

**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 Jacqueline Amy Crawshaw
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: **Jacqueline Amy Crawshaw**  
Address: Suite 2, Level 14, 1 Castlereagh St, Sydney 2000 in the state of New South Wales  
Occupation: Associate Director, Advocacy and Communications  
Date: 5 May 2020

I, Jacqueline Amy Crawshaw of Suite 2, Level 14, 1 Castlereagh St, Sydney 2000 in the state of New South Wales, say as follows:

1. I am the Associate Director, Advocacy and Communications, for Energy Consumers Australia Ltd (**ECA**) and am authorised to make this statement on ECA's behalf.
2. Except where otherwise stated, I make this statement from my own knowledge and from ECA's records referred to below.

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

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3. Now shown to me is a hyperlinked index marked **Exhibit JC-1** and a further hyperlinked index marked **Confidential Exhibit JC-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 JC-1** or **Confidential Exhibit JC-2**.

**A. BACKGROUND**

4. I was appointed to my current role in January 2019. In that role, I am primarily responsible for:
- (a) the consideration of ECA's position with respect to proposed laws, regulations and market developments across the National Energy Market (**NEM**) (both gas and electricity) that might impact on retail aspects of, and innovation across, the NEM;
  - (b) the assessment of the impact of these potential developments on small business and residential energy consumers; and
  - (c) the formulation of submissions directed to market participants and statutory and regulatory bodies relating to the impact of these developments on small business and residential energy consumers.
5. In my current role, I report directly to Mr Chris Alexander, who is ECA's Director, Advocacy and Communications. However, Mr Alexander had little involvement in ECA's work on the New Energy Tech Consumer Code (**Tech Code**), and I typically reported directly to the CEO at that time, Ms Rosemary Sinclair, on all matters relating to the Tech Code. Where I provide evidence as to matters which occurred prior to my direct involvement in the Tech Code process, I do so based on my review of relevant ECA materials and records.
6. From June 2012 to December 2018, I held the position of Manager, National Energy Policy in the NSW Department of Planning and Environment. In that role, I was involved in various initiatives, including:
- (a) the implementation of the National Energy Customer Framework in NSW;
  - (b) the removal of retail energy price regulation; and
  - (c) the passage through NSW Parliament of several key legislative items, including the *National Energy Retail (NSW), Electricity Supply Amendment*

*(Advanced Meters) Act 2016 and Energy Legislation Amendment (Retail Electricity and Gas Pricing) Act 2015.*

7. From September 2011 to June 2012, I held the roles of Senior Policy Officer and Acting Manager Consumer Energy Policy within the NSW Department of Trade and Investment.
8. From June 2007 to September 2011, I was employed as an advisor within the Australian Energy Market Commission.
9. From April to September 2006, I was employed as an analyst at AGL. Prior to that I briefly held the role of Administration Officer at Agility.
10. I graduated from Macquarie University with a Bachelor of Science (Atmospheric Science) in 2000 and a Master of Science (Atmospheric Science) in 2004.

**B. ECA**

11. In late 2013, the Council of Australian Governments Energy Council (a forum for the energy ministers of the Commonwealth, States and Territories to work together in the pursuit of national energy reforms) (**COAG EC**) resolved to establish a national energy consumer advocacy body. This decision followed a period of consultation with consumer groups and other stakeholders as part of the energy market reform package agreed by State and Federal Energy Ministers in 2012.
12. ECA was established as a company limited by guarantee on 30 January 2015, with a mandate to act as a national energy consumer advocacy body, with a focus on matters of strategic importance and material consequence for energy consumers, in particular, households and small business consumers.
13. It is my understanding that the rationale for the establishment of ECA was that while there were many active consumer advocacy groups, there was no national group which represented the interests of all households, not just vulnerable households, and small business with respect to the energy market.
14. ECA's Constitution records its objects as being to promote the long-term interests of consumers of energy with respect to the price, quality, safety, reliability and security of the supply of energy services by providing and enabling strong, coordinated, collegiate evidence-based consumer advocacy on NEM matters of strategic importance or material consequence for energy consumers, in particular for



residential customers and small business customers. A copy of ECA's Constitution appears at tab 1 of **Exhibit JC-1** ([ANA.001.001.0234](#)).

15. ECA seeks to fulfil its objects by:
  - (a) gathering evidence-based research with a national perspective, through a range of activities, including a biannual consumer sentiment survey and community listening tours which are held as needed;
  - (b) seeking additional input from other stakeholders and from its Board Reference Committee, which comprises individuals with expert capacity who are drawn from a variety of key consumer groups, including the NSW Energy Institute, Consumer Action Law Centre (**CALC**), the South Australian Council of Social Service and Hydrogen Mobility Australia (amongst others);
  - (c) reviewing and weighing up the various consumer and stakeholder views with the aim of producing a balanced and considered position; and
  - (d) communicating that balanced position to regulators, government and industry participants by way of submissions and otherwise participating in market consultation processes run by regulators and government.
16. While there are many active consumer advocacy groups in the broader market, I consider that ECA performs a unique role when it comes to the NEM, in that it weighs up the long-term interests of all residential and small business consumers in the NEM, by assessing total consumer benefit.
17. When I refer to total consumer benefit, I mean that ECA takes a broad approach when considering the outcomes of policy or regulatory decisions. That is, it considers whether a proposed policy or law delivers benefits to energy consumers broadly, including as to matters of price, innovation and consumer protection.
18. ECA's goal, in considering each element of a statutory, regulatory, policy or market development, is to weigh up the manner in which it contributes to (or detracts from) the benefit to small business and residential energy consumers. In its assessments, ECA applies an assessment matrix known as the "AIO" framework. This acronym stands for Affordable, Individualised and Optimised. ECA applies this framework against each relevant development or proposal by asking whether it:
  - (a) is likely to deliver lower costs to consumers (such as through competition or by directly lowering consumer bills);

- (b) facilitates consumer choice, decision-making and investments by giving consumers the information and tools they need to choose a solution that works for them, to manage their energy bills; or
  - (c) presents the most efficient approach, having regard to both individual consumer needs and the need to ensure appropriate investment in energy infrastructure or systems.
19. Based on my years of experience in roles relating to Australian energy markets, I consider that the complex and often overlapping legal and regulatory frameworks of Australian energy markets can stifle innovation. I have held that opinion for many years.
20. ECA considers that increased innovation in energy markets is a key desirable outcome for household and small business customers in the NEM, and that consumer uptake of technology can be a key driver of innovation in the sector.
21. Any market developments which promote innovation are likely to be directly relevant to the price, quality, safety, reliability and security of the supply of energy services experienced by consumers.
22. Consistent with ECA's focus on innovation in the NEM, ECA has been an active supporter of policy settings which help to support consumer choice of new technology in the NEM.
23. The development, and increased availability, of new technology strongly contributes to positive consumer outcomes with respect to the price, quality, safety, reliability and security of the supply of energy services. In that respect, the Tech Code directly engaged with two of the AIO principles discussed above: lowering consumer costs through the introduction of cost reducing technology and increasing consumer choice, though making new technology products and services more accessible (through their being more clearly marketed and supplied).
24. In any consumer facing market, including for new energy technology, there is potential for market participant behaviour to give rise to negative consumer outcomes. However, the risk of these outcomes (including the steps taken to mitigate them) must be weighed up against the benefits of the relevant policy for consumers more generally.
25. ECA considers that the Tech Code is an example of how these competing considerations (i.e. the need for consumer protection (on the one hand) and the

impact of the costs of ensuring consumer protection (on the other)) – produce an outcome which, overall, is in the best interests of small business and residential energy consumers.

### C. THE TECH CODE: BACKGROUND

26. By letter dated 16 August 2017, the then Federal Minister for the Environment and Energy wrote to ECA on behalf of the COAG EC. That letter:
- (a) requested ECA to develop well targeted and clear information on consumer rights and protections and a range of consumer information products (facts sheets, infographics and online tools), to help explain the laws and protections that apply under different behind-the-meter supply arrangements.
  - (b) requested that ECA consult with consumer advocates, industry, Energy Ombudsman's offices, market bodies and the ACCC as part of this exercise;
  - (c) requested ECA to work with industry to cooperatively develop a single, industry wide Code of Conduct for all behind-the-meter electricity supply services and products (the **Tech Code**); and
  - (d) informed ECA that the Minister had also written to industry about the development of the Tech Code and asked industry to collaborate with ECA to support this work.

A copy of that letter appears at tab 2 of **Exhibit JC-1** ([ANA.001.001.0329](#)).

27. The term “behind-the-meter products and services” describes those products and services that are located on the consumer’s side of the meter installed at every household or business that is connected to the electricity or gas supply. That is, all relevant energy related products and services which are acquired by the consumer and installed for use on the consumer’s premises, and which are not the responsibility of the relevant energy retailer or distributor. In my opinion, the term “new energy tech” goods or services has a meaning broadly equivalent to “behind-the-meter” goods or services.
28. As noted above, the Minister had also written, in separate letters in similar terms, to the Australian Energy Council (**AEC**), Clean Energy Council (**CEC**), Smart Energy Council (**SEC**) (known as the Australian Solar Council at the time) and Energy Networks Australia (**ENA**), on behalf of the COAG EC, requesting that they work together with ECA to develop the Tech Code (**COAG EC Letter**). A copy of the letter sent to the AEC appears at tab 3 of **Exhibit JC-1** ([ANA.001.001.0354](#)).

29. Various regulatory regimes govern the supply of energy to consumers by retailers, but these only govern the delivery of the energy up to the consumer's meter (i.e. the gas or electricity meter). They do not provide any energy sector-specific consumer protection "behind the meter".
30. While the Australian Consumer Law (**ACL**) provides for a wide range of consumer protection, it necessarily has a broad focus across all sectors, and is not tailored to the energy sector.
31. The COAG EC Letter noted the lack of a consistent approach by industry to addressing various issues associated with the supply of new energy tech, and requested industry agreement in the development of a single industry code of conduct to govern the supply of all behind the meter products and services.

#### **D. DEVELOPMENT OF THE TECH CODE**

32. A "behind-the-meter" working group (**BTMWG**) was established in October 2017, in order to give effect to the request of the COAG EC. The members of the BTMWG were:
  - (a) CEC, as the peak body for the clean energy industry in Australia representing businesses operating in, or supporting, the development of renewable energy (including solar, wind, hydro, bioenergy, geothermal and marine);
  - (b) AEC, being the industry body representing 23 businesses operating in the wholesale and retail energy markets;
  - (c) SEC, being the peak body for the solar, storage and smart energy industry in Australia;
  - (d) CALC, being a not-for-profit organisation which advocates for a fair marketplace for the benefit of consumers;
  - (e) ENA, being the industry body representing Australia's electricity transmission and distribution and gas distribution networks;
  - (f) Renew, being a not-for-profit association that advocates for sustainable living practices;
  - (g) Public Interest Advocacy Centre, being an association which tackles difficult social problems that impact on the lives of Australians;

- (h) Energy Queensland, the body responsible for the Queensland government's electricity networks and retail businesses;
  - (i) national electricity generator and retailer, AGL; and
  - (j) ECA.
33. A draft Tech Code was released for broad stakeholder consultation in late November 2018, with a request for feedback by 6 February 2019.
34. The stakeholder consultation targeted a broad range of consumer representatives, industry, government bodies, other stakeholder groups and organisations and included workshop fora in Adelaide, Brisbane, Sydney and Melbourne.
35. Following these workshops, a preliminary report was produced by an external service provider (which had been involved in the stakeholder consultation process), summarising the key feedback from the sessions, principal amongst them being:
- (a) the view that there was broad support for the Tech Code and its role in ensuring good consumer outcomes;
  - (b) the perceived flexibility of the Tech Code to change with the pace of new energy technology; and
  - (c) enthusiasm for consumer-focused information being delivered to consumers through the Tech Code itself.
36. A draft copy of that report, dated December 2018, appears at tab 4 of **Exhibit JC-1** ([ANA.001.001.0340](#)). This report was never finalised but I understand this was the most recent draft.
37. Written submissions were received from many interested parties, addressing a range of issues, including:
- (a) the terms on which finance of the kind known as “buy now, pay later” (**BNPL**) should be available to consumers seeking to acquire new energy tech products and services. Examples of this are the submissions received from Brighte dated 6 February 2019 (a copy of which appears at tab 5 of **Exhibit JC-1**) ([ANA.001.001.0357](#)) and CALC, mistakenly dated 22 January 2018 (instead of 2019), a copy of which appears at tab 6 of **Exhibit JC-1** (**CALC BTM Submission**) ([ANA.001.001.0368](#)).

- (b) unsolicited sales with respect to new energy tech goods or services. An example of this is the CALC BTM Submission;
  - (c) operational aspects of the Tech Code; and
  - (d) the administration of the Tech Code.
38. There was general support for the principal objectives of the Tech Code and the manner in which the Tech Code sought to address these. One example of a submission which recognised the balance sought to be struck by the Tech Code in seeking to mandate a minimum set of customer expectations while encouraging efficiency and the promotion of innovation, was the submission of Ausnet Services, dated 8 February 2019, a copy of which appears at tab 7 of **Exhibit JC-1** ([ANA.001.001.0373](#)).
39. In January 2019, technical fora were held in Brisbane and Melbourne, where attendees responded to structured questions and considered draft Tech Code provisions against several categories of new energy tech products and services.
40. Throughout the consultation process, submissions and feedback were received from a diverse range of parties. Various changes were made to the draft Tech Code to reflect feedback received during the workshops and from submissions received by the BTMWG.
41. The Tech Code specifically addressed a range of matters, including:
- (a) ensuring that signatories and consumers were aware of their statutory obligations and consumer rights (principally being those arising under the ACL);
  - (b) expanding on those statutory rights to include additional rights and obligations, which the BTMWG considered promoted the objects of the Tech Code. Examples of these included signatories:
    - (i) being required to comply with detailed guidelines relating to the advertisement and promotion of New Energy Tech;
    - (ii) having adequate systems, policies and procedures in place to ensure compliance with these obligations;
    - (iii) being required to comply with minimum business practice standards for direct marketing and sales;

- (iv) being required to consider whether goods or services are fit for purpose for each consumer's needs (for example, that a consumer was not acquiring goods which – while fit for purpose in an ACL sense – exceeded the consumer's practical requirements);
    - (v) not quoting for the supply of goods or services without first obtaining certain details from consumers; and
    - (vi) having a clear and transparent complaints handling process; and
  - (c) an explanation of consumers' entitlements to terminate the contract with the supplier.
42. The draft Tech Code also included detailed provisions dealing with payment and finance terms.
43. While submissions had been received both for and against permitting BNPL finance to be available to consumers when acquiring new energy tech goods or services, the final version of the Tech Code approved by the BTMWG entirely prohibited the offering of BNPL in association with the sale of new energy tech.
44. The Tech Code was submitted to the ACCC for authorisation in April 2019. A copy of the application submitted by the Authorisation Applicants appears at tab 8 of **Exhibit JC-1** ([ANA.001.001.0506](#)). It was around this time that I took direct day-to-day responsibility for ECA's involvement in the BTMWG and with the Tech Code.
45. The proposed conduct for which the authorisation was sought was, broadly, the commitment by signatories to the Tech Code to give effect to provisions in the Tech Code:
- (a) under which they would abide by the minimum standards of practice set out in the Tech Code;
  - (b) for monitoring and sanctioning non-compliance with the Tech Code; and
  - (c) requiring signatories to only offer deferred payment arrangements which were regulated under the *National Consumer Credit Protection Act 2009* (**NCCPA**) and the National Credit Code (**NCC**), and which were provided by credit providers licensed under the NCCPA.

46. As noted above, one of the key objects of the Tech Code was to establish a guide which provided a single comprehensive reference point for consumer rights and supplier obligations in the new energy tech sector.
47. While a solar industry-specific code existed prior to the development of the Tech Code, it only addressed the solar industry and did not address other areas of new tech in the energy sector. As such, the Tech Code represented the first time that consumer issues in the new energy tech space were brought together in a single document, in an approachable and easy to follow format.
48. Not only did the Tech Code usefully identify and reinforce matters which were already the subject of consumer protection legislation, but it expanded the obligations of suppliers by reference to what we referred to as “the consumer journey”.
49. The “consumer journey” is depicted at pages 3 and 4 of the Tech Code submitted to the ACCC for authorisation. It is a term essentially designed to refer to the entire life span of new energy technology, from marketing through to the end of the life of the goods or services (and the supplier obligations and consumer rights that exist throughout that journey).
50. The Tech Code provided greater focus on the earlier stages of that life cycle. This was due to there being greater certainty as to the issues likely to arise and it was also considered that as “end of life” issues varied between different types of new energy tech, it was difficult to address this in too much detail in a sector-specific guide that was not limited to any one type of new energy tech.
51. Examples of obligations arising under the Tech Code which do not otherwise exist (or which exist, but only to a lesser extent), include:
- (a) taking extra care if the signatory becomes aware that the consumer may be facing vulnerable circumstances (paragraph 5 of the initial version of the Tech Code/paragraph 6 of the final version assessed by the ACCC);
  - (b) ensuring that the supplier of the new energy tech goods or services make “fit-for-purpose inquiries”, including ensuring that any offer of new energy tech is fit for purpose in light of the consumer’s needs and expectations (which are to be assessed by the supplier) (paragraph 6 of the initial version of the Tech Code/paragraph 7 of the final version assessed by the ACCC);
  - (c) taking responsibility for sales agents, representatives, installers and subcontractors in order to ensure the accuracy of information provided and the



safety of installations (paragraphs 57-59 of the initial version of the Tech Code/paragraphs 58-60 of the final version assessed by the ACCC); and

- (d) improving complaints handling processes (paragraph 53 of the initial version of the Tech Code/paragraph 54 of the final version assessed by the ACCC).

52. Tab 9 of **Exhibit JC-1** ([ANA.001.001.0404](#)) is a report dated December 2016 and prepared by KPMG on solar systems and batteries, commissioned by ECA.

Relevantly, the report:

- (a) identified instances of consumers being sold systems that were not appropriately sized for them (see chapter 5 of the report);
- (b) concluded that customers needed access to the information and tools they require in order to make informed investment decisions (see chapter 5);
- (c) observed that consumer knowledge of their warranty entitlements was low (see chapter 8); and
- (d) concluded that many customers did not understand how their solar system operated or how to get the most value from their system (see chapter 8).

53. In ECA's view, the Tech Code helped address these concerns and provided significant benefits to both consumers and suppliers of new energy tech products and services. The consumer benefits arose from:

- (a) the promotion of new energy tech products in a manner which was likely, in ECA's opinion, to increase market penetration of those products and services, principally through a demystification of complex technology and its promotion in a consumer-friendly manner;
- (b) a likely reduction in energy costs for consumers through the adoption of appropriately tailored new energy tech products and services;
- (c) the extension of consumer protections not otherwise available to consumers under existing consumer protection legislation;
- (d) the publication of a document which clearly sets out key consumer rights and supplier obligations in the one place and in plain English, making it accessible for consumers; and
- (e) consumers avoiding additional costs which might be passed on by suppliers if the suppliers were subject to a more heavy-handed form of industry regulation.

54. Supplier benefits arose by virtue of suppliers:
- (a) benefiting from increased consumer confidence, in order to help grow the new energy technology market;
  - (b) clearly understanding the framework in which they were to operate, thereby reducing the risk of complaints by, or disputes with, consumers; and
  - (c) having the ability – in circumstances where the Tech Code is voluntary and not mandatory – to promote their business as one which has signed up to, and complies with, the Tech Code.

## **E. THE AUTHORISATION PROCESS**

55. When I commenced in my current role in January 2019, the then CEO of ECA, Ms Sinclair, asked me to take over responsibility for ECA's involvement with the Tech Code. However, due to onboarding and other commitments at that time, I only formally took on responsibility for the Tech Code around the time that the Tech Code was submitted to the ACCC for authorisation.
56. Prior to taking on responsibility for ECA's involvement with the Tech Code and the authorisation process, I was briefed on the background by Ms Sabiene Heindl, Director Strategic Engagement (who had been responsible for ECA's involvement with the Tech Code until that time), and I was broadly aware of the development of the Tech Code as a result of work I had been doing prior to joining the ECA.
57. I formally took on the role of ECA's representative to the BTMWG at the end of April 2019, although I accompanied Ms Heindl at meetings of the BTMWG on 15 and 24 April 2019.
58. Following the submission of the authorisation application to the ACCC, the BTMWG did not formally discuss the submissions made to the ACCC in respect of the Tech Code until after the ACCC published its Draft Determination.
59. However, I was aware of the various submissions made to the ACCC during its public consultation process and, in particular, the submissions for and against BNPL.
60. I am also aware that the ACCC communicated with the CEC on behalf of the Authorisation Applicants, seeking further information in relation to various administrative and operational aspects relating to the administration of the Tech Code, during the period prior to the publishing of the Draft Determination.

**F. ACCC DRAFT DETERMINATION ON 1 AUGUST 2019**

61. On 1 August 2019, the ACCC published its Draft Determination. A copy of the Draft Determination appears at tab 10 of **Exhibit JC-1** ([ANA.001.001.0278](#)).
62. The ACCC noted that the majority of submissions received by it supported the intention of the Tech Code, and the ACCC expressed its preliminary position as being that:
- (a) the Tech Code was likely to result in significant public benefits;
  - (b) the Tech Code was unlikely to result in public detriment from a lessening of competition in the supply of new energy tech products and services; and
  - (c) the ACCC proposed to grant authorisation for the Tech Code.
63. However, the ACCC sought further submissions with respect to the Tech Code's approach to BNPL arrangements (i.e. excluding them), particularly if BNPL providers were able to demonstrate that they were properly regulated and offer consumers adequate protections similar to those available under the NCCPA and NCC.
64. The ACCC also referred to submissions from consumer associations which generally supported the commitments required of signatories in the Tech Code (including in relation to BNPL), and the fact that some of those submissions raised questions about whether paragraph 4 of the original version of the Tech Code (relating to high pressure sales tactics) went far enough, and whether the Tech Code should specifically proscribe unsolicited sales of new energy tech goods or services.
65. Following publication of the Draft Determination, the members of the BTMWG held a number of discussions, many of which were ad hoc and by way of conference call or email exchange between members.
66. By letter sent to the CEC on 16 August 2019, the ACCC informed the Authorisation Applicants that two parties had requested that the ACCC hold a pre-decision conference and that it would be held on 9 September 2019.
67. On 21 August 2019, Mr Kris Funston of Deloitte (who I had known from my time at the NSW Department of Planning and Environment) emailed me:
- (a) introducing me to Ms Ann Devine, the Chief Risk Officer of Brighte;
  - (b) stating that Deloitte had been engaged by Brighte to undertake a consumer feedback study on Brighte's loan offering; and

(c) stating that he was leaving it to Ms Devine to follow (I assumed, me) up.

A copy of Mr Funston's email to me appears at tab 11 of **Exhibit JC-1** ([ANA.001.001.0233](#)).

68. Mr Funston, Ms Devine and I subsequently agreed to meet on 4 September 2019.
69. By email sent on 22 August 2019, the CEC's representative on the BTMWG (Ms Mindy Lim), suggested that the members of the BTMWG meet to discuss the issues raised in the Draft Determination. This meeting was scheduled for 2 September 2019.
70. Subsequently, on 30 August 2019, Ms Lim sent an email to the BTMWG representatives identifying some specific points which the ACCC had requested the Authorisation Applicants to address at the pre-decision conference (principally, unsolicited sales and BNPL). To the best of my recollection, Ms Lim's email was sent following a conversation that she had with ACCC staff some time after her email of 22 August 2019. A copy of that email appears at tab 12 of **Exhibit JC-1** ([ANA.001.001.0336](#)).
71. At the meeting on 2 September, the two principal issues discussed were:
- (a) whether or not the Tech Code's approach to BNPL finance should be modified. That is, whether the Tech Code should be amended to enable the provision – generally or in a limited way – of BNPL finance in association with the purchase of goods or services to which the Tech Code applied; and
  - (b) whether the Tech Code should contain a prohibition on the unsolicited sale of new energy tech products.

I address each of these topics separately below.

### **Discussion re BNPL**

72. I recall there being extensive discussion around the topic of BNPL. In the course of those discussions, I stated that ECA's position was that the interests of consumers needed to be protected, first and foremost. However, if there was a way in which that could be achieved without excluding BNPL providers from the new energy tech sector, then ECA was supportive of that approach.
73. I recall reviewing the various submissions made by Brighte and FlexiGroup, which revealed how widely BNPL was expanding as a way of consumers being able to finance new energy tech products, particular solar systems and batteries. In this

context, I reflected on how the language of paragraph 24 of the Tech Code could potentially impact on consumer choice to invest in new energy tech.

74. Based on my discussions with other members of the BTMWG, it was my understanding that the initial approach to paragraph 24 of the Tech Code (i.e. excluding BNPL finance as a class) was drafted with a view to ensuring that consumers' rights were adequately protected (CALC, in particular, had strongly expressed the view that BNPL had been the cause of significant consumer detriment on a number of occasions). That is, the BTMWG did not have a particular opposition to BNPL finance per se, rather, it was focused on the risk of consumer harm. I also shared that view (in that the focus of the Tech Code was on ensuring consumer benefits and preventing consumer harm).
75. My understanding was that, in light of concerns expressed by CALC and some others as to consumer risk, the BTMWG was satisfied with the proposal to exclude BNPL from the Tech Code.
76. However, reflecting on the observations of the ACCC in the Draft Determination, I was persuaded that – so long as the risk of consumer harm was appropriately managed – the Tech Code could be amended to make BNPL finance available for purchases of new energy tech goods and services. In my view, such a change could be beneficial to consumers – particularly those who would not have otherwise been able to access new energy technology goods or services.
77. As stated above, ECA's objects require it to consider the total consumer benefit of any proposal. When I reviewed the submissions made to the ACCC, and considered the position taken by the ACCC, I appreciated the extent to which BNPL finance influenced the uptake by consumers of new energy tech products and services. In ECA's view, subject to addressing the consumer protection risks associated with BNPL, the introduction of BNPL would give consumers greater choice and control over their energy technology. This could, in turn, possibly affect the extent of innovation in the sector. Based on discussions with other members of the BTMWG, it appeared to me that at least some of the other members shared this view.
78. Any response designed to overcome the potential impact on innovation in the sector and market penetration of new energy tech products had to necessarily be weighed up against any possible detriment to consumers that might arise from that response. ECA was satisfied that any potential consumer detriments (such as those raised by CALC) could be adequately addressed through a mechanism which required BNPL

providers to effectively observe substantially similar standards as those contained in the NCCPA and NCC.

#### **Discussions re unsolicited sales**

79. While some members of the BTMWG expressed support for a stronger approach to unsolicited sales, the AEC representative (Mr Ben Barnes) stated that:
- (a) the AEC opposed this change; and
  - (b) in any event, it was not appropriate to adopt such a significant change at such a late stage in the process, as there was no opportunity to undertake formal consultation on this change.
80. I agreed with this position. That is, that it was not desirable to make significant changes at that time, and it was agreed by the members of the BTMWG that it was not desirable to make substantive changes at that stage of the process, in circumstances where there had been much effort in reaching the agreed position presented in the draft Tech Code.

#### **Events subsequent to the 2 September 2019 meeting**

81. On 4 September 2019, I met with Mr Funston of Deloitte and Ms Devine of Brighte, where they presented the results of their study. A copy of the Deloitte presentation appears at tab 1 of **Confidential Exhibit JC-2** ([ANA.001.001.0220](#)) [Confidential to Brighte].
82. On a further BTMWG conference call on 6 September 2019, it was resolved by the BTMWG that it would not support any change to the Tech Code to prohibit unsolicited sales of new energy tech products. Instead, it resolved that the administrator of the Tech Code should publish guidelines on unsolicited sales, for consultation, once the Tech Code had commenced. This approach would allow wider consultation on this topic.

#### **G. CORRESPONDENCE WITH THE ACCC AND THE PRE-DECISION CONFERENCE ON 9 SEPTEMBER 2019**

83. In light of the ACCC's request for the BTMWG's response to the issues identified in Ms Lim's email of 30 August 2019, it was agreed – during the meeting of 2 September 2019 – that, ahead of the pre-decision conference, the Authorisation Applicants would write to the ACCC to:

- (a) clarify the intent behind paragraph 24 of the Tech Code, and note that the intention of the Authorisation Applicants was not to exclude BNPL providers *per se*, but, rather, to ensure that consumers' interests were adequately protected;
  - (b) note the development of an industry code for the BNPL industry (**BNPL Code**) which, the Authorisation Applicants understood, would deliver substantively equivalent consumer protections to those contained in the NCCPA;
  - (c) propose an amendment to paragraph 24 to address these points. In particular, the proposed amendment suggested amending paragraph 24(b) to permit BNPL to be offered where it complied with a regulator approved code of conduct or industry code that delivered substantively equivalent consumer protections to those contained in the NCCPA (notwithstanding the fact that the BNPL finance was not regulated by the NCCPA or NCC); and
  - (d) indicate its response to the question of whether unsolicited sales should be prohibited under the Tech Code.
84. By letter dated 6 September 2019, the CEC (on behalf of the Authorisation Applicants) wrote to the ACCC, addressing the BNPL issue and proposing an amendment to the Tech Code to address this. The letter also addressed the topic of unsolicited sales. A copy of that letter appears at tab 13 of **Exhibit JC-1** ([ANA.001.001.0323](#)).
85. It was ECA's intention – and, I understood, that of the other Authorisation Applicants – in sending this letter, to:
- (a) address the concerns raised by the ACCC;
  - (b) pursue an approach which advanced the uptake by consumers of new energy tech products while, at the same time, ensuring that consumers' interests were adequately protected; and
  - (c) ensure that the authorisation process for the Tech Code was not derailed or delayed by an issue which ECA considered was relatively small in the broader context of the benefits sought to be provided to consumers by the Tech Code as a whole. This, in particular, was a very significant concern for ECA.
86. On 9 September 2019, I attended the ACCC's pre-decision conference together with representatives from the CEC and AEC, on behalf of the Authorisation Applicants. A

copy of the minutes of that meeting, as prepared by the ACCC and published on its public register, appears at tab 14 of **Exhibit JC-1** ([ANA.001.001.0265](#)).

87. At that conference, I supported the proposed amendment advocated for by the Authorisation Applicants in the CEC's letter of 6 September 2019.

#### **H. EVENTS FOLLOWING THE PRE-DECISION CONFERENCE**

88. On 13 September 2019, Ms Lim sent an email to the members of the BTMWG. In her email, she stated that she had been contacted by the ACCC and that the ACCC had requested a further submission in relation to (among other things) unsolicited sales. A copy of that email appears at tab 15 of **Exhibit JC-1** ([ANA.001.001.0325](#)).
89. On 16 September 2019, Mr Gerard Brody of CALC sent an email to the members of the BTMWG in response to Ms Lim's email of 13 September 2019. In his email, he noted that in order for the proposed BNPL Code to offer equivalent protections to the NCCPA, it would have to restrict BNPL providers from engaging in the supply of BNPL finance in respect of goods or services supplied as a result of unsolicited contact. This was due to the fact that the existing regulatory regime restricted vendors offering regulated credit products from engaging in such sales. A copy of that email appears at tab 16 of **Exhibit JC-1** ([ANA.001.001.0337](#)).
90. The topics of unsolicited sales and BNPL finance were again discussed by the BTMWG on a conference call on 17 September 2019.
91. Tab 17 of **Exhibit JC-1** ([ANA.001.001.0263](#)) is a copy of my handwritten notes from that call, which I consider to be an accurate record of the call. My notes record the fact that the following three key consumer risks associated with unsolicited sales were identified as:
- (a) these sales can be high pressure sales;
  - (b) consumers could agree to detrimental finance arrangements; and
  - (c) a high-pressure environment might result in a consumer agreeing to acquire a potentially unfit product.
92. In relation to the first risk, the BTMWG agreed that the Tech Code should be amended to insert a requirement that signatories must have a policy around unsolicited sales of new energy tech products and services. This resulted in the insertion of a new paragraph 2 into the Tech Code.



93. The second risk was primarily a concern around ensuring that the treatment in the Tech Code of BNPL finance was equivalent to the regulatory treatment of regulated finance. The basis for this concern was our understanding that there was no regulatory framework which addressed the offering of BNPL finance by vendors of new energy tech products and services.
94. In light of the ACCC's request for further consideration of this issue, I (and, I perceived, the other BTMWG members) considered that further changes were required to address this concern.
95. As a result, the BTMWG members agreed that the Tech Code should be amended to prohibit signatories from making any offers of unregulated finance in conjunction with the supply of goods or services to consumers arising from unsolicited contact with the consumers. This resulted in the language of the proposed new paragraph 3(d) of the Tech Code (discussed further below).
96. The BTMWG members considered that the third risk was already sufficiently addressed by the Tech Code.
97. In relation to BNPL finance more generally:
- (a) Mr Barnes (AEC's representative) said that:
    - (i) he had been seeking further information in relation to the BNPL Code, but that he had not had any response from the relevant industry association;
    - (ii) based on what he knew about it so far, he did not consider that the BNPL Code would offer consumer protection equivalent to that offered for regulated finance; and
    - (iii) he considered that a requirement for ASIC approval of the BNPL Code might overcome his concerns.
  - (b) Mr Brody (CALC's representative) stated that he agreed with Mr Barnes' concerns about the adequacy of the BNPL Code in protecting consumers;
  - (c) the BTMWG considered that the position under the Tech Code should ensure an equivalence in consumer protection, regardless of whether or not the finance was regulated or unregulated (i.e. BNPL);
  - (d) the BTMWG agreed that the Tech Code should be amended to reflect these various concerns; and

- (e) a principal attraction in having the adequacy of the BNPL Code approved by ASIC, was the fact that the Tech Code administrator had no financial services market expertise. I – and, I perceived, other members of the BTMWG – did not consider it appropriate for the Tech Code administrator to be responsible for assessing whether or not the BNPL Code provided consumers with equivalent protections to those offered in the case of regulated finance.
98. It was agreed that a further – updated and consolidated – version of the Tech Code should be provided to the ACCC for its assessment, which took these issues into account.
99. By letter dated 23 September 2019, ECA – independently – wrote to the ACCC, setting out further background in relation to the development of the Tech Code, its support for the Tech Code and providing further endorsement of the public benefits associated with the Tech Code. A copy of that letter appears at tab 18 of **Exhibit JC-1** ([ANA.001.001.0327](#)). This letter was prompted by ECA wanting to ensure that the relatively discrete (from ECA's perspective) issue of BNPL did not derail the introduction of the Tech Code, with its broader significant consumer benefits.
100. The CEC wrote to the ACCC on behalf of the Authorisation Applicants, by letter dated 25 September 2019, addressing a number of the issues raised during the pre-decision conference (and in subsequent communications between the ACCC and CEC) and summarising the BTMWG's position on those issues.
101. As decided in the BTMWG meeting on 17 September 2019, a revised version of the Tech Code was provided to the ACCC under cover of the CEC's letter of 25 September 2019 (***September Version of the Tech Code***), addressing (among other things) these issues. The unsolicited offering of unregulated finance was specifically addressed in a new paragraph 3(d), and paragraph 24 (which, due to other changes, had become paragraph 25) was also amended. A copy of the letter of 25 September 2019 together with the September Version of the Tech Code appears at tab 19 of **Exhibit JC-1** ([ANA.001.001.0375](#)).
102. The letter confirmed the Authorisation Applicants' support for the introduction of the proposed BNPL Code and the provision of BNPL finance in association with the supply of new energy tech products and services. The letter set out the proposed amendment to paragraph 24 to facilitate this (i.e. to allow BNPL finance to be offered in conjunction with new energy tech goods and services where regulated by the BNPL Code).

103. Without saying it explicitly, this support was predicated on the assumption that the BNPL Code provided substantially similar protections to those contained in the NCCPA and NCC. This was implicit from the reference to the CEC's letter of 6 September 2019.
104. In ECA's view, this proposed amendment ensured that all of the benefits of the Tech Code would be retained, and that any potential consumer detriment arising from BNPL being available to consumers of new energy tech goods or services was adequately mitigated.
105. The letter of 25 September 2019 also addressed the topic of unsolicited sales and noted that, following consideration of further submissions in relation to that topic, the BTMWG had reached the view that financial products should not be offered during unsolicited sales unless the party making the offer possessed a licence under the NCPPA (thereby ensuring consistency with the NCCPA).
106. I was concerned to ensure that the proposed changes to paragraph 24 (i.e. which now permitting the supply of BNPL in certain circumstances) did not have the unintended consequence of:
- (a) enabling BNPL to be offered to customers in conjunction with the supply of unsolicited goods or services (given that BNPL is not regulated by the NCCPA and the unsolicited supply prohibition in the NCCPA would not apply to BNPL); and, thereby
  - (b) providing BNPL with a competitive advantage against other forms of regulated finance, which could not be offered in the same circumstances. This aspect of my concern was reflected in the reference in the CEC's letter of 6 September 2019 to the proposed amendment ensuring competitive neutrality. That is, that BNPL and regulated finance were treated in the same way under the Tech Code.
107. It was – and remains – ECA's opinion that the September Version of the Tech Code (particularly, the proposed amended paragraphs 3(d) and 25) delivered new energy tech consumers with many significant benefits, providing a consumer outcome that was far superior to that which existed prior to the development of the Tech Code.

#### **I. ACCC RESPONSE TO THE SEPTEMBER VERSION OF THE TECH CODE**

108. On 2 October 2019, I participated in a video conference with representatives of the ACCC and the other Authorisation Applicants.

109. During the video conference, one of the ACCC representatives (I do not recall whom) stated that while the ACCC did not want the Tech Code to exclude BNPL finance as a whole, the ACCC was not supportive of the amendments proposed by the Authorisation Applicants under cover of the CEC's letter of 25 September 2019.
110. The ACCC representative stated that the reasons for the ACCC's position were, essentially:
- (a) that the proposed amendments did not provide sufficient certainty as to the specific consumer protections which were required to be provided under the Tech Code; and
  - (b) the uncertain timing for the introduction of, and final form of, the BNPL Code.
111. The ACCC representative then stated that the ACCC would shortly circulate a proposed redrafted paragraph 24, designed to address the ACCC's concerns.
112. By letter dated 22 October 2019 and published on the ACCC's public register, the ACCC confirmed its position and attached a further revised proposed version of paragraph 24 (noting that it was now paragraph 25 in the Tech Code) as Annexure A (***ACCC Version of Paragraph 25***).
113. The ACCC's letter also referred to the Authorisation Applicants' proposed amendment to deal with unsolicited offers of finance (inaccurately referring to it as unsolicited sales), but did not otherwise address that proposed amendment in its letter. A copy of that letter and its attachment appears at tab 20 of **Exhibit JC-1** ([ANA.001.001.0332](#)).
114. The ACCC Version of Paragraph 25 specifically imposed a requirement on the Tech Code administrator to, in the case of entities offering BNPL finance, ensure that those entities had in place policies which complied with various obligations designed (in part) to mirror obligations arising under the NCCPA and the NCC.

## **J. ADDRESSING THE ACCC VERSION OF PARAGRAPH 25**

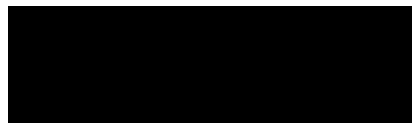
115. On receiving and considering the ACCC Version of Paragraph 25, I had two initial reactions. My first reaction was that, on a practical level, the ACCC had clearly indicated that it was unlikely to grant the authorisation of the Tech Code based on the September Version of the Tech Code. As such, the Authorisation Applicants were confronted with the reality that obtaining the authorisation depended on acceptance of the ACCC Version of Paragraph 25.

116. I considered that the bulk of the benefits to be provided to consumers arose from the Tech Code more generally (i.e. not including the BNPL provisions), and did not want to see the introduction of the Tech Code derailed by a dispute over the most appropriate mechanism for regulating the provision of BNPL finance under the Tech Code.
117. As such, I considered that the most pragmatic approach would be for the Authorisation Applicants to accept the ACCC's proposed amendment.
118. While I was satisfied that the public benefits provided by the Tech Code (incorporating the ACCC Version of Paragraph 25) still outweighed any detriment, this did not change my views on the September Version of the Tech Code, discussed above. In my view, both the September Version of the Tech Code and the version incorporating the ACCC Version of Paragraph 25 provided significant benefits to consumers of new energy tech products and that in neither case did any detriment outweigh the associated benefits.
119. My second reaction to the ACCC Version of Paragraph 25 was also a practical one, and that related to the assessment of a BNPL finance provider's compliance with the obligations set out at the ACCC's Version of Paragraph 25. It was my understanding that, under the September Version of the Tech Code, ASIC would be responsible for assessing whether the BNPL Code satisfied the relevant test, and the role of the administrator of the Tech Code would be limited to ensuring that a BNPL provider was a signatory to the BNPL Code.
120. However, the ACCC Version of Paragraph 25 removed any reference to the BNPL Code and imposed on the Tech Code administrator a clear role of assessing a BNPL provider's compliance with various specific obligations included by the ACCC in paragraph 25. In my opinion, that required a deep familiarity with the NCCPA and NCC; a skill set which was not likely to be possessed by the Tech Code administrator (or, in my opinion, any organisation not active in the financial services sector).
121. These two issues were discussed with the other members of the BTMWG in a teleconference on 25 October 2019, where other members said that they shared my views on these two issues.
122. In light of the agreement on these issues, the BTMWG resolved to accept the ACCC Version of Paragraph 25, subject to requesting an amendment to address the role of the Tech Code administrator, so as to relieve it of any obligation to assess a BNPL

provider's compliance with the various obligations set out in the ACCC's Version of Paragraph 25.

123. The BTMWG resolved that the CEC should write to the ACCC on behalf of the Authorisation Applicants to:
- (a) confirm that the ACCC Version of Paragraph 25 was broadly acceptable to the Authorisation Applicants; but
  - (b) seek a suggested amendment to the ACCC Version of Paragraph 25, designed to relieve the Tech Code administrator of the burden of assessing the adequacy of the BNPL Providers' compliance with the various obligations contained the ACCC's Version of Paragraph 25.
124. Mr Barnes prepared a draft letter to the ACCC to address these points, for consideration by the Authorisation Applicants. That letter was subsequently sent by the CEC to the ACCC on 11 November 2019. A copy of that letter appears at tab 21 of **Exhibit JC-1** ([ANA.001.001.0624](#)).
125. While I am not aware if the ACCC formally responded to that letter, I considered that the final version of the Tech Code submitted for authorisation comprised:
- (a) the version submitted on 25 September 2019, save for paragraph 25; and
  - (b) the ACCC Version of Paragraph 25 (subject to the subsequent request contained in the CEC's letter of 11 November 2019)
- (the ***Finalised Version of the Tech Code***).
126. In ECA's opinion, the Finalised Version of the Tech Code provided for substantial public benefits with little or no public detriment.

Date: 5 May 2020



Jacqueline Amy Crawshaw

## 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 "**JC-1**" to the statement of Jacqueline Amy Crawshaw dated  
5 May 2020.

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

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RNWM 509780815v1 120913343

## Exhibit JC-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.	Constitution of Energy Consumers Australia	<a href="#">ANA.001.001.0234</a>
2.	Letter from COAG Energy Council to Rosemary Sinclair (ECA) dated 16 August 2017	<a href="#">ANA.001.001.0329</a>
3.	Letter from COAG Energy Council to Matthew Warren (AEC) dated 16 August 2017	<a href="#">ANA.001.001.0354</a>
4.	Draft Summary Report of the Behind the Meter Working Group Consultation Workshops dated December 2018	<a href="#">ANA.001.001.0340</a>
5.	Submission by Brighte to Behind the Meter Working Group dated 6 February 2019	<a href="#">ANA.001.001.0357</a>
6.	Submission by CALC to Behind the Meter Working Group dated 22 January 2019 (incorrectly dated 22 January 2018)	<a href="#">ANA.001.001.0368</a>
7.	Submission by AusNet Services to Behind the Meter Working Group dated 8 February 2019	<a href="#">ANA.001.001.0373</a>
8.	Application for Authorisation to the ACCC dated 29 April 2019	<a href="#">ANA.001.001.0506</a>
9.	KPMG Report titled "Residential PV: Customer Experiences and Future Developments" dated December 2016	<a href="#">ANA.001.001.0404</a>
10.	ACCC Draft Determination dated 1 August 2019	<a href="#">ANA.001.001.0278</a>
11.	Email from Kris Funston (Deloitte) to Jacqueline Crawshaw (ECA) and Ann Devine (Brighte) dated 21 August 2019	<a href="#">ANA.001.001.0233</a>



12.	Email from Mindy Lim (CEC) to members of the Behind the Meter Working Group dated 30 August 2019	<a href="#">ANA.001.001.0336</a>
13.	Letter from CEC to the ACCC dated 6 September 2019	<a href="#">ANA.001.001.0323</a>
14.	Minutes of the ACCC Pre-Decision Conference on 9 September 2019	<a href="#">ANA.001.001.0265</a>
15.	Email from Mindy Lim (CEC) to members of the Behind the Meter Working Group dated 13 September 2019	<a href="#">ANA.001.001.0325</a>
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18.	Letter from ECA to the ACCC dated 23 September 2019	<a href="#">ANA.001.001.0327</a>
19.	Letter from CEC to the ACCC dated 25 September 2019 attaching amended New Energy Tech Consumer Code	<a href="#">ANA.001.001.0375</a>
20.	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	<a href="#">ANA.001.001.0332</a>
21.	Letter from CEC to the ACCC dated 11 November 2019	<a href="#">ANA.001.001.0624</a>

**From:** [Funston, Kris](#)  
**To:** [Jacqueline Crawshaw](#); [Ann Devine](#)  
**Cc:** [David Havyatt](#)  
**Subject:** Introduction  
**Date:** Wednesday, 21 August 2019 6:47:52 PM  
**Attachments:** [image011.png](#)  
[image012.png](#)  
[image013.png](#)  
[image014.png](#)  
[image015.png](#)

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Jacqui, Ann

I thought I'd do an introduction given the issues around the ACCC Draft Determination on the New Energy Tech Code Authorisation that have arisen.

**Jacqui**, I hope things are going well in the not so new role at the ECA these days. Ann is the Chief Risk Officer of Brighte, who are a Buy Now Pay Later provider that is involved very heavily in funding consumer with energy efficient products such as solar. So you're also aware, Deloitte Access Economics were commissioned by Brighte to do a customer and vendor study of their loan offering in the market. I thought I should also cc in David given that work, as he might have interest in the report given some of the financial and market analysis done.

**Ann**, Jacqui is the ECA representative with responsibility for the Code. I shall leave it with you to follow up next steps.

Kind regards

Kris

**Kris Funston**  
 Partner  
 Deloitte Access Economics



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**Deloitte.**



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# **Constitution of Energy Consumers Australia Limited**

**ACN 603 931 326**

**Corporation Act 2001**

**Company Limited by Guarantee not having a Share Capital**

## 1. DEFINITIONS AND INTERPRETATION

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### 1.1 Definitions

In this Constitution:

**Act** means the *Corporations Act 2001* (Cth).

**Activities** means the activities of the Company as outlined in Article 4.2.

**AEMC** means the Australian Energy Market Commission established by section 5 of the *Australian Energy Market Commission Establishment Act 2004* (SA).

**AER** means the Australian Energy Regulator established by section 44AE of the *Competition and Consumer Act 2010* (Cth).

**AEMO** means the Australian Energy Market Operator Limited ACN 072 010 327.

**Annual Budget** means a document prepared in accordance with Article 18.3.

**Annual General Meeting** means the annual meeting of the Company required to be held in accordance with the provisions of the Act.

**Annual Report** means a document which outlines the following information in respect of the financial year to which it relates:

- (a) the Activities undertaken by the Company;
- (b) the outcomes achieved by the Company; and
- (c) such other matters as determined by the Board from time to time regarding the performance of the Company.

**Auditor** means the auditor or auditors of the Company.

**Board** means the board of directors of the Company.

**Business Day** means a weekday other than a public holiday in the place specified, or if no place is specified, in the Australian Capital Territory.

**Business Plan** means a document which outlines the following information in respect of the financial year to which it relates and the following 2 financial years:

- (a) the guiding principles for the Company;
- (b) the proposed main undertakings of the Company;
- (c) the performance measures for the Company, including specific and measurable consumer benefits, through which performance of the Company in relation to its Objects, Activities and undertakings is intended to be judged;
- (d) risk management strategies to be adopted by the Company; and
- (e) such other matters as determined by the Board from time to time.

**Chairperson** means the Director who is appointed to this office in accordance with article 12.1.

**Chief Executive Officer or CEO** means, during the term of that appointment, the person appointed as the chief executive officer of the Company in accordance with this Constitution.

**Company** means Energy Consumers Australia Limited as that name is amended from time to time.

**Constitution** means this constitution, as amended from time to time.

**Consumer** means an End User of Energy that is a Retail Customer, in particular (but not limited to):

- (a) Residential Customer; or
- (b) Small Business Customer;

and includes such a customer located in a rural or regional area.

**Directors** means the members individually or collectively of the Board.

**Effective Date** means the date on which all relevant legislation relating to the operation and funding of the Company has been enacted by the South Australian Parliament and any relevant amendments to the National Electricity Rules and National Gas Rules for that purpose have been made and commenced.

**End User** in relation to electricity—has the same meaning given to that term in the National Electricity Law; and in relation to gas—has the same meaning given to that term in the National Gas Law.

**Energy** means electricity or gas or both.

**Energy Council** means the group of Ministers (constituting or forming part of a Ministerial Council, Standing Council of Ministers or similar body) responsible for energy matters at the national level comprising Ministers representing the Commonwealth, the States, the Australian Capital Territory and the Northern Territory, acting in accordance with their own agreed procedures.

**Energy Ombudsman** means any body or person prescribed as an ‘energy ombudsman’ for the purposes of the National Energy Retail Law.

**Extraordinary Meeting** means a General Meeting of the Member other than an Annual General Meeting.

**gas or natural gas** means natural gas within the meaning given to that term in the National Gas Law.

**General Meeting** means an Annual General Meeting or an Extraordinary Meeting of the Company.

**Legal Person** means the legal definition of a person, including a natural person (individual) or an Organisation.

**Member** means a Legal Person admitted to Membership in accordance with this Constitution, and whose name is entered in the Register as a Member of the

Company, which at the time the Company is incorporated is the Minister of the Crown in right of the State of South Australia for the time being administering the National Energy Laws as applied by South Australia in accordance with article 5.

**Membership** means membership of the Company.

**National Electricity Law** means the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* (SA), as in force from time to time.

**National Electricity Rules** means the National Electricity Rules as in force from time to time under the National Electricity Law.

**National Energy Laws** means the National Electricity Law, the National Gas Law and the National Energy Retail Law (and includes the rules and regulations made under or for the purposes of those Laws), as applying as law by legislation in force in a State or Territory or the Commonwealth.

**National Energy Market** means a market for Energy established or regulated by one of the National Energy Laws.

**National Gas Law** means the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2008* (SA), as in force from time to time.

**National Gas Rules** means the National Gas Rules as in force from time to time under the National Gas Law.

**National Energy Retail Law** means the National Energy Retail Law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011* (SA), as in force from time to time.

**Objects** means the objects for which the Company is established as set out in article 4.1.

**Organisation** includes a body corporate, association, firm, partnership, or other unincorporated body.

**Reference Committee** means any Reference Group or Groups constituted under article 16.4.

**Register** means the register of Members kept in accordance with the Act.

**Registered Office** means the registered office of the Company.

**Remuneration** in relation to a Director:

- (a) includes salary, bonuses, fringe benefits and superannuation contributions provided by the Company; and
- (b) excludes a payment as compensation for loss of office or in connection with retirement from office and an indemnity under article 24.

**Residential Customer** has the same meaning given to that term in the National Energy Retail Law.

**Retail Customer** in relation to electricity– has the same meaning given to that term in the National Electricity Law; and in relation to gas– has the same meaning given to that term in the National Gas Law.

**Secretary** means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with this Constitution.

**Small Business Customer** has the same meaning as a ‘small customer’ who is a ‘business customer’ within the meaning given to those terms in the National Energy Retail Law.

## 1.2 General Interpretation

In this Constitution, unless the context requires otherwise:

- (a) a ‘person’ includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and includes any executor, administrator or successor in law of the person and the Crown in right of the Commonwealth of Australia, a State of Australia, the Australian Capital Territory or the Northern Territory;
- (b) anything (including a right or obligation or concept) includes each part of it;
- (c) a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them and includes all legislative instruments made under that statute or provision, whether by a State, a Territory, the Commonwealth of Australia or otherwise;
- (d) this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- (e) an article, schedule or appendix is a reference to an article, schedule or appendix to this Constitution;
- (f) a word or phrase that is defined has the corresponding meaning in its other grammatical forms;
- (g) writing includes all modes of representing or reproducing words in a legible, permanent and visible form and includes any representation of words in a physical document or in an electronic communication or form or otherwise;
- (h) the singular includes the plural and vice versa;
- (i) a gender includes all other genders;
- (j) headings and sub headings are inserted for ease of reference only and do not affect the interpretation of this Constitution; and
- (k) a reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Act.

### **1.3 Replaceable Rules Displaced**

Each of the provisions of the Act that would apply to the Company as a replaceable rule set out in the Act but for this article, is expressly displaced and does not apply to the Company.

## **2. COMPANY LIMITED BY GUARANTEE**

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### **2.1 Company limited by guarantee**

The Company is a company limited by guarantee and the liability of the Member is limited as provided in this Constitution.

### **2.2 Income of the Company**

- (a) The Company may receive initial funding from the Commonwealth, States and Territories on such terms and conditions as may be agreed by the Company and the party providing the funding, including but not limited to repayment of all or part of the funding.
- (b) For each successive year from the Effective Date, the Company will receive funding from the fees recovered or to be recovered by the AEMO in accordance with the National Electricity Rules and the National Gas Rules.
- (c) Nothing in this article 2.2 prevents the Company receiving additional funding or income from the Commonwealth, States and/or Territories or any other source.

### **2.3 No payment or transfer to the Member**

The Company is to operate on a break even basis. All of the income and property of the Company must be applied solely towards the promotion of the Objects of the Company as set out in this Constitution. No portion of it may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise to the Member.

### **2.4 Payments in good faith**

- (a) Notwithstanding article 2.3 and subject to articles 2.4(b), the Company may make payments in good faith of remuneration to the Member, or an officer or employee of the Company in return for any services rendered to the Company or for goods supplied in the ordinary and usual course of business.
- (b) The Company must not make any payment to a Director for services rendered by that Director to the Company unless the provision of those services has the prior consent of the Board, the amount payable is approved by a resolution of the Board and is on reasonable commercial terms.
- (c) The Company must not make any payment to a Director in his or her capacity as an employee of the Company, in return for any services



rendered by that employee to the Company, unless the terms of that employment have first been approved by a resolution of the Board.

### **3. NAME OF THE COMPANY**

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The name of the Company is Energy Consumers Australia Limited.

### **4. OBJECTS, ACTIVITIES AND POWERS**

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#### **4.1 Objects**

The object of the Company is:

- (a) To promote the long term interests of Consumers of Energy with respect to the price, quality, safety, reliability and security of supply of Energy services by providing and enabling strong, coordinated, collegiate evidence based consumer advocacy on National Energy Market matters of strategic importance or material consequence for Energy Consumers, in particular for Residential Customers and Small Business Customers.

#### **4.2 Activities**

Without limiting the effect of article 4.3, the Company will seek to achieve its objects through:

- (a) Effectively and objectively participating in National Energy Market issues and influencing regulatory activities and Energy market reform to benefit Consumers;
- (b) Frequently engaging and communicating with Consumers and consumer advocates to discuss, support, liaise, collaborate, educate, identify and to receive and provide updates on the National Energy Market and its policies, reforms, issues and general news;
- (c) Building national and jurisdictional expertise and capacity through research, knowledge development and consultation to advance the interests of Australian Energy Consumers, in particular residential and small business Energy Consumers;
- (d) Undertaking robust research to build knowledge, engage and influence policy development and educate Consumers in the Energy markets;
- (e) When notified by the Member, after the Effective Date, of the Company's capacity to do so – funding and managing grants to build knowledge and sectoral capacity supporting policy development and consumer education in the National Energy Market;
- (f) Creating and maintaining effective working relationships with key stakeholders including but not limited to: Consumers and consumer advocates, the AER, jurisdictional regulators, Energy market

participants, the AEMC, the AEMO, governments and Energy Ombudsmen; and

- (g) Developing an understanding of the distinct market differences between jurisdictions within the National Energy Market and applying these considerations when engaging, responding or initiating work on behalf of Energy Consumers' interests, and with jurisdictional bodies where appropriate;
- (h) Frequently and collaboratively engaging and communicating with representatives from the Energy industry on issues in the interest of Consumers to help inform the Company when performing the activities in this article 4.2; and
- (i) Doing all things as may be incidental or ancillary to achieving the Objects and performing the activities in this article 4.2.

In performing these Activities, the Company must have regard to any relevant objectives set out in the National Energy Laws.

#### **4.3 Powers**

The Company may exercise all powers, rights and privileges as a natural person may do or exercise, for the purpose of furthering the Objects set out above.

#### **4.4 Activities funded by other sources**

- (a) The Company must use funding provided from fees recovered in accordance with article 2.2(b) for Activities related to the National Energy Market.
- (b) Income generated from other sources in accordance with article 2.2(c) may be used by the Company to fund any one or more of the Activities for the benefit of any Australian jurisdiction.

### **5. MEMBERSHIP**

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#### **5.1 Number of Members**

The Company shall have only one Member.

#### **5.2 Identity of the Member**

The Member of the Company shall be the Minister of the Crown in right of the State of South Australia for the time being administering the National Energy Laws as applied by South Australia.

### **6. LIABILITY OF MEMBER**

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The liability of the Member is limited to the amount specified in article 25.1. The Member undertakes to contribute to the Company's property if the Company is

wound up while he or she is a Member or within one year after he or she ceases to be a Member, for payment of the Company's debts and liabilities contracted before he or she ceases to be a Member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding the amount set out in article 25.1.

## **7. MEETINGS OF THE BOARD WITH MEMBER**

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### **7.1 Meeting with Member**

The Board must hold an Annual General Meeting with the Member or a representative nominated by the Member at least once in each calendar year and within 6 months after the end of its financial year. The Member may invite outsiders to attend such meetings.

### **7.2 Extraordinary Meeting**

The Board may convene an Extraordinary Meeting at such time and place as the Board thinks fit, but must be convened in accordance with the Act. The Member may also convene an Extraordinary Meeting, but only in accordance with the Act. The Member may invite outsiders to attend an Extraordinary Meeting.

### **7.3 Reports to be considered at the Meeting**

At each meeting, referred to in article 7.1, the Board must present to the Member:

- (a) the financial report; and
- (b) the directors' report;

for the last financial year that ended before the meeting.

## **8. PROCEEDINGS AT MEETINGS WITH MEMBER**

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### **8.1 Single Member Company**

The Company has only one Member. A written record of a decision to a particular effect signed by the Member or their attorney or representative nominated by the Member in writing to the Board counts as the passing by the Member of a resolution to that effect in General Meeting and has effect as minutes of that resolution.

## **9. DIRECTORS**

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### **9.1 Number and Qualifications of Directors**

- (a) The number of Directors comprising the Board will be five (including the Chairperson).

- (b) A Director will not be a member of the Company.

## **9.2 Appointment of Directors**

Directors, including the Chairperson and the initial Board, will be selected by a determination of the Energy Council in accordance with its own agreed procedures, and having regard to the matters contained in Schedule 1. The Member will appoint (or reappoint) Directors (including the Chairperson) in accordance with a determination of the Energy Council.

## **9.3 Second and subsequent Boards**

- (a) The second Board will consist of those Directors who did not retire from the initial Board under article 9.4 and Directors appointed (or reappointed) in accordance with article 9.2.
- (b) All subsequent Boards will consist of Directors appointed in accordance with article 9.2.

## **9.4 Term of Appointment**

- (a) Subject to this article 9.4, each elected Director will hold office for a period of not more than four years from their appointment to the Board. Upon expiry of a Director's term of appointment, the Director must retire from office but will be eligible for re-appointment in accordance with the process specified in article 9.2.
- (b) For Board appointments, at least:
  - i. two Directors must be appointed for a term of two years;
  - ii. two Directors must be appointed for a term of three years; and
  - iii. the Chairperson must be appointed for a term of four years.
- (c) A Director may not serve more than two consecutive terms (of any period) on the Board but may be eligible to serve a further term or terms at a later date.

## **9.5 Remuneration of Directors**

- (a) The remuneration of each Director will be determined by the Member. Relevant determinations of the Commonwealth Remuneration Tribunal will be used as a guide by the Member to set the remuneration of each Director and that Remuneration may consist of salary, bonuses or any other elements (excluding dividends). The overall level of Remuneration shall not exceed such sum as may be determined by the Member.
- (b) A Director is entitled to be reimbursed out of the funds of the Company for their reasonable travel, accommodation and other expenses incurred when travelling to or from meetings of Directors or a committee or when otherwise engaged in the business of the Company. The Company will only be liable for such expenses to the extent they are consistent with any policy adopted by the Directors from time to time and substantiated to the satisfaction of the Secretary.

## **9.6 Disqualification of Directors**

The office of a Director will be vacated if:

- (a) the Director becomes bankrupt, insolvent under administration, or makes any arrangement or composition with his or her creditors;
- (b) the Director is not permitted by the Act (or an order made under the Act) to be a director;
- (c) the Director becomes disqualified from acting as a Director under the Act;
- (d) the Director dies or becomes of unsound mind, or physically or mentally incapable of performing the functions of that office;
- (e) without leave of the Board, the Director is absent from meetings of the Board for three consecutive Board Meetings, unless the Board makes a resolution to the contrary;
- (f) by notice in writing to the Company, the Director resigns from office;
- (g) the Director ceases to hold office by reason of any order made under the Act; or
- (h) the Director was appointed to the office for a specified period and that period expires.

## **9.7 Removal from Office**

The Member, on agreement from the Energy Council, may by ordinary resolution remove a Director from office.

## **9.8 Casual Vacancies**

- (a) The Board may appoint a replacement Director to any casual vacancy arising in the office of a Director.
- (b) Any Director so appointed will hold office until the Member fills the vacancy in accordance with article 9.9.
- (c) Decisions of the Board concerning the appointment of replacement Directors in accordance with article 9.8(a), will be taken by continuing Directors. For the purposes of appointing a replacement Director to a casual vacancy, the quorum requirement in article 15.1(f) does not apply.

## **9.9 Too few Directors**

If the number of Directors is reduced below the number required by article 9.1:

- (a) the Energy Council must select one or more new Directors within 270 days in order that the number of Directors be returned to the number required by article 9.1. Such Director(s) will be appointed in accordance with article 9.2; and

- (b) The continuing Directors may act as the Board in all matters subject to the quorum requirement in article 15.1(f).

## **10. POWERS OF THE BOARD**

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### **10.1 Powers Generally**

- (a) Except as otherwise required by the Act, any other applicable law, or this Constitution, the Board:
  - i. has power to manage the business of the Company and to carry into effect all or any of the Objects; and
  - ii. may exercise every right, power or capacity of the Company.
- (b) The Board has no power to assume any obligations or liabilities on behalf of the Member, the Energy Council, the Commonwealth or any State or Territory.

### **10.2 Exercise of Powers**

A power of the Board can be exercised only:

- (a) by resolution passed, or treated by article 15 as passed, at a meeting of the Board; or
- (b) in accordance with a delegation of the power under article 10.3.

### **10.3 Power to delegate**

- (a) The Board may delegate any of its powers to:
  - i. a committee of directors established under article 16.1; or
  - ii. a director; or
  - iii. an employee of the company; or
  - iv. any other person.
- (b) The delegation must be recorded in the company's minute book.
- (c) The delegate must exercise the powers delegated in accordance with any directions of the Board.
- (d) The Board may not delegate its power to delegate.

### **10.4 Borrowing**

- (a) Subject to article 10.4(b), the Board may raise money in any manner it thinks fit including the borrowing of money on the security of the

Company's assets, the charging of any property or business of the Company and the issuing of a security for any other purpose.

- (b) Other than the support deed entered into between the Company and the Commonwealth of Australia on or about the date of incorporation of the Company, the Board may only raise money, provide any security or charge any property under article 10.4(a) in accordance with the Annual Budget approved by the Member.

#### **10.5 Investment**

- (a) Subject to article 10.5(b), the Board may invest funds of the Company in any manner consistent with the Objects set out in article 4.1 and for any period as it thinks fit.
- (b) The Board may only invest funds of the Company under article 10.5(a) in accordance with the Annual Budget approved by the Member.

#### **10.6 Negotiable Instruments**

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company will be signed, drawn, accepted, endorsed or otherwise executed (as the case may be) for and on behalf of the Company, by two Directors or by one Director and some other officer authorised by the Board for that purpose or in any other manner as the Board may determine.

#### **10.7 Activities requiring approval of the Member**

The Directors must not undertake any of the following activities without the prior approval of the Member:

- (a) change the Company's name;
- (b) acquiring a business or making a material financial commitment towards starting a new business;
- (c) disposal of the Company or its business or any substantial part of the Company or its business;
- (d) merger or amalgamation of the Company with any other Company;
- (e) acquiring any debt or making any early repayment of any of its indebtedness;
- (f) undertaking any financial or capital restructuring of the Company;
- (g) lending money to any person (otherwise than by way of deposit with a bank or other institution the normal business of which includes the acceptance of deposits) or waiving repayment or forgiving loans, granting credit to any person or giving any guarantee, indemnity or security in respect of the obligations of any other person.

## **11. RESPONSIBILITIES OF THE BOARD**

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### **11.1 Responsibilities**

Without limiting the responsibilities of the Board under the Act or any other applicable law or this Constitution, the responsibilities of the Board shall include:

- (a) setting an annual work program for the Company, after consultation with stakeholders;
- (b) representation by at least one Board member at Reference Committee forums;
- (c) developing the Company's strategic direction consistent with the Company's Objects and advocating these in discussions with regulators, government and the energy industry;
- (d) CEO appointment and performance management;
- (e) appointing the Company Secretary;
- (f) financial management, including receipt of an Annual Budget and Business Plan for approval;
- (g) engaging in advocacy issues where they relate to sensitive or high profile issues;
- (h) providing strategic input and guidance to the CEO and engaging on sensitive issues as required;
- (i) implementing the outcomes of the independent reviews of the Company commissioned by the Energy Council and developing proposals for its continued operation. The first review will be conducted after the first 3 years of the Company's operations, with subsequent reviews every 5 years or at the discretion of the Energy Council.

### **11.2 Voting and attendance restrictions on Directors**

- (a) A Director who has a material personal interest in a matter that relates to the affairs of the Company must give other Directors notice of the interest in accordance with section 191 of the Act.
- (b) Where a Director has a material personal interest in the outcome of a vote, the participation of that Director, both in the vote and in the meeting at which the vote takes place, shall be governed by the procedures set out in section 195 of the Act.
- (c) A Director who has any interest that may represent a conflict of interest must disclose that interest to the other Directors and take such action as is reasonably determined by the other Directors to manage the risk related to any actual, potential or perceived conflict of interest. If the Board establishes a protocol for the management of conflicts of interest,



any interest disclosed by a Director under this article 11.2(c) must also be managed in accordance with that protocol.

## **12. OFFICERS ON THE BOARD**

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### **12.1 Appointment of Chairperson**

The Chairperson will be selected by the Energy Council and appointed by the Member as set out in article 9.2.

### **12.2 Skills of the Chairperson**

The Chairperson should have the skills, knowledge and experience outlined in Schedule 1.

### **12.3 Appointment of Chairperson**

- (a) Subject to article 12.3(b), a Chairperson holds office for so long as he or she remains a Director.
- (b) A Chairperson can resign by providing one month's written notice to the Company.

### **12.4 Role of Chairperson**

The Chairperson will:

- (a) undertake the responsibilities outlined in article 15.1 of this Constitution; and
- (b) perform the activities in respect of appointments of Directors as requested by the Member.

## **13. CHIEF EXECUTIVE OFFICER**

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### **13.1 Appointment of the CEO**

The Board is responsible for recruiting, selecting and appointing a person to the office of Chief Executive Officer (CEO).

### **13.2 Termination and replacement of the CEO**

- (a) Whether or not the appointment of the Chief Executive Officer is expressed to be for a specified term, the appointment of the Chief Executive Officer terminates if the Board removes the Chief Executive Officer from the office of Chief Executive Officer (which, subject to any contract between the Company and the Chief Executive Officer, the Board has power to do).

- (b) If the CEO's appointment is terminated or ceases for any reason, the Board must promptly follow the process in article 13.1 to identify a replacement CEO.

### **13.3 Remuneration of the CEO**

The remuneration of the Chief Executive Officer will be determined by the Board.

### **13.4 Responsibilities of the CEO**

- (a) The Chief Executive Officer will:
  - i. be the chief executive officer of the Company;
  - ii. act consistently with the Objects of the Company;
  - iii. use their best endeavours at all times to enhance the good name of the Company;
  - iv. insofar as the resources available permit, implement the policies of the Board;
  - v. prepare an Annual Report for the Board on the work and activities of the Company during the preceding 12 months ending on 30 June in each year; and
  - vi. exercise such other functions, duties and responsibilities as may be determined from time to time by the Board.
- (b) Without affecting the generality of the foregoing, the Chief Executive Officer is responsible for:
  - i. the effective and efficient day-to-day management of the organisation in accordance with the law, decisions made by the Board and the Company's Business Plan.
  - ii. advising the Directors and keeping them informed of material matters relating to their functions and powers, for instance concerning strategy, finance and reporting obligations.
  - iii. leading the development and execution of the Company's long and short term strategy and policy against performance targets.
  - iv. liaising between the Board and management.
  - v. communicating on behalf of the Company to employees, governments, officials, the media and other stakeholders as an official spokesperson.
  - vi. overseeing the employment and management of staff.
  - vii. motivating staff, building workplace culture and driving organisational change.
  - viii. ensuring the Company's organisational functions are effective, including financial, human resource, information systems and risk management, communications, marketing, asset management and reporting.

- ix. ensuring the Company's expenditure is within the authorised budget.
- x. leading by personal example and ensuring the Company maintains the highest standards of integrity and ethics.

## **14. SECRETARY**

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### **14.1 Appointment of Secretary**

The Company must have at least one Secretary who is to be appointed by the Board.

### **14.2 Suspension and removal of Secretary**

The Board may suspend or remove a Secretary from that office.

### **14.3 Powers, duties and authorities of Secretary**

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Board. The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Board.

## **15. PROCEEDINGS OF THE BOARD**

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### **15.1 General**

- (a) The Chairperson may at any time, and the Secretary must on request from the Chairperson, convene a Board meeting.
- (b) The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
- (c) The Board must meet at least twelve (12) times in each financial year.
- (d) The Board may at any time, and the Secretary will, on the request of the Chairperson, convene a meeting of the Board by reasonable notice served upon each Director.
- (e) The accidental omission to give notice of a meeting to, or the non-receipt of a notice of a meeting by, a Director will not invalidate proceedings at a Board meeting.
- (f) A quorum for meetings of the Board is four (4) of the Directors or such higher number as may be determined by the Board, one of whom must be the Chairperson.
- (g) The Chairperson will be the Chairperson of the Board and chair Board meetings. If the Chairperson is not present within fifteen minutes after the time appointed for holding that meeting (or being present is unwilling

to act), the Board will appoint an acting Chairperson for the meeting from the Directors present.

- (h) Each Director present at any meeting of the Board will be entitled to one vote.
- (i) The Chairperson or acting Chairperson for the meeting will have a casting vote.
- (j) A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another manner permitted by the Act, the Board must resolve the basis on which Directors are treated as present.
- (k) The Board may adjourn and, subject to this Constitution, otherwise regulate its meetings as it decides.

## **15.2 Majority decisions**

- (a) Where possible, the Board will make decisions by consensus.
- (b) Notwithstanding article 15.2(a), a resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.

## **15.3 Out of session resolutions**

- (a) Without limiting article 15.1(j), all significant matters with respect to the Company are to be considered by the Directors of the Company at Board meetings including matters relating to:
  - (i) the Business Plan,
  - (ii) the Annual Budget,
  - (iii) the appointment of the CEO;
  - (iv) the appointment of a replacement Director to any casual vacancy.
- (b) For less significant matters, the Directors of the Company may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (c) Separate copies of a document may be used for signing by the Directors if the wording of the resolution and statement is identical in each copy.
- (d) The resolution is deemed to have been passed at a meeting of the Board held on the day and at the time the last Director entitled to vote on the resolution signs the document.

## **15.4 Adjourned meetings**

A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

**15.5 Voting by proxy**

- (a) A Director (“Appointing Director”) may participate in, and vote by, proxy at a Board meeting if the proxy:
  - i. is another Director; and
  - ii. has been appointed in writing signed by the Appointing Director.
- (b) The appointment may be general or for one or more particular meetings. A Director present as proxy for one or more Appointing Directors has:
  - i. one vote per Appointing Director for whom the Director is proxy and who would be entitled to vote if present at the meeting; and
  - ii. one vote in his or her own capacity as a Director if entitled to vote at the meeting.

**15.6 Use of technology in conferencing**

- (a) Subject to article 15.3 but without limiting the discretion of the Board to regulate their meetings, the Board may, if it thinks fit, confer by radio, telephone, facsimile, computer, Internet, closed circuit television or other electronic means of audio or audio-visual communication. A resolution passed by such a conference will, notwithstanding that the Directors are not present together in one place at the time of the conference, be deemed to have been passed at a meeting of the Board held on the day and at the time the conference was held.
- (b) The provisions of this Constitution regulating the proceedings of the Board apply so far as they are capable to such conferences.

**15.7 Minutes to be kept**

The Board must cause:

- (a) proper minutes to be made of the proceedings and resolutions of all meetings of the Company, the Board and committees formed by the Board;
- (b) the minutes to be entered in books kept for that purpose; and
- (c) the minutes as accepted by each Director present at the meeting, to be signed by the Chairperson of the meeting or by the Chairperson of the next meeting.

**15.8 Evidence of Proceedings and Resolutions**

A minute that is recorded and signed in accordance with article 15.7 is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.

## **16. COMMITTEES AND PANELS**

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### **16.1 Board Committee**

- (a) The Board may in its absolute discretion establish committees ("Board Committees") or working groups as deemed necessary including, for example and without limitation, a finance and audit committee.
- (b) Board Committees, with the exception of the committee established under article 16.4, must involve a majority of Directors, but the Board may at its discretion appoint expert advisors as needed to Board Committees.

### **16.2 Standing Committees/Expert Advisory Committees**

The Company's Chief Executive Officer may establish standing and/or ad hoc advisory committees to undertake specific identified tasks in accordance with the Objects of the Company.

### **16.3 Procedures for Board and Advisory Committees**

The meetings and proceedings of any committee or working group will be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as applicable and so far as those provisions are not superseded by any other direction given by the Board.

### **16.4 Reference Committee**

- (a) The Board must establish a Reference Committee to act as an advisory group to the Board on Consumer Energy issues.
- (b) The number of representatives on the Reference Committee will be determined by the Board but until otherwise determined shall be no more than 10.
- (c) The Reference Committee shall include at least one member from each of the participating National Energy Market States and Territories.
- (d) The responsibilities of the Reference Committee include the provision of effective advice to the Board on emerging Consumer issues and on the development of the Company's work program, and the sharing of grass roots Consumer feedback and research.
- (e) The Reference Committee shall meet and otherwise carry out their functions in accordance with procedures determined by the Board, subject to the proviso that no more than four meetings are to be held in any calendar year.
- (f) Reference Committee members shall be entitled to reimbursement of reasonable costs. These costs shall be in accordance with any policy approved by the Board from time to time.
- (g) A Director will be required to chair the meetings of the Reference Committee. Different Directors may chair the Reference Committee meetings from time to time.

## **17. DEFECTS IN APPOINTMENT**

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An act done in good faith by any meeting of the Board, of any committee formed by the Board or by any person acting as a Director will not be invalidated by reason of:

- (a) any defect in the election, appointment or tenure of a Director or person acting on any such committee; or
- (b) the disqualification of any of them.

## **18. ACCOUNTS**

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### **18.1 Books of Account to be kept**

The Directors will cause to be kept proper books of account in which will be kept true and complete accounts of the affairs and transactions of the Company. Proper books will not be deemed to be kept unless the books give a true and fair view of the state of the Company's affairs and explain its transactions.

### **18.2 Location of Books of Account**

The books of account will be kept at the Registered Office or place or places as the Board thinks fit and will be open to the inspection of the Directors during usual business hours.

### **18.3 Business Plan and Annual Budget**

- (a) Each year, no later than three months before the commencement of each financial year of the Company, the Board must prepare and submit to the Member:
  - i. a draft Business Plan relating to the upcoming financial year; and
  - ii. a draft Annual Budget relating to the upcoming financial year (Year 1) and two subsequent financial years.
- (b) The draft Annual Budget must contain the following information in relation to Year 1 and indicative information for the two subsequent financial years:
  - i. the projected income of the Company;
  - ii. the projected expenses of the Company, including details of all administrative costs and any current or proposed grant programs;
  - iii. the projected cash flow of the Company; and
  - iv. such other matters as determined by the Board from time to time.

- (c) In relation to Year 1, the draft Annual Budget must separately allocate all expenses between:
  - i. performance of activities relevant to Consumers of electricity;
  - ii. performance of activities relevant to Consumers of natural gas; and
  - iii. performance of activities relevant to both Consumers of electricity and Consumers of natural gas, in which case the Annual Budget must specify a division of those costs between the two.
- (d) The Member may provide copies of, and consult with, the Energy Council in relation to the draft Business Plan and draft Annual Budget. The Member must provide any comments on the draft Business Plan and draft Annual Budget to the Board before the commencement of the Company's financial year.
- (e) The Board must consider any comments on the draft Business Plan and draft Annual Budget which are submitted by the Member to the Secretary within one month of the commencement of the Company's financial year.
- (f) Following consideration of the Member's comments under article 18.3(d) (which in the case of any comments regarding Year 1 of the Annual Budget must be adopted by the Board but which in the case of the remainder of the Annual Budget and the Business Plan may be adopted or rejected by the Board in its discretion), the Board must issue, within 3 months of the commencement of the financial year:
  - i. a final Business Plan and a final Annual Budget to the Member; and
  - ii. a final Annual Budget to AEMO for the purpose of AEMO providing funding to the Company as contemplated by article 2.2(b).
- (g) Subject to articles 10.4(b) and 10.5(b), neither the Business Plan nor the Annual Budget limits the powers or discretions of the Board. However the Board may have regard to the Business Plan and must have regard to the Annual Budget when exercising their powers and discharging their duties.

#### **18.4 Inspection of Company books**

The Member may at any time by written notice request, and the Board must take all reasonable steps to arrange, for the Member or a representative of the Member to inspect the financial records or books of the Company.

### **19. FINANCIAL REPORTING**

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The Board must cause the Company to prepare a financial report, Annual Report and a Directors' report that comply with the Act and must report to the Member no



later than four months after the end of the financial year or the deadline set by the Act (if earlier). The Member may provide a copy of the financial report, Annual Report and Directors report it receives from the Board to the Energy Council and may also make such reports publicly available.

## **20. AUDITOR**

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The Company must cause the Company's financial report for each financial year to be audited and obtain an Auditor's report.

The Company will observe the provisions of the Act in relation to the eligibility, appointment, removal, remuneration, rights and duties of the auditor (if any), and resignation of the Auditor.

## **21. COMPANY SEALS**

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### **21.1 Common Seal**

The Board:

- (a) may decide whether or not the Company has a common seal, and
- (b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt.

### **21.2 Use of seals**

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with the Act.

### **21.3 Fixing seals to documents**

The fixing of a Company seal to a document must be witnessed by two Directors or one Director and the Secretary.

## **22. NOTICES**

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### **22.1 Methods of giving notice**

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:

- i. delivered personally; or
- ii. sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
- iii. sent by fax to the fax number (if any) nominated by that person; or
- iv. sent by electronic message to the electronic address (if any) nominated by that person.

## **22.2 When notice is given**

A notice to a person by the Company is regarded as given and received:

- (a) if it is delivered personally or sent by fax or electronic message:
  - i. by 5.00 p.m. (local time in the place of receipt) on a Business Day – on that day; or
  - ii. after 5.00 p.m. (local time in the place of receipt) on a Business Day, or on a day that is not a business day – on the next Business Day; and
- (b) if it is sent by mail:
  - i. within Australia – three Business Days after posting; or
  - ii. to a place outside Australia – seven Business Days after posting.

A certificate in writing signed by a Director or Secretary of the Company stating that a notice was sent is conclusive evidence of service.

## **22.3 Counting days**

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

## **23. REIMBURSEMENT OF EXPENSES**

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The Board may authorise the payment of any expenses incurred by any Director or the Member (including expenses incurred by a representative of the Member) in connection with the performance of their duties to the Company.

## **24. INDEMNITY**

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### **24.1 Definition of Liability and Officer**

In this article 24:

- (a) Liability means costs, losses, liabilities and expenses.

- (b) Officer means a Director, Secretary or executive officer of the Company and includes a former Officer, but does not include an auditor or agent of the Company.

## 24.2 Indemnity of Officers

To the extent permitted by law, the Company indemnifies every person who is or has been an Officer of the Company, and may indemnify every person who is or has been an auditor of the Company, against:

- (a) any Liability incurred by that person in his or her capacity as a Director, Secretary, auditor or executive officer of the Company other than:
  - i. a Liability owed to the Company or a related body corporate; or
  - ii. a Liability for a pecuniary penalty order under section 1317G or a compensation order under section 1317H of the Act; or
  - iii. a Liability for a pecuniary penalty order under section 224 of the Australian Consumer Law (Schedule 2 to the *Competition and Consumer Act 2010* (Cth) as applied under Subdivision A of Division 2 of Part XI of the *Competition and Consumer Act 2010*); or
  - iv. a Liability that is owed to someone other than the Company or a related body corporate which did not arise out of conduct in good faith; and
- (b) any Liability for legal costs incurred by that person in his or her capacity as a Director, Secretary, auditor or executive officer of the Company other than:
  - i. in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under article 24.2(a); or
  - ii. in defending or resisting criminal proceedings in which the person is found guilty; or
  - iii. in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (except in relation to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for a court order); or
  - iv. in connection with proceedings for relief to the person under the law in which the Court denies the relief.

## 24.3 Insurance

Subject to section 199B of the Act, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

## **25. CONTRIBUTION ON WINDING-UP**

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### **25.1 Contribution**

- (a) The Member undertakes to contribute to the property of the Company if it is wound up:
  - i. while that person is the Member; or
  - ii. within one year after that person ceases to be the Member;

in respect of the debts and liabilities of the Company contracted before that person ceases to be the Member, in respect of the costs, charges and expenses of winding-up and for the adjustment of the rights of the contributories among themselves.
- (b) The amount to be contributed by the Member will not exceed ten dollars.

## **26. DISTRIBUTION OF PROPERTY ON WINDING-UP**

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- (a) If, upon the winding-up or dissolution of the Company after the satisfaction of all its debts and liabilities there remains any property, this property must not be paid to the Member.
- (b) Instead, this property must be given or transferred to some other institution or institutions having:
  - i. objects similar to the objects of the Company; and
  - ii. a Constitution which prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on the Company under article 2 of this Constitution.
- (c) This institution or institutions must be determined by:
  - i. a special resolution of the Member at or before the time of dissolution; or
  - ii. if no such special resolution is passed, by a Judge of the Supreme Court of South Australia or such other court of competent jurisdiction.

## **Schedule 1 – ECA Skills Matrix – Board of Directors**

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### ○ **Role and Skills – Board of Directors**

The Board of Directors will undertake their functions autonomously. The Board will be made up of skilled Directors to enable the application of independent expertise across the range of activities undertaken by the organisation.

The skills matrix is useful only to the extent it reflects organisational needs, and therefore requires regular review by the Board.

### ▪ ***The Role of the Board***

The role of the ECA Board under Principle 1 of the ASX's Corporate Governance Principles and Recommendations is described as:

- Overseeing the company, including its control and accountability systems.
- Appointing and removing the Chief Executive Officer (CEO), or equivalent.
- Where appropriate, ratifying the appointment and removal of senior executives.
- Providing input into and final approval of the corporate strategy and performance objectives.
- Reviewing, ratifying and monitoring systems of risk management and internal control, codes of conduct, and legal compliance.
- Monitoring senior executives' performance and implementation of strategy.
- Ensuring appropriate resources are available to the organisation.
- Approving and monitoring the progress of major capital expenditure, capital management, and acquisitions and divestitures.
- Approving and monitoring financial and other reporting.

In addition, the role of the Board of the ECA must include:

- Ensuring processes are in place that provides stakeholders with opportunities to input into strategic planning for the organisation.
- Establishing an effective, independent national energy consumer advocacy body, in accordance with the law and the company's Constitution and Objectives.
- Establishing the corporate governance agenda and ensuring that it remains properly focused and balanced across all areas requiring consideration by the Board.
- Developing a risk management strategy that addresses risk appetite and preparedness to take informed and strategic risks in appropriate circumstances.
- Interacting with key stakeholders to inform them of achievements.
- Active engagement with the CEO to provide strategic input and guidance on sensitive issues as required.

- Ensure the company is performing against its objective as set out in the company constitution.
- Ensure effective communication between the Board and the Reference Committee, including one member of the Board serving as the Chair for the Reference Committee.
- Establishing appropriate conflict of interest and ethic modalities for ECA's Board of Directors.

▪ ***General Skills and Experience***

The following general skills and experience are required by all Board members.

- Strategic expertise – the ability to constructively set and review strategy.
- Corporate governance – knowledge and understanding of corporate governance principles.
- Accounting and finance – the ability to read and comprehend the company's accounts and financial material presented to the Board; understanding of financial reporting requirements, and ability to make a contribution to the commercial performance.
- Legal – knowledge and understanding of legal compliance and Directors' individual legal duties and responsibilities.
- Managing risk – knowledge and understanding of risk management principles, experience in managing areas of major risk to an organisation.
- Collegiate style and the highest standards of integrity and ethics.
- Excellent communication skills.
- No material commitments or affiliations that may conflict with the interests of ECA.
- Credibility with key energy market stakeholders and participants.
- A commitment to furthering the long term interests of energy consumers.

▪ ***Specific Skills and Experience***

The following specific skills and experience are required by certain Board members only (numbers specified below).

- Consumer advocacy – experience in a public interest advocacy organisation or similar and an understanding of the mechanisms to deliver effective, equitable advocacy which promotes the interests of consumers (two Directors).
- Legal – knowledge and the ability to advise on corporate law, particularly the *Corporations Act 2001* (Cth).
- Knowledge of legislation and legal issues associated with energy markets, including the National Electricity Law, National Gas Law, National Energy Retail Law and associated Rules and Regulations, knowledge of the Australian Consumer Law, as well as the *Competition and Consumer Act 2010* (Cth) as relevant to the economic regulation of Energy utilities (at least two to three Directors).
- Accounting and finance – understanding of corporate finance; experience in financial estimates and budgeting for small to medium size organisations (two to three Directors).

- Grant administration – knowledge and understanding of best practice grant allocation and funding processes, including assessing grant proposals against criteria; grant oversight and evaluation experience (two Directors).
- Experience within the Energy industry (one to two Directors).
- Economics, public policy and regulatory experience (at least one Director).
- Stakeholder engagement – experience managing complex stakeholder relationships. All Board members should have some experience in this area.

### ***Desirable Skills and Experience***

The following skills and experience are not compulsory but may be desirable for some ECA Board members to possess.

- A demonstrated commitment to, and/or experience in, furthering the long term interests of consumers.
- Energy industry knowledge, including the operation of the National Electricity Market, Australian gas markets and the Western Australian and Northern Territory electricity markets.
- Understanding of Energy consumer issues, including small business, residential, remote and regional and indigenous consumer issues, in addition to associated policy and research needs.
- Understanding of the environment in which ECA operates, including the Council of Australian Governments and Standing Council on Energy and Resources reform agenda and government and political processes in the energy industry.
- Experience managing, mentoring and developing senior executives.

### ***Chairperson***

The Chair is expected to have the following specific skills, knowledge and experience:

- Experience in Chairing boards, committees, industry associations or other similar bodies or organisations.
- Strong corporate governance skills.
- Dispute resolution skills.
- Credentials to represent the Board externally with a broad range of senior stakeholders as required.
- No conflicts of interest.



17/9/19

NETCC - ACCC sub.

Jake, Kurt, Dean, Mindy, Jenny  
Ben,

Ben - tried to engage w/ AFIA re  
consumer code. - no response

Ben + Dean - code is unlikely to be  
good enough.

Mindy - asked Bright for update, but  
no clear response

BB - ASIC can approve Code for finance  
which would include BNPL code

∴ propose "Code is approved by  
ASIC"

cl. 183.

Code Council can seek expertise  
to assess "equivalence". (from  
consultant).

CEC prefers amendment to stat.



Mindy to give DIs to Phil Kearny  
re 245). today.

Council to engage expert to assess  
equiv. - verify → Code will likely  
to be live in ST

Progress of Council.

↳

Unsol. sales.

↳ guidelines in sands of Code.

3 issues - finance

- high pressure

- dodgy products.

potential for MOU w/ ombuds to gain  
insight.

insert req. that signatories must  
have policy in place.



# **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**

<p>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.</p>
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# **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's<sup>1</sup> 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

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<sup>1</sup> 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.



# Draft Determination

Application for authorisation AA1000439

lodged by

Australian Energy Council (AEC), Clean Energy Council (CEC), Smart Energy Council (SEC) and Energy Consumers Australia (ECA) (together **the Applicants**)

in respect of

the New Energy Tech Consumer Code

Authorisation number: AA1000439

Commissioners: Rickard  
Court  
Keogh  
Ridgeway

## Summary

The ACCC proposes to grant authorisation to the Applicants and future signatories to the proposed New Energy Tech Consumer Code (the Consumer Code) for a period of five years. The Consumer Code sets minimum standards that suppliers of “New Energy Tech” products (e.g. solar panels, energy storage systems and other emerging products and services) must comply with when interacting with consumers, including from initial marketing and promotion through to installation and complaints handling. The Consumer Code operates alongside a range of existing legal and regulatory protections.

The ACCC invites submissions in relation to this draft determination by 23 August 2019, and expects to make its final determination in September or October 2019.

### *Public benefits and detriments*

The ACCC considers that compliance with the Consumer Code will result in public benefits by improving the business practices of signatory retailers and the level of consumer protection provided. This will assist consumers of New Energy Tech to make better informed purchasing decisions in a complex industry and reduce the risk of consumer harm, including from unscrupulous business practices.

The Consumer Code is unlikely to lessen competition between suppliers of New Energy Tech products or services; the Consumer Code will limit certain practices that are not in the best interests of consumers, but does not prevent vigorous competition to win customers by offering attractive products and services at competitive prices.

### *Effective administration of the Consumer Code*

Effective administration and enforcement of a voluntary code is crucial to the realisation of the claimed public benefits under the code. The administrator of the Consumer Code (Code Administrator) has yet to be appointed. Further, membership of the Council charged with appointing the Code Administrator has also yet to be settled. A number of submissions expressed views about who should or should not be appointed as Code Administrator. The ACCC expresses no view on the concerns raised in these submissions but notes it will be open to Council members to consider these submissions when deciding who to appoint as Code Administrator.

In any event, the ACCC considers provisions of the Consumer Code:

- enable the Council to be sufficiently representative of stakeholders in the industry, and
- appear sufficient to ensure the appointed Code Administrator will administer the Consumer Code effectively, including imposing sanctions where appropriate.

### *Finance arrangements permitted under the Code*

Under the Consumer Code, consumer finance associated with New Energy Tech products and services is only permitted if the credit products are regulated under the *National Consumer Credit Protection Act 2009* (NCCPA) and the *National Credit Code* (NCC) and provided by credit providers licensed under the NCCPA. These regulations provide important protections for consumers; they require credit providers to provide relevant product information disclosures, take appropriate steps to assess a consumer’s ability to pay, and provide access to external dispute resolution.



A number of ‘buy now, pay later’ (BNPL) providers that currently supply finance for a sizeable share of New Energy Tech products, particularly solar products, would not be permitted to provide finance under the Consumer Code as it is presently drafted. Although these providers are not captured by NCCPA and NCC regulation, they submit that they are subject to separate regulation and provide equivalent consumer safeguards. They submit that preventing consumers from accessing these finance arrangements will in turn restrict consumers’ access to New Energy Tech products.

The ACCC invites further submissions on whether it is feasible and desirable to modify these provisions of the Consumer Code to permit finance arrangements that fall under other regulatory regimes if they can be demonstrated to provide equivalent consumer safeguards to those in the NCCPA and NCC.

## 1. The application for authorisation

- 1.1. On 30 April 2019, the Australian Energy Council (**AEC**), Clean Energy Council (**CEC**), Smart Energy Council (**SEC**) and Energy Consumers Australia (**ECA**) (together, the **Applicants**) lodged an application for authorisation with the Australian Competition and Consumer Commission (the **ACCC**). The Applicants are seeking authorisation for the provisions in the proposed New Energy Tech Consumer Code (the **Consumer Code**) for five years.<sup>1</sup>
- 1.2. Authorisation provides businesses with legal protection for arrangements that may otherwise risk breaching the law but are not harmful to competition and/or are likely to result in overall public benefits.

### The Applicants

- 1.3. The Applicants are:
  - a) **AEC** – The AEC is an industry body representing 23 electricity and downstream natural gas businesses operating in wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.
  - b) **CEC** – The CEC is a not-for-profit, membership-based organisation and peak body for the clean energy industry in Australia. The CEC represents, and works with, over 600 businesses operating in or supporting the development of renewable energy (such as solar, wind, hydro, bioenergy, geothermal and marine) and energy storage, along with more than 4000 solar installers. The CEC currently administers the Solar PV Retailer Code of Conduct (**Solar Code**) and an Accreditation scheme for solar PV installers.
  - c) **SEC** – is a not-for-profit peak body for the solar, storage and smart energy industries in Australia. The SEC has been previously known as the Australian Solar Energy Society and the Australian Solar Council, and has been involved in advancing solar energy since 1954. Its membership comprises individual, small and medium businesses as well as many Australian and international companies or organisations as corporate members. It encompasses installers, sales people, engineers, scientists, recruiters, managers and financiers, and some individual consumers; all of whom are in some way involved in the smart energy industry.

<sup>1</sup> This application for authorisation AA1000439 was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).

- d) **ECA** – The ECA is a national voice for residential and small business energy consumers. Established by the Council by Australian Governments (**COAG**) Energy Council in 2015, its objective is to promote the long-term interests of consumers with respect to price, quality, reliability, safety and security of supply.

## The Proposed Conduct

1.4. The Applicants are seeking authorisation, including on behalf of future signatories to the Consumer Code, to agree, sign up to and comply with (give effect to) provisions of the Consumer Code:

- a) according to which signatories will commit to abide by minimum standards of good practice as set out in the Consumer Code, which are intended to cover all aspects of the customer experience<sup>2</sup>
- b) for monitoring and sanctioning non-compliance, where the Code Administrator has powers requiring a signatory to rectify issues giving rise to a breach of the Consumer Code, and, where there is serious non-compliance, the Code Administrator may propose to the Code Monitoring and Compliance Panel that the signatory should be suspended or expelled, and
- c) requiring signatories to only offer deferred payment arrangements<sup>3</sup> that are regulated under the *National Consumer Credit Protection Act 2009* (Cth) (**NCCPA**) and the *National Credit Code* (**NCC**), and provided by credit providers licensed under the NCCPA.

(the **Proposed Conduct**). A copy of the Consumer Code is **annexed**.

1.5. The Applicants have identified the following sections of the *Competition and Consumer Act 2010* (Cth) (the **Act**) as relevant to their application:

- cartel conduct (s. 45AD) – the Consumer Code provides for powers to enforce the Consumer Code and suspend or expel signatory members<sup>4</sup>
- contracts, arrangements or understandings that restrict dealings or affect competition, including concerted practices (s. 45) – in many cases signatories will be competitors with each other and are agreeing to undertake consistent business practices
- misuse of market power (s. 46) – for some nascent New Energy Tech products and services such as Virtual Power Plant services, it is possible that at least initially, there may be one or a small number of dominant suppliers which will be a signatory to the Consumer Code
- exclusive dealing (s. 47) – the Consumer Code includes requirements for signatories in relation to the offer of deferred payment arrangements.

<sup>2</sup> See for example, the commitments outlined in paragraph 4.8 below.

<sup>3</sup> A 'deferred payment arrangement' under the Consumer Code is a reference to an alternative method of payment to upfront payment upon delivery or installation. The conditions on the offer of a deferred payment arrangement applies when offered to a residential consumer and this arrangement includes an interest component, additional fees or involves an increased purchase price.

<sup>4</sup> Application for ACCC Authorisation - New Energy Tech Consumer Code (April 2019), Attachment B – Draft for ACCC – New Energy Tech Consumer Code, Annexure – Code Administration, Section 24.

## 2. Background

### *New Energy Tech products and services*

- 2.1. New Energy Tech, as defined for the purposes of the Consumer Code, includes products, systems and services that:
  - a) are 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) are services that support or are closely related to those products or systems
  - c) monitor or manage a customer's usage of energy whether on or off an energy network, and
  - d) the Consumer Code administrator is satisfied sit appropriately within the Consumer Code, future flexibility and innovation permitting.
- 2.2. The definition under the Consumer Code is not intended to include simple, low cost or off-the-shelf New Energy Tech, such as might be purchased from a whitegoods or hardware store for self-installation.
- 2.3. Examples of New Energy Tech include:
  - a) distributed energy resources connected to an energy network for supplementary supply such as solar photovoltaic systems, wind turbines, hydro and bioenergy generators
  - b) a microgrid
  - c) energy management products, systems and services including batteries and other energy storage methods
  - d) programs aimed at stabilising the supply of energy including those that incentivise or restrict power consumption during critical peak periods
  - e) a power purchase agreement<sup>5</sup>
  - f) person to person energy trading systems and services
  - g) electric vehicle charging services, and
  - h) associated repair, maintenance or removal services for New Energy Tech products and systems.

### *Background to the New Energy Tech Consumer Code*

- 2.4. In August 2017, the COAG Energy Council wrote to industry and ECA respectively, requesting that:

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<sup>5</sup> A power purchase agreement can refer to any agreement between a power generator (vendor) and a purchaser(s) for the sale and supply of energy. In more recent times it has been used to refer to arrangements involving the sale of electricity generated from renewable energy such solar panels (eg. a business may form an agreement with a homeowner, whereby the business will install solar panels on the homeowner's roof and sell that electricity to the homeowner).

- a) industry associations (namely, the AEC, CEC, SEC and Energy Networks Australia), collaborate with the ECA to develop an industry code for behind-the-meter (**BTM**) products and services<sup>6</sup>, and
  - b) ECA develop a range of consumer information products on consumer rights and responsibilities for BTM products and services (the **Consumer Information Products**).
- 2.5. Representatives from other consumer advocacy organisations (the Consumer Action Law Centre (**CALC**), RENEW (previously the Alternative Technology Association) and the Public Interest Advocacy Centre (**PIAC**)) – joined with the industry associations and ECA to progress this work through the formation of the BTM Working Group.
- 2.6. Since October 2017, the BTM Working Group has met regularly to progress the development of the draft Consumer Code and the Consumer Information Products.
- 2.7. In November 2018, a draft Consumer Code was released for stakeholder consultation and was amended following feedback before being the subject of this application for authorisation.

#### *Previous related authorisations*

- 2.8. The ACCC re-authorised the revised Solar Code for five years in 2015.<sup>7</sup>
- 2.9. The CEC currently administers the Solar Code, which requires signatory retailers to meet certain best practice standards that enhance consumer protection. The Solar Code also requires signatories to use installers accredited by the CEC.
- 2.10. Under the Small-Scale Renewable Energy Scheme administered by the Clean Energy Regulator (a government body), installers of solar systems are now required to be a signatory to the Solar Code and accredited by the CEC in order to be eligible to obtain small-scale technology certificates (**STCs**) for installations. STCs have value and can be bought and sold through the open STC market or the STC clearing house.
- 2.11. The Applicants consider current signatories of the Solar Code are likely to transfer to the Consumer Code, if it is authorised by the ACCC.

### 3. Consultation

- 3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Consumer Code.
- 3.2. The ACCC invited submissions from a range of potentially interested parties including energy companies, new energy tech providers, electrical installers, consumer advocacy and representative groups, BNPL providers and relevant regulatory bodies.<sup>8</sup>
- 3.3. The ACCC received 22 submissions from interested parties in relation to the application. A brief summary of submissions is below:

<sup>6</sup> New Energy Tech products and services are commonly also referred to in the industry as BTM products and services.

<sup>7</sup> For further information, please see: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/clean-energy-council-limited-revocation-and-substitution-a91495-a91496>

<sup>8</sup> A list of the parties consulted and the public submissions received is available from the ACCC's public register at [www.accc.gov.au/authorisationsregister](http://www.accc.gov.au/authorisationsregister).

- a) The majority of submissions were in support of the intention of the Consumer Code, in improving business standards across the industry and increasing consumer protections.
  - b) A number of submissions raised concerns that some of the commitments required of signatories under the Consumer Code were too broad and lacked specificity. Some retailers were concerned it would be unclear what they were required to do in order to comply with some of the provisions of the Consumer Code.
  - c) A number of submissions raised concerns regarding the ability of the Consumer Code to be effective and deliver the intended outcomes, particularly if the CEC was appointed the administrator of the Consumer Code. This view appears to have been based on previous experience with the CEC's administration of the Solar Code. This issue is further discussed at paragraphs 4.22 to 4.32.
  - d) Submissions from BNPL arrangement providers opposed the commitment required of signatories in relation to the offer of deferred payment arrangements with New Energy Tech products and services. The effect of the commitment under section 24 of the Consumer Code is that signatories are prevented from offering BNPL arrangements and BNPL providers are essentially excluded. The BNPL providers submit that this exclusion is anti-competitive and not a proportionate response to the consumer protection concerns underlying the exclusion.
  - e) Submissions from consumer associations generally supported the commitments required of signatories in the Consumer Code, including strongly supporting the requirement in relation to the offer of deferred payment arrangements. Some submissions also called for the Consumer Code to go further to ban all unsolicited sales.
- 3.4. Public submissions by the Applicants and interested parties are on the Public Register for this matter.

## 4. ACCC assessment

- 4.1. The ACCC's assessment of the Consumer Code is carried out in accordance with the relevant authorisation test contained in the Act.
- 4.2. The Applicants have sought authorisation for the Proposed Conduct that would or might involve a cartel provision within the meaning of Division 1 of Part IV of the Act, or may substantially lessen competition within the meaning of sections 45 and 46 of the Act, or may constitute exclusive dealing within the meaning of section 47 of the Act. Consistent with subsection 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result (authorisation test).
- 4.3. To assist with the assessment of the Consumer Code, the ACCC considers:
  - a) the relevant areas of competition likely to be affected by the implementation of the Consumer Code are the supply of:
    - i. different types of New Energy Tech products and services, and

- ii. financial products, including particularly deferred payment arrangements, offered with New Energy Tech products and services,
- b) that the likely future without the Consumer Code is that suppliers of New Energy Tech products and services will be free to engage in sales practices and interactions with consumers provided they comply with relevant laws and regulations. Without the Consumer Code, the Solar Code will continue to apply to signatories to that code who supply solar PV products and services.

## Public benefits

- 4.4. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that the term should be given its widest possible meaning, and includes:

*...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.<sup>9</sup>*

- 4.5. The Applicants submit that the Consumer Code is likely to result in public benefits in the form of:
- a) providing consumers with clear, accurate and relevant information to help them make informed choices
  - b) encouraging consumers to be aware of their rights under the law and the Consumer Code
  - c) ensuring that signatory sales practices are responsible
  - d) ensuring that products, systems, services and documentation provided under the Consumer Code are suitable and fit for purpose
  - e) supporting staff training and work processes that ensure that signatories comply with the law and the Consumer Code, and
  - f) ensuring that signatories will be responsive to consumer needs and take prompt, appropriate action if customers make a complaint.
- 4.6. Specifically in relation to the commitment restricting the offer of deferred payment arrangements, the Applicants submit that adoption of the Consumer Code will offer public benefits through the protections provided by regulation under the NCCPA and the NCC.
- 4.7. The ACCC has considered the following public benefits:
- a) reduced information asymmetry and enhanced consumer ability to make informed choices that better suit their needs
  - b) increased consumer protections arising from key commitments by signatories beyond what is currently explicitly required by the law, and
  - c) increased consumer protections from the requirement that finance arrangements meet certain regulatory obligations.

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<sup>9</sup> *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242; cited with approval in *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677.

**Reduced information asymmetry and enhanced consumer ability to make informed choices that better suit their needs**

- 4.8. The ACCC considers that adoption of the Consumer Code is likely to result in better informed consumers, due to the various commitments agreed to by signatories. These include:
- a) Commitments to take positive actions with respect to advertising and promotion, including:
    - i. using language that is accessible and that avoids industry jargon (section 2. d))
    - ii. ensuring that any claims relating to performance or energy cost savings are reasonably based and where available, based on reputable sources (section 2. g))
    - iii. advertising the total price as prominently as any component price (section 2. h))
    - iv. ensuring that any disclaimers are clearly outlined and not buried in small print (section 2. j))
    - v. be clear about any additional cost for finance or an alternative purchasing arrangement when the cost is being recovered in the overall price (section 2. m))
  - b) Commitments to educate consumers of their rights when undertaking direct marketing, including:
    - i. advising consumers they can ask the sales person to leave or end the contact at any time (section 3. a))
    - ii. provide the Consumer Information Product that explains the consumer protection framework (section 3. f))
    - iii. avoiding high-pressure sales tactics (section 4)
  - c) Commitments to provide detailed information disclosures, including:
    - i. an itemised list of the New Energy Tech being supplied (section 8. b))
    - ii. information about how the New Energy Tech operates and how to operate it (sections 8. c), d) and e))
    - iii. a site specific design plan and performance estimate for the New Energy Tech (section 16. a))
    - iv. explanations of how to operate and maintain the New Energy Tech (section 36)
- 4.9. The submissions received from interested parties support the benefits of the Consumer Code in improving consumers' understanding of New Energy Tech products and services and their consumer protection rights. In particular, CALC and Uniting Vic. Tas. made submissions regarding the complexity of energy markets, and how difficult, confusing and risky it was for many consumers to make decisions about their energy supply.

- 4.10. The ACCC accepts that for complex products such as New Energy Tech, the initiatives and commitments under the Consumer Code requiring additional information disclosures are likely to result in public benefits. Where consumers are able to make better and more informed purchasing decisions about the products or services that best meet their needs there may also be some efficiency improvements.

**Increased consumer protections from key commitments by signatories beyond what is currently explicitly required by the law**

- 4.11. The ACCC considers that adoption of the Consumer Code is likely to result in greater consumer protections, as a result of the commitments adopted by signatories that are beyond that which is currently explicitly required under current consumer protection laws. These include:

- a) taking extra care if the signatory becomes aware that the consumer may be facing vulnerable circumstances (section 5)
- b) making product or service 'fit-for-purpose inquiries', including:
  - i. asking about the potential consumer's specific circumstances, needs and expectations (section 6. a))
  - ii. ensuring that any offer of New Energy Tech is fit for purpose in light of the consumer's needs and expectations and recording a brief description of the consumer's circumstances, needs and expectations in quotes and contracts (section 6. c))
- c) providing site-specific installation designs or plans and site-specific performance estimates (section 16)
- d) facilitating any activation required for the use of products or services (section 32)
- e) taking responsibility for sales agents, representatives, installers, subcontractors etc. to ensure the accuracy of information provided and safety of installations (section 57-59), and
- f) improving complaints handling processes (section 53).

- 4.12. The ACCC considers that these commitments by signatories under the Consumer Code are likely to result in public benefits by providing protections to reduce the likelihood and degree of consumer harm that can arise from the kinds of practices sought to be addressed by these provisions.

- 4.13. Some submissions from interested parties called for the Consumer Code to provide further consumer protections by banning all unsolicited sales. As drafted, the Code provides a level of protection by requiring signatories to provide information disclosures up-front in the unsolicited interaction (including the Consumer Information Products) and informing consumers of their rights as part of the interaction. The ACCC invites further submissions on this issue.

**Increased consumer protections from the requirement that finance arrangements meet certain regulatory obligations**

- 4.14. The Applicants submit that consumers have been harmed by taking up unaffordable unregulated finance leading to financial hardship and debt for vulnerable consumers. The Applicants seek to address this issue under section 24 of the Consumer Code. Section 24 requires that if a signatory is to offer New Energy Tech to a residential



consumer with a deferred payment arrangement, and this arrangement includes an interest component, additional fees or an increased price, it will ensure that:

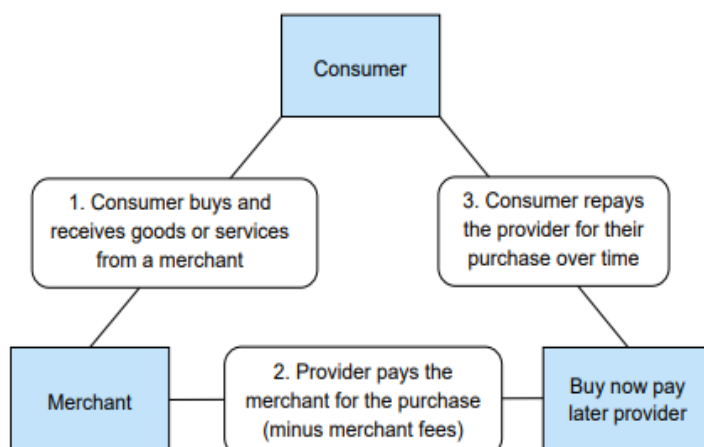
- a) this payment arrangement is offered through a credit provider licenced under the NCCPA, and
- b) this payment arrangement is regulated by the NCCPA and the NCC.

4.15. Section 24 effectively means that signatories to the Consumer Code are prevented from offering BNPL arrangements<sup>10</sup>, as these arrangements are not regulated under the NCCPA and the NCC.

#### *Buy now pay later (BNPL) arrangements*

BNPL arrangements usually involve:

- a contract between a consumer and the BNPL provider
- a contract between the consumer and the merchant, and
- a contract between the provider and the merchant.



BNPL providers usually charge merchants when consumers use a BNPL arrangement (eg. through merchant fees) and some providers also charge consumers for these arrangements (eg. accounting fees).

BNPL arrangements generally do not charge consumers interest, however, in addition to the periodic payments required, consumers may also be charged an upfront fee, periodic fixed fees and/or fees for missed payments.

4.16. The Applicants submit that this requirement will provide clear public benefits as this will provide consumers with the following protections not applicable to BNPL arrangements:

<sup>10</sup> A reference to a BNPL arrangement in this document is a reference to a BNPL arrangement that is not regulated under the NCCPA and the NCC. See also: Australian Securities and Investment Commission, 'Report 600 – Review of buy now pay later arrangements' (November 2018) 6-7.

- a) consumers will be provided with regulated information about the credit offer
  - b) consumers will benefit from the obligation on credit providers to make a responsible lending assessment under the NCCPA, and
  - c) consumers will be assured of the ability to take any complaint or dispute about the credit product to an external dispute resolution scheme.
- 4.17. BNPL providers, Brighte and FlexiGroup, submit that consumer protections do exist for BNPL arrangements and such arrangements are regulated by the Australian Securities and Investment Commission (**ASIC**) through the *ASIC Act 2001* (**ASIC Act**) and ASIC's new product intervention powers. As such, consumers utilising BNPL arrangements have access to similar consumer protections as those products regulated by the NCCPA. In addition, Brighte and FlexiGroup submit that BNPL arrangements are an important financing option for purchases of New Energy Tech products and services. For example, FlexiGroup estimate that it has provided finance for the purchase of more than 180,000 solar installations, which represents about 10% of all installed grid-connected solar systems in Australia.
- 4.18. In November 2018, ASIC released a report on BNPL arrangements.<sup>11</sup> ASIC found that the BNPL industry is rapidly growing and there is a diverse range of arrangements available. ASIC noted that BNPL arrangements can create some risks for consumers if they take on debt that they may have difficulty paying back. ASIC also found that some providers take steps to help consumers make informed decisions about their purchases and repayment, but in some instances more could be done. ASIC considered that its proposed product intervention power should be extended to all credit facilities, including BNPL arrangements, regulated under the ASIC Act. ASIC's product intervention powers have since come into force from April 2019.
- 4.19. The ACCC recognises that the protections available under the NCCPA and NCC are likely to reduce harm to consumers from unsuitable and/or unregulated finance arrangements.
- 4.20. However, this benefit is likely to be (at least partially) offset by a public detriment if adoption of the Consumer Code will also result in preventing some consumers from accessing finance arrangements that include appropriate safeguards, despite not being regulated under the NCCPA and NCC. In some cases, such finance arrangements may meet consumer needs and allow them to purchase New Energy Tech products and services which could reduce their energy consumption, and therefore provide savings over time.
- 4.21. The ACCC is therefore seeking submissions about the feasibility and desirability of amendments to the Consumer Code that may allow for BNPL arrangements to be offered if providers are able to demonstrate that they are properly regulated and offer consumers adequate protections similar to those available under the NCCPA and NCC.

### **Effective administration and enforcement of the Consumer Code**

- 4.22. Effective administration and enforcement of a voluntary code is crucial to the realisation of the claimed public benefits under the code. However, key roles under the Consumer Code are yet to be filled and the identity of the relevant appointees won't be

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<sup>11</sup> Australian Securities and Investment Commission, 'Report 600 – Review of buy now pay later arrangements' (November 2018).

decided until after the Consumer Code comes into effect (should authorisation be granted).

- 4.23. The Consumer Code is administered in accordance with the Memorandum of Understanding, agreed to on 24 January 2019 by various members of the BTM Working Group: ECA, ENA, PIAC, CEC, SEC, AEC and Renew (**MOU**).<sup>12</sup> The MOU specifies that the Consumer Code will be governed and administered by:<sup>13</sup>
- 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
  - c) the Code Administrator, appointed by the Council and responsible for day to day administration of the Code, and
  - d) the Code Monitoring and Compliance Panel (the **Panel**) appointed by the Council and comprising industry and consumer representatives and independent persons with relevant expertise.
- 4.24. None of the Council, Steward, Code Administrator or the Panel positions have been filled.
- 4.25. A number of submissions raised concerns regarding the CEC's ability to effectively administer the Consumer Code, should it be appointed to the role. This concern appears to be largely based on the experiences of those interested parties with the CEC as the administrator of the Solar Code.
- 4.26. The ACCC expresses no view on the concerns raised in these submissions but notes that they are available on the ACCC's Public Register, and it will be open to Council members to consider them when deciding who to appoint as Code Administrator.
- 4.27. Irrespective of whether the CEC is ultimately appointed Code Administrator, a key determinant of effective administration is a robust system of checks and balances within the Consumer Code rules, and the criteria to be used for appointing the Code Administrator.
- 4.28. The ACCC considers that the Consumer Code sufficiently outlines the roles and responsibilities of the Code Administrator and provides for a process to ensure the Code Administrator is qualified and performing its duties appropriately.<sup>14</sup>
- 4.29. Under the MOU, the Chair of the Council must be a person of high standing and with an extensive understanding of consumer protection issues. They must be able to demonstrate that they are capable of reflecting the viewpoints and concerns of consumers, have expertise in consumer affairs and the confidence of consumers, consumer organisations, industry and other key stakeholders and have knowledge of the industry and the issues involved in the Consumer Code. The Chair of the Council

<sup>12</sup> Application for ACCC Authorisation - New Energy Tech Consumer Code (April 2019), Attachment C – The Consumer Code Journey, Attachment B – Memorandum of Understanding – Governance.

<sup>13</sup> Application for ACCC Authorisation - New Energy Tech Consumer Code (April 2019), Attachment B – Draft for ACCC – New Energy Tech Consumer Code, Annexure – Code Administration, section 2.

<sup>14</sup> The Administrator's duties are clearly set out in the Consumer Code, Annexure – Code Administration and include assessing membership applications, annually reviewing the fees payable by signatories, determining whether to grant exemptions to provisions of the Consumer Code, monitoring compliance with the Consumer Code (including through investigating complaints, conducting audits and analysing repeat offences), and determining remedial actions or sanctions for Consumer Code breaches.

will appoint the Council members, whom will then appoint the Code Administrator after agreeing appropriate criteria. The Code Administrator will be subject to an initial review after 12 months into the three-year term.

- 4.30. In addition, the Code Administrator is required to consider specific matters when assessing applications from those wishing to become a signatory to the Consumer Code. Further, decisions made by the Code Administrator requiring a signatory to rectify a breach are reviewable by the Panel if the signatory requests such a review. Also, matters of expulsion or suspension are to be referred by the Code Administrator to the Panel for decision. The Panel is required to publish on-line an annual report about the Consumer Code's operation, including information about each finding of breach and the remedial action or sanction imposed on the relevant signatory. As such, the ACCC considers it is unlikely that the Code Administrator will be able to inappropriately refuse membership or impose improper sanctions on signatories.
- 4.31. The Consumer Code also provides for three-yearly independent reviews of its governance framework, including by seeking the views of stakeholders and revising the Consumer Code in light of that review.
- 4.32. On balance, the ACCC is satisfied that the Consumer Code has sufficient mechanisms in place to ensure its effective administration and enforcement and that it is not critical for the identity of the Code Administrator (or the other key roles identified above) to be known before the ACCC issues a final determination on this authorisation application.

### **ACCC conclusion on public benefit**

- 4.33. The ACCC considers that adoption of the Consumer Code is likely to result in the following public benefits:
- The commitments by signatories to provide additional information disclosures reduces information asymmetry. Consumers are more likely to be better informed and better placed to make purchasing decisions better suited to their needs, and
  - Key commitments by signatories to take proactive steps to ensure products and services are fit for purpose will increase consumer protection beyond what is required under the law. Recording a description of the customers' circumstances and purchase will also make it easier for any consumer guarantees claims to be made under the ACL if product or service failures occur.
- 4.34. The ACCC notes that the Consumer Code does not supersede existing legal consumer protections (i.e. it is additional to existing protections).
- 4.35. The ACCC is satisfied that provisions in the Consumer Code provide mechanisms to ensure its effective administration and enforcement.

### **Public detriments**

- 4.36. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

*...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.<sup>15</sup>*

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<sup>15</sup> Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

4.37. The ACCC has considered the following public detriments:

- A lessening of competition in the supply of New Energy Tech products and services.
- A lessening of competition in the supply of finance arrangements between finance providers, and a lessening of consumer choice, due to the exclusion of BNPL providers.

### **Reduction in competition between suppliers of New Energy Tech products and services unlikely**

*Increased cost of supply for signatories may raise barriers to entry*

4.38. The Applicants recognise that signatories to the Consumer Code are likely to face additional costs as a result of signing on to the Consumer Code, including:

- a) administration fees charged to signatories by the Code Administrator, and
- b) added costs incurred in order to comply with the commitments and higher standards required under the Consumer Code, including increased operating costs for training, documentation, disclosures and consumer protection provisions.

4.39. The ACCC considers that costs arising from the additional disclosure commitments and consumer protections, are likely to reflect a corresponding increase in the quality of the goods and services supplied, for example as a result of the additional product information disclosures and requirement for the signatory to provide site design and development plans.

4.40. In relation to the compliance costs for signatories directly resulting from the Consumer Code's implementation and administration, the ACCC considers that the compliance requirements imposed are necessary in order for the Consumer Code to be effective. The ACCC notes that it is currently unclear what the fees for the Consumer Code will be and agrees with Tesla's submission that these will need to be clearly articulated.

*Expulsions and denied membership to the Consumer Code as a barrier to entry*

4.41. Membership to the Consumer Code may provide an advantage to suppliers of New Energy Tech products and services over those that choose not to become members because consumers may perceive that signatories uphold better business practices and offer greater consumer protections than non-signatories. This advantage may be further increased if governments link supplier access to rebate or incentive schemes, or government tenders to membership of the Consumer Code. The ACCC notes it is a matter for governments to determine the appropriate eligibility criteria for their programs.

4.42. This may make Consumer Code signatories more attractive to consumers than non-signatory suppliers of New Energy Tech products and services. If signatories are inappropriately expelled or suppliers are not accepted as signatories this may impact on their ability to compete to provide New Energy Tech products and services.

4.43. The ACCC considers the Consumer Code administrative framework under the MOU contains sufficient rules, checks and balances to ensure that the Administrator and the Panel will be sufficiently qualified and will appropriately assess applications for membership and the level of sanctions against signatories for non-compliance.

### **Reduced consumer choice for finance arrangements**

- 4.44. As noted in paragraph 4.14, BNPL arrangements are excluded as a financing option for the purchase of New Energy Tech products and services supplied by signatories to the Consumer Code. For example, Brighte and FlexiGroup submit that their BNPL arrangements have assisted a large number of consumers by providing finance to assist with the purchase of solar installations.
- 4.45. As already noted, the ACCC recognises that there is some detriment from preventing some consumers from accessing finance arrangements that include appropriate consumer safeguards and information requirements, despite not being regulated under the NCCPA and NCC, and invites further submissions on this issue.

### **ACCC conclusion on public detriment**

- 4.46. The ACCC considers that adoption of the Consumer Code is unlikely to result in a reduction of competition between suppliers of New Energy Tech products and services. There are appropriate safeguards in place to ensure that signatories will not be inappropriately excluded or expelled.

### **Balance of public benefit and detriment**

- 4.47. The ACCC considers that adoption of the Consumer Code is likely to result in significant public benefits in the form of:
- Reduced information asymmetry
  - Increased consumer protections.
- 4.48. The ACCC considers that adoption of the Consumer Code is unlikely to result in public detriment from a lessening of competition in the supply of New Energy Tech products and services.
- 4.49. The ACCC is seeking submissions about the feasibility and desirability of amendments to the Consumer Code that may allow for BNPL arrangements to be offered if providers are able to demonstrate that they are properly regulated and offer consumers adequate protections similar to those available under the NCCPA and NCC.

### **Length of authorisation**

- 4.50. The Act allows the ACCC to grant authorisation for a limited period of time.<sup>16</sup> This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
- 4.51. In this instance, the Applicants seek authorisation for five years.
- 4.52. The ACCC considers this period is appropriate given the evolving nature of the New Energy Tech Sector and the need to test the effectiveness of the administration arrangements and any sanctions taken under the Consumer Code during that period.

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<sup>16</sup> Subsection 91(1)

## 5. Draft determination

### The application

- 5.1. On 30 April 2019, the Applicants lodged application AA1000439 with the ACCC, seeking authorisation under subsection 88(1) of the Act.
- 5.2. The Applicants seek authorisation for the Consumer Code. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

### The authorisation test

- 5.3. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Proposed Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Proposed Conduct.
- 5.4. For the reasons outlined in this draft determination, the ACCC is satisfied, in all the circumstances, that the Proposed Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct, including any lessening of competition.
- 5.5. Accordingly, the ACCC proposes to grant authorisation.

### Conduct which the ACCC proposes to authorise

- 5.6. The ACCC proposes to grant authorisation AA1000439 to enable the Applicants and future signatories to the Consumer Code<sup>17</sup> to agree, sign up to and comply with (give effect to) provisions of the Consumer Code:
  - a) according to which signatories will commit to abide by minimum standards of good practice as set out in the Consumer Code, which intended to cover all aspects of the customer experience
  - b) for monitoring and sanctioning non-compliance, where the Code Administrator has powers requiring a signatory to rectify issues giving rise to a breach of the Consumer Code, and, where there is serious non-compliance, the Code Administrator may propose to the Code Monitoring and Compliance Panel that the signatory should be suspended or expelled, and
  - c) requiring signatories to only offer deferred payment arrangements that are regulated by the NCCPA and NCC and provided by credit providers licensed under the NCCPA.
- 5.7. This conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act, or may substantially lessen competition within the meaning of sections 45 or 46 of the Act, or may constitute exclusive dealing within the meaning of section 47 of the Act.
- 5.8. This authorisation is limited to the conduct described in paragraph 5.6 above (that is merely agreeing, signing up to and complying with (giving effect to) those provisions of

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<sup>17</sup> Pursuant to section 88(2) of the Act.

the Consumer Code). The authorisation does not extend to any other conduct, particularly any other conduct that may contravene section 46 or other provisions of Part IV of the Act.

- 5.9. The ACCC proposes to grant authorisation AA1000439 for five years.
- 5.10. The proposed authorisation is in respect of the Consumer Code as it stands at the time of authorisation is granted, a copy of which is annexed to the draft determination. Any changes to the Consumer Code during the term of the proposed authorisation would not be covered by the proposed authorisation.

## 6. Next steps

- 6.1. The ACCC now invites submissions in response to this draft determination. In addition, consistent with section 90A of the Act, the Applicants or an interested party may request that the ACCC hold a conference to discuss the draft determination.



**Annexure – New Energy Tech Consumer Code**

## Attachment B – New Energy Tech Consumer Code

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## Part A - Overview

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### 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”).

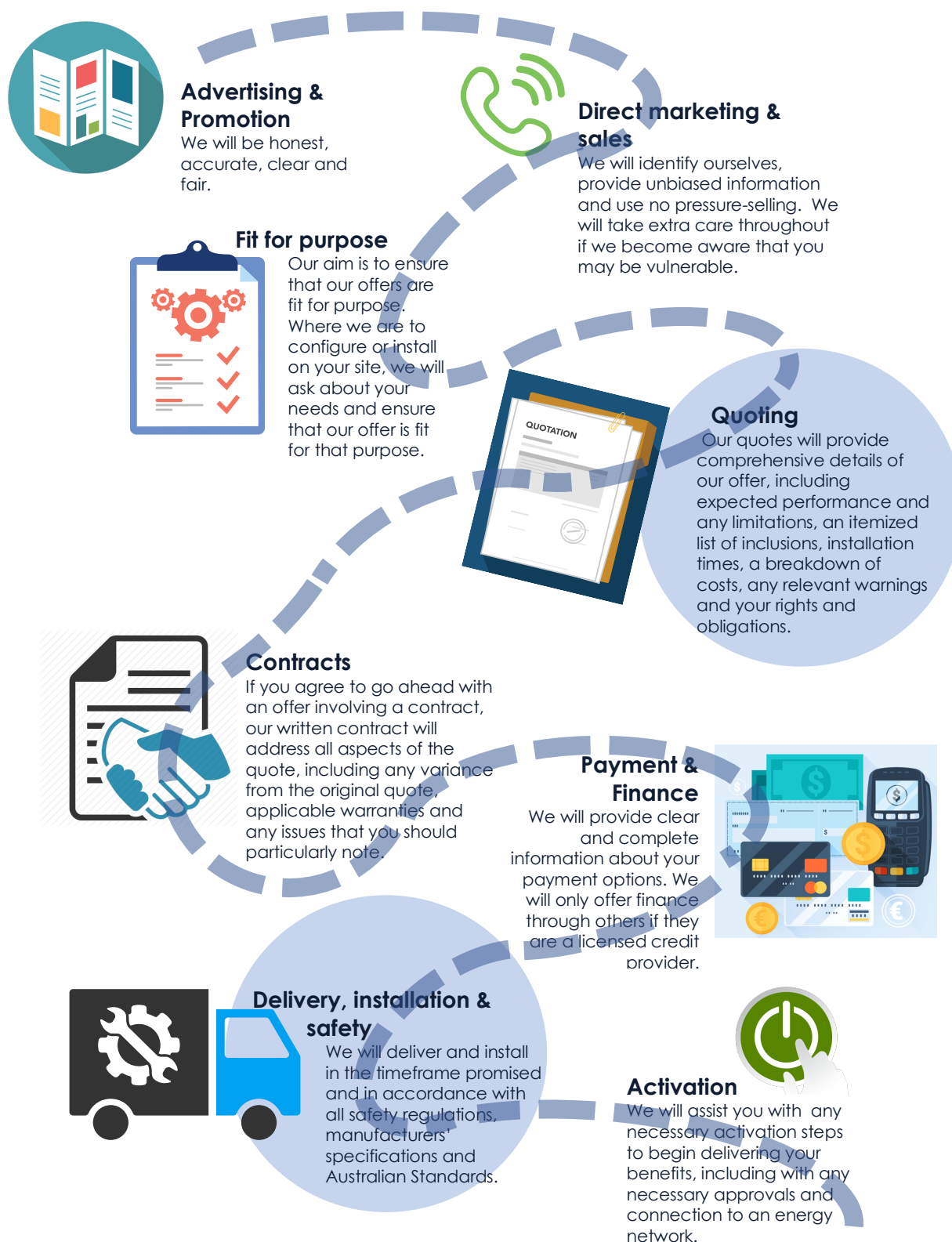
The Code operates alongside a range of existing legal and regulatory protections. Generally, it does not repeat these protections except as needed to provide you with a complete understanding of what to expect from us.

### Key Commitments

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

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### Advertising and promotion

2. 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) use language that is accessible and that avoids industry jargon
  - e) not make any misleading claims about the place of origin (manufacture and assembly) of our products
  - f) not mislead you about the impact our New Energy Tech will have on your energy usage or costs
  - g) 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
  - h) advertise the total price for our New Energy Tech as prominently as we advertise any component of the price
  - i) provide information that is specific to the state or region in which the promotional activity takes place
  - j) ensure that any disclaimers are clearly outlined and not buried in small print
  - k) only include a statement, promise, prediction or opinion if it is reasonably based
  - l) not include information that is no longer current, for example, quote an offer or financial incentive that is no longer available
  - m) 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

3. When marketing directly to you, including through a sales agent (as well as meeting the requirements in paragraph 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.
4. 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.
5. 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

6. 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.
7. 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

8. 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

9. 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).
10. 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.
11. 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).
12. 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.
13. 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.
14. 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.

15. 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

16. 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) 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, complete a site-specific installation design or plan and site-specific performance estimate (both must meet the requirements of paragraph 16a)) 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 16a)) 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

17. 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

18. 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.
19. 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.
20. 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.
21. 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.
22. 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

23. We will issue you with a receipt for any deposit or other payment you make under the contract.
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 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
  - 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
    - 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.
25. Paragraph 24 does not apply if the finance is provided by a government body.
26. Paragraph 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 2.m)).
27. Paragraph 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.

28. 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.
29. 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

30. 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.
31. 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

32. 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.
33. 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 47 if your application is rejected.
34. 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.
35. 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

36. 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

37. Our New Energy Tech will meet your reasonable expectations including but not limited to:
- a) meeting your needs as explained to us (see paragraph 6), 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.
38. 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. 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

40. 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

41. 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.
42. 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.~~





43. 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

44. 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 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.
45. 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.
46. 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.
47. 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 34), 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.
48. 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 8.n) and
  - f) we have proceeded with the installation on your incorrect advice that yours is not a strata title property.
49. 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

50. 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.



51. 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

52. 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.



53. 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

54. 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.



LAW



REGULATIONS



STANDARDS

55. 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 reasonably expect to receive from us or
  - c) to provide your personal information to a third party if you have given express permission for this.
56. 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

- 57. 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.
- 58. 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.
- 59. 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

60. 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.
61. 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

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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

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### Introduction

1. 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. 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. 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. 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.
- 5. 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.

## Fees

- 6. 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.
- 7. 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. 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. 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. The Council and the Administrator must promote the benefits of the Code to customers, to industry participants and to other stakeholders.
- 11. 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. The Administrator must maintain an easily accessible list of Signatories on the Code website.

## Supplementary materials

- 13. 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.
- 14. 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
- 15. 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.
- 16. 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. 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.
- 18. 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.
- 19. 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. The Administrator must monitor compliance with the Code, for example, undertake regular compliance audits and mystery shopping, assess customer satisfaction, analyse customer complaints and investigate repeat instances.
- 21. 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.
22. 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) 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.
23. If the Administrator requires a Signatory to undertake remedial action in accordance with paragraph 22 a. to c., the Administrator must monitor the Signatory's compliance with that requirement.
24. 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 22 a. to c.
25. 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. 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 16
  - c) reviewing a decision made by the Administrator requiring rectification of a breach (under paragraph 22), if the relevant Signatory requests a review
  - d) deciding matters of suspension or expulsion referred under paragraph 24 to it by the Administrator
  - e) referring serious or systemic breaches of law to relevant regulators under paragraph 25
  - f) 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

- g) 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. 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. A Signatory must promptly pay annual and any other Code-related fees applicable to it.
- 29. A Signatory must comply with the Code and all standards mandated by the Administrator in accordance with the Code.
- 30. 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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 ABN: 84 127 102 443



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](mailto: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

A handwritten signature in black ink, appearing to read 'Kane Thornton', with a stylized flourish at the end.

Kane Thornton  
Chief Executive  
Sent on behalf of the Applicants

**Jacqueline Crawshaw**

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**From:** Mindy Lim <MLim@cleanenergycouncil.org.au>  
**Sent:** Friday, 13 September 2019 4:34 PM  
**To:** Steve Blume (NoCarbon); John Grimes; 'Donna Luckman'; Gerard Brody; 'Dean Lombard'; Ben Barnes (Energy Council); Jacqueline Crawshaw; Mediri Weera (PIAC); Anna Sexton (CEC); michelle.taylor@energyq.com.au; Jennifer Gannon (EnergyQ); 'Kurt Winter'  
**Cc:** Kane Thornton; Rosemary Sinclair  
**Subject:** Final submission to ACCC - next steps  
**Attachments:** Ltr to ACCC dated 6 Sept 2019 from Working Group .pdf

Dear Working Group members,

As you are aware, the ACCC held a Pre Decision Conference on Monday 9 September regarding the draft determination for the authorisation of NETCC. This was the letter sent by the Applicants dated 6 September (attached).

I had an opportunity to speak with ACCC staff post conference and they have recommended a further brief submission from the Applicants on behalf of the Working group (prior to the closing date of 23 September) on the following points:

**Unsolicited Sales**

- Further detail on the proposed additional wording in clause 4 specifically around the Code Administrator to publish technical guidance to signatories on unsolicited sales, and if necessary, to make mandatory guidelines.

**Appeal mechanism**

- To insert proposed wording potentially in clause 26 around the Panel's power to oversee appeals for rejected applicants.

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- Appointment of Clare Petrie as the Chair and the criteria taken into consideration when appointing Clare

Annual reporting (this is canvassed in clause 26(f) obligations of the Panel)

Finalise additional wording on clause 24.

The CEC would be happy to host, and anticipate that this would take no longer than 1.5 hours. I am proposing Tuesday 17<sup>th</sup> September from noon (to give time for further refinements/checks by Cameron Ralph Khoury before submitting to the ACCC) and will send an invitation to you should you wish to attend. Dial in details will also be provided.

I do appreciate that this is short notice however we are working towards the ACCC timelines. Thank you.

Regards  
Mindy



**MINDY LIM, CODE OF CONDUCT MANAGER**





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Sydney NSW 2000  
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**W** [energyconsumersaustralia.com.au](http://energyconsumersaustralia.com.au)  
**Twitter** @energyvoiceau  
**in** /energyconsumersaustralia  
**f** /energyconsumersaustralia

ABN 96 603 931 326

23 September 2019

Ms Susie Black  
Director – Coordination and Strategy  
Merger & Adjudication Review Division  
Level 17 Casselden Place  
2 Lonsdale Street, Melbourne 3000

## **NEW ENERGY TECH CONSUMER CODE - ACCC DRAFT DETERMINATION**

Energy Consumers Australia is the national voice for residential and small business energy consumers.

We appreciate the opportunity to make a submission to the Australian Competition and Consumer Commission (ACCC) process and support the ACCC draft determination that the Consumer Code will result in public benefits by improving the business practices of signatory retailers and the level of consumer protection provided.

We would like to emphasise the importance of the Consumer Code as an initiative to give consumers the confidence to engage in an evolving energy market. Consumers are telling us affordability is their major concern and they are taking whatever steps they can to manage their energy use.<sup>1</sup> This 'cost and control' imperative is why so many consumers are investing in new energy technologies, such as solar panels and batteries. It is critical that consumers can engage in the market for these services and technologies with confidence. In this context, the strengthened consumer protections that would apply under this Code, which are equal to, or better than the legislative requirements, are key.

We welcome the response from the Applicants to the specific issues that were raised in submissions on the Draft Determination and do not intend to cover the same concerns in detail in this submission. However, we note there has been some debate on the inclusion or exclusion of "buy now, pay later" finance providers. While we do not intend to comment on this issue in detail, we note that in either case, the outcome for consumers should be the key consideration and this Consumer Code provides an opportunity to improve this outcome.

In August 2017, the Council of Australian Governments (COAG) Energy Council recognised the need for a more consistent approach to customer protections for new and emerging energy products. The COAG Energy Council requested industry and Energy Consumers Australia to collaboratively develop an industry-wide code of conduct.

A working group was formed, consisting of industry, Energy Consumers Australia and other consumer representatives, to progress this important work. The working group undertook broad stakeholder consultation on the draft Code, including forums in Adelaide, Brisbane, Sydney and Melbourne, technical workshops in Brisbane and Melbourne, and providing an opportunity to comment on the drafting. The proposed Consumer Code is the result of that important work and can achieve better consumer outcomes through a flexible, industry-led framework.

To ensure that consumers and industry can have confidence in the Code, it will be supported by clear and robust governance, accountability and administration arrangements. These arrangements include

<sup>1</sup> For example, see UMR, *Usage of solar electricity in the national energy market* at <https://energyconsumersaustralia.com.au/wp-content/uploads/UMR-Usage-of-solar-electricity-in-the-national-energy-market.pdf>; ECA, *Energy Consumer Sentiment Survey* at <https://energyconsumersaustralia.com.au/wp-content/uploads/Energy-Consumer-Sentiment-Survey-Report-June-2019.pdf>





a Council, Steward, Administrator, and the Code Monitoring and Compliance Panel. The Council will be made up of industry and consumer representatives who will be responsible for making the other appointments. We consider this approach provides appropriate checks and balances and will ensure the administration is effective.

We consider that there are clear benefits to consumers and industry which would be gained by authorising the proposed Code. Some examples of these benefits are that:

- consumers will be able to make confident and better-informed decisions about adopting and using new energy technology with clearer information provision and the avoidance of high-pressure sales tactics;
- products will be fit for purpose and the installation process will be simpler for consumers; and
- the process for making complaints and resolving disputes will be clearer for consumers.

The Consumer Code is written in plain English and uses accessible language, so that commitments are easily understood by consumers and industry. Most importantly, the Consumer Code balances better consumer protections with market efficiency and promotes innovation.

The structure of the Consumer Code has also been developed to be flexible. Taking a high-level principles-based approach means the Consumer Code can be technologically neutral. New products, systems and services can be accommodated as they enter the market. Should a need arise for more detailed guidance for industry, then this can be accommodated through the development of standards, guidelines or training. Any supplementary materials would be developed in consultation with stakeholders.

A significant focus of Energy Consumers Australia's contribution to the Consumer Code has been the development of supporting communications materials. These materials are intended to inform consumers about new energy technology products and services and about their rights and protections so that they are informed decision-makers and know where to get help if something goes wrong.

Energy Consumers Australia considers that the Consumer Code provides an agile, industry-led and customer-focused approach to delivering customer protections for new energy technologies. This flexible approach means that as issues arise in the market, they can be quickly and easily resolved for consumers. We anticipate that this approach will give consumers the information and tools they need to make informed decisions and will help to improve consumer trust in the energy market, while avoiding unnecessary costs on industry or stifling innovation.

If you would like to discuss this submission or require any further information, please contact Jacqueline Crawshaw, Associate Director, by email at

or by phone on

Yours sincerely,

Rosemary Sinclair AM  
Chief Executive Officer



Ms Rosemary Sinclair  
Chief Executive Officer  
Energy Consumers Australia  
Suite 2, Level 14, 1 Castlereagh Street  
Sydney NSW 2000

Dear Ms Sinclair

I am writing to request Energy Consumers Australia develop a range of consumer information products on consumer rights and protections for behind-the-meter products and services.

Consumers are driving change in the energy market by embracing distributed generation and storage technologies, and in response, the industry is transforming by offering a wider range of energy services and products. While this changing market is offering greater choice to consumers, with commensurate benefits, it can imply greater complexity and a risk of some consumers getting products that don't meet their needs or present poor value.

Given this, the Council of Australian Government Energy Council has undertaken a review of consumer protections for energy products and services that fall 'behind the meter' including solar and storage technologies. Ministers wanted to ensure consumer protections continued to balance consumer wellbeing with market efficiency and promotion of innovation. The review was informed by consultation with industry, consumer representative organisations and other stakeholders.

The way energy is regulated depends on how that service is provided. The National Energy Customer Framework (NECF) provides energy-specific consumer protections related to the sale of energy by authorised retailers and exempt sellers. While the NECF has not been adopted in Victoria, similar protections apply under the Victorian Retail Code.

The Australian Consumer Law (ACL) provides universal consumer protections in areas such as unfair contract terms, product safety, misleading information, and product liability. This offers complementary protections in cases where the NECF or Victorian Retail Code does not apply. For example, when consumers are leasing or purchasing technology outright, the ACL serves as the principle form of regulation for these energy products.

In March 2017 the Final Report of the ACL Review made recommendations that will improve regulation including, allowing for greater consumer access to consumer guarantees and greater guidance on contract terms and unsolicited consumer agreements. It will also increase the threshold of purchases from \$40,000 to \$100,000.

Noting the above, the Council has concluded that consumer protections offered under the ACL and the NECF provide sufficient protection in relation to new and emerging products, appropriately balancing consumer protection with an innovative energy market. Ministers did not, at this stage, find a case for NECF regulation to be extended to behind- the-meter energy products that currently fall outside the NECF.

The Council has decided to ask if Energy Consumers Australia could develop well targeted and clear information on consumer rights and protections for behind the meter services that will support consumers navigate these choices and access help if something goes wrong. The Energy Council believes that Energy Consumers Australia is well placed to develop a series of information products such as facts sheets, infographics and online tools, to help explain the laws and protections that apply under different behind-the-meter supply arrangements.

In developing guidance about a comprehensive range of information products, I anticipate that Energy Consumers Australia will consult with consumer advocates, industry, Energy Ombudsman's offices, market bodies and the ACCC. It may also be useful to consider the manner in which consumer information products are developed and disseminated in other sectors of the economy such as financial services.

Energy Consumers Australia's energy rights information campaign will complement other work on consumer protections including an industry wide voluntary code of conduct for exempt and alternative energy sellers, and legislative amendments to allow for Energy Ombudsmen to service customers of exempt sellers including alternative energy sellers.


The Council is requesting industry to cooperatively develop a single, industry wide Code of Conduct for all behind- the-meter electricity supply services and products. Ministers believe an industry led Code would improve the consistency and quality of information and the management of disputes without the necessity of heavy handed regulation.

In my letters to industry about the development of the industry code for behind-the-meter products and services, I am also asking that they collaborate with Energy Consumers Australia to support this work.

The Council appreciates that this work is additional to Energy Consumers Australia's current work program which may require an adjustment to its 2017-18 work program and budget.

To discuss this matter further please do not hesitate to contact Gayle Leaver (07 3166 0170) or Rebecca Knights (08 8226 5500) Co-Chairs, Energy Market Transformation Project Team.

Yours Sincerely

A handwritten signature in blue ink, appearing to be 'J. Frydenberg', with a long horizontal stroke extending to the right.

**The Hon Josh Frydenberg MP**

Chair

COAG Energy Council

16 August 2017



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@accc.gov.au  
 www.accc.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 2<sup>1</sup> – 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.accc.gov.au/AuthorisationsRegister](http://www.accc.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

---

<sup>1</sup> 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@accc.gov.au](mailto:adjudication@accc.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@accc.gov.au](mailto:adjudication@accc.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.



**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.

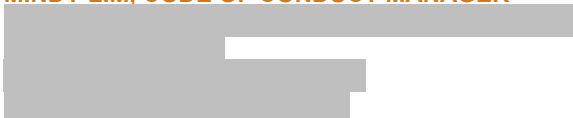
1. Is the exclusion around BNPL too blunt? Are there other ways to ensure providers of BNPL and other exempt products provide appropriate (or equivalent) consumer protections without requiring a strict exclusion?
2. Some submissions call for a ban on unsolicited sales. Can the NETCC strengthen the obligations 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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**Jacqueline Crawshaw**

---

**From:** Gerard Brody <gerard@consumeraction.org.au>  
**Sent:** Monday, 16 September 2019 9:46 AM  
**To:** Mindy Lim (CEC); Steve Blume (NoCarbon); John Grimes; 'Donna Luckman'; 'Dean Lombard'; Ben Barnes (Energy Council); Jacqueline Crawshaw; Mediri Weera (PIAC); Anna Sexton (CEC); michelle.taylor@energyq.com.au; Jennifer Gannon (EnergyQ); 'Kurt Winter'  
**Cc:** Kane Thornton; Rosemary Sinclair; Jake Lilley  
**Subject:** RE: Final submission to ACCC - next steps

Hi Mindy

Thanks for this. I'm unavailable to attend tomorrow, but have asked Jake Lilley to attend in my place.

A couple of points following the pre-decision conference:

- Whether the working group maintains that it is possible to have a BNPL industry code that “delivers substantially equivalent consumer protections to those contained in the NCCPA”. After hearing the submissions at the conference, I'm concerned that it is not possible to achieve for a number of reasons.
  - First, as I mentioned at the pre-decision conference, equivalence requires there to be resources applied to compliance and enforcement activities, as well as penalties for non-compliance. I'm not aware of financial penalties for non-compliance in the context of industry codes (though there is some talk of this with respect to the review of the general insurance code of practice). What commitments have the BTMWG obtained from AFIA in this regard (is there any discussions between AFIA and the BTMWG at all)?
  - Second, I was interested to hear RateSetter's strong submission about the practices of inflating the price of financed goods. Unless this is dealt with in an industry code by disclosing the cost of credit to the consumer, then there can be no equivalence. The NCC is based on the principles of truth in lending. If BNPL did disclose cost of credit to the consumer, then it would fit within the definition of consumer credit under the NCC and NCPPA and thus we would not require a separate industry code.
  - Third, we should remember the restrictions on goods vendors which use regulated credit products from engaging in unsolicited sales (that is, a vendor who does this would have to be separately licensed as a credit provider – that's why we don't see this happening in the marketplace). BNPL providers would also similarly have to be restricted from engaging in unsolicited sales for there to be equivalence. There is no indication that they would agree to such a restriction because it is central to their business model in the solar market
    - Given the submissions at the pre-decision conference, I think the working group should reconsider its position put in the letter dated 6 September.
- Regarding unsolicited selling & the prospect of technical guidance. I think this guidance will need to actually prohibit unsolicited selling, or move to a deferred sales mechanism (as recommended by Consumer Action's 2017 Knock it Off report), to achieve any substantial change. I think the WG previously dismissed the deferred sales mechanism because it was untested. It is worth noting that the Federal Government has committed to introducing a [deferred sales mechanism for add-on insurance](#) in light of pressure selling in that context, which is similar to unsolicited selling. It is also worth noting that the Federal Government has committed to [banning unsolicited selling of financial services](#). The Victorian Government has also committed to banning unsolicited selling in the context of licensed energy retail.
  - There is a real risk that the consumer protections proposed by the NETCC will quickly falling behind community expectations, partly due to the very long time taken in its development. It is entirely reasonable for the draft code now to be updated in light of regulatory developments.

Warm regards  
 Gerard

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

**Sent:** Friday, 13 September 2019 4:34 PM

**To:** 'Steve Blume (NoCarbon)' <ceo@nocarbon.com.au>; 'John Grimes' <ceo@smartenergy.org.au>; 'Donna Luckman' <donna.luckman@ata.org.au>; Gerard Brody <gerard@consumeraction.org.au>; 'Dean Lombard' <dean.lombard@renew.org.au>; 'Ben Barnes' <ben.barnes@energycouncil.com.au>; 'Jacqueline Crawshaw' <jacqueline.crawshaw@energyconsumersaustralia.com.au>; 'Miyuru Ediriweera' <mediriweera@piac.asn.au>; Anna Sexton <ASexton@cleanenergycouncil.org.au>; michelle.taylor@energyq.com.au; jennifer.gannon@energyq.com.au; 'Kurt Winter' <kwinter@agl.com.au>

**Cc:** Kane Thornton <KThornton@cleanenergycouncil.org.au>; 'Rosemary Sinclair' <rosemary.sinclair@energyconsumersaustralia.com.au>

**Subject:** Final submission to ACCC - next steps

Dear Working Group members,

As you are aware, the ACCC held a Pre Decision Conference on Monday 9 September regarding the draft determination for the authorisation of NETCC. This was the letter sent by the Applicants dated 6 September (attached).

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#### Appeal mechanism

- To insert proposed wording potentially in clause 26 around the Panel's power to oversee appeals for rejected applicants.

#### Progress of the Industry Council

- Appointment of Clare Petrie as the Chair and the criteria taken into consideration when appointing Clare

Annual reporting (this is canvassed in clause 26(f) obligations of the Panel)

Finalise additional wording on clause 24.

The CEC would be happy to host, and anticipate that this would take no longer than 1.5 hours. I am proposing Tuesday 17<sup>th</sup> September from noon (to give time for further refinements/checks by Cameron Ralph Khoury before submitting to the ACCC) and will send an invitation to you should you wish to attend. Dial in details will also be provided.

I do appreciate that this is short notice however we are working towards the ACCC timelines. Thank you.

Regards

Mindy



**MINDY LIM, CODE OF CONDUCT MANAGER**





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## Behind the Meter

### Code of Conduct consultation December 2018

#### Summary Report

In the week of 10 December 2018, representatives from the Behind the Meter Working Group (BTM WG) held four industry forums to discuss the draft Code. The forums were primarily an opportunity for industry representatives, from installers, to retailers, manufacturers, consumer group representatives, government agency representatives, and members of the public to attend and have their say about the draft Code. The industry forums were held in Adelaide (10 December), Brisbane (11 December) Sydney (13 December) and Melbourne (14 December). The Adelaide forum had 28 attendees, Brisbane had 31, Sydney had 20, and Melbourne had 36.

The forums were three hours in duration, and involved presentations about the background to the Code, an overview of the Code, a question and answer session, and rotating table discussions on four focus areas relating to the Code. The following report summarises some key feedback received at the table discussions.

Overall, there was broad support for the Code and its role in ensuring good consumer outcomes, while being flexible enough to change with the pace of BTM technology. There was also enthusiasm for consumer information products to be delivered to consumers through the Code itself.



### Focus area 1 – ‘Have we got it right?’

Focus area 1 was primarily about the essentials of the Code, and centred around asking participants, ‘have we got it right?’. Below is a summary of comments and table materials.

The focus area 1 questions were about the key commitments, whether they are important and how they will influence customer outcomes. General feedback on the key commitments included:

- Ensuring there was not duplication with other Codes
- Ensuring that the Code did not make it more difficult to sell BTM products and focused on good consumer outcomes
- Support for the Code making the industry safer and improve its reputation
- The need to include safety commitments
- Reducing industry jargon to benefit the consumer
- Clearly define all products that fall within the Code to make it clearer
- The need for the Code to cover the entire customer journey from pre-sales to end-of-life
- The broad definition of “small business” should be aligned with the definitions in energy regulation based on consumption.

Around the importance of the Code, participants felt that it can protect consumers and contractors, but some were concerned with self-regulating considering the complexity of the industry. It was felt that it is important to write down exactly what consumers are receiving to ensure quality and integrity of services. It was said that the Code should be forward looking and adaptive to different markets and finance requirements. Complaint processes were also noted as important.

When asked about how the Code will influence outcomes for consumers, participants felt that public awareness and clear communication was important to ensure the success of the Code, and to give confidence to consumers about the industry. The Code could be powerful if consumers and industry know it exists.

About how the Code will address poor industry practices, it was felt that the enforcement of the Code was vital, and clear communication to customers would allow them to know the Code existed. It was said that if there is no enforcement, this Code could be a ‘toothless tiger’.



## RPS

## Behind the Meter Code of Conduct – ‘have we got it right?’

### Key Commitments - the aims of this Code are to:

- provide you with clear, accurate and relevant information to help you make informed choices;
- make you aware of your rights under the law and this Code;
- ensure that our sales practices are responsible;
- ensure that products, systems, services and documentation provided under this Code are fit for purpose;
- provide staff training and work processes that ensure that we comply with the law and this Code; and
- ensure that we will be responsive to your needs and take prompt, appropriate action if you make a complaint.

#### A.1 BEFORE WE SELL TO YOU

Our promotional material will be clear, accurate and relevant. Our sales and quotation practices will be responsible and not include pressure selling. To empower you to make effective choices, our pre-sale information will be clear, including:

- What performance and benefits you should expect from products, systems and services we supply;
  - What the up-front costs of purchase and installation will be;
  - Any areas of the purchase that may involve additional costs during installation;
  - What the ongoing costs of energy will be, including any applicable incentives or rebates and any continuing service fees;
  - The expected life of the product or system;
  - The estimated costs of ongoing maintenance and end-of-life costs;
  - What responsibility you will have for operation, safety and maintenance; and
  - Any limitations that may impact you such as portability or functionality.
- We will take special care when providing written information or oral explanations if you are in vulnerable circumstances or have special needs, for example, difficulty with the English language or impaired sight or hearing.

If we provide you with a quote, it will be kept open for you to accept for at least 10 business days.

#### A.2 WHEN WE SELL TO YOU

We will provide you with fit for purpose products, systems and services.

We will provide you with a contract that states clearly what products, systems and services will be supplied, in what timeframes and all the contract costs.

Our contract will advise you if you are entitled to any cooling off period.

We will draw to your attention any areas of the contract that have the potential to create disagreements.

We will make sure that both of us have signed the contract before proceeding.

#### A.3 PAYMENT AND FINANCE

If we help to arrange financing for your purchase, we will make sure that you are provided with all the relevant information including the identity of the financier, the required payments, interest rate, fees, terms and conditions and relevant legal rights and responsibilities and any entitlement you may have to financial hardship assistance.

We will only work with Credit Providers that have an Australian Financial Services License (AFSL).

If you exercise your cooling off rights, we will refund any deposit within 7 days of you advising us.

#### A.4 INSTALLATION AND AFTER SALES

After installation of the supplied products, we will provide you with all necessary documentation and make sure that all steps are taken so that you get the benefit of your purchase.

Where we sub-contract any installation work to others, we will continue to take responsibility for the work and make sure that it complies with all applicable legislation, regulations, standards and guidelines.

If you choose to take full responsibility for any post-installation steps, we will make sure that you are aware of what steps need to be taken to get the benefits of your purchase.

If we agree any changes to the contract, this must be in writing and signed by both of us.

#### A.5 COMPLAINT HANDLING AND WARRANTY

We will be responsive to you and deal appropriately with you, including if you make a complaint about your purchase.

We will provide you with a warranty for all supplied products and workmanship that guarantees a reasonable period of working life. We will promptly honour our obligations under warranties after being advised of a fault.

We will also advise you at signing of the contract who to contact about your purchase (e.g. A supplier or distributor) if we exit the market.

We will respond promptly to any complaint you make about your purchase.

#### A.6 GENERAL BUSINESS MANAGEMENT

We will comply with existing legislation, regulations, Australian Standards and practices required under this Code.

Even if we are not legally bound by the Privacy Act, we will still take reasonable steps to protect your personal information and to comply with any request by you for access to your personal information.

#### A.7 ADMINISTRATION

The Code Administrator is responsible for monitoring and enforcing this Code and is overseen by the Code Review and Oversight Panel. We will comply with any reasonable requests made by the Administrator or the Panel.

## Focus area 1 – ‘have we got it right?’

### • Have a look at the key commitments of the code, if you aren't aware of them already

- What do you think of them?
- Why do you think they are important (or why not)?
- How do you think they will influence outcomes for consumers?

### • On the table you will see some basics that are in the first section of the code. Have a look through....

- How do you think the code will address poor industry practices?
- How do you think the code will protect consumers?
- What else do you think the code could do to protect consumers?



## Focus area 2 – Specific Code provisions

The focus area 2 discussion was primarily about specific elements and provisions in the Code. Below is a summary of comments and table materials.

The Focus area 2 questions were about marketing of products, including unsolicited marketing; electricity charges including protection of customers considering charges may change; credit provision and using a licenced credit provider; and connecting to the grid by encouraging networks and retailers to play a role to ensure customers are connected.

Around marketing of products, it was felt that an oversight/monitoring regime by the Code Administrator was important, along with enforcement action by regulators. For many aspects, to be effective, this requires an inspection program by qualified independent experts.

A number of comments took the view that this was such a technical, complex and detailed area that driving consumer outcomes through information/disclosure and 'empowered' consumers is futile. The only effective way to achieve consumer protection is through provision of independent expert advice and inspections.

At an individual business level, a priority should be placed on building compliance into business marketing processes (eg. through automated reporting). Ensuring that businesses had standardised marketing information and clear communication with customers, so they could make a balanced and informed choice. A checklist was suggested as a good requirement to have for customers to test sales pitches.

Many references were made to poor decision-making and low attention to detail from consumers – as well as checklists, infographics and more imaginative ways of getting information across should be encouraged.

Where business outsource marketing, they should be responsible for training/quality control of outsourcers. Some argued for limiting marketing or advice-giving to licensed providers – others felt this was unrealistic.

Some consumer advocates suggested that unsolicited marketing should simply be banned for any products or services that involved technical judgements.

There are a number of current bad practices in marketing battery products – these should be singled out and forbidden and good practice set out in the technical schedules. Others asked how the Code could be used to stamp out marketing of the 'unrealistically cheap deal'.

Another issue was the marketing of 'net' benefits, with a number of items bundled together. Good practice should be separate declaration of 'line item' benefits or costs.

Training in the Code obligations (and other marketing regulation) was mentioned several times by participants as a key element that could reduce bad practices. and improving sales practices through sufficient training of staff. Comments were made about being licenced and/or certified under the Code as a way of reducing **bad** behaviour.

It was mentioned that the CEC retailer Code provides a sufficient precedent for guidelines around marketing. It was also observed that there should be a general principle about acting 'in the spirit'



of the Code – to enable the Administrator to take action where there is not necessarily a black and white breach.

The code should be extended to cover other participants including metering companies.

Was also raised that there were also problems with poor practice in marketing commercial installations and the question of the Code applying beyond residential scale should be addressed.

A number of issues were raised around the balance of responsibility between retailers and installers and the need to ensure that consumer outcomes did not ‘fall between the cracks’.

Another ‘macro’ issue raised was the question of overlap/potential confusion with the myriad other regulatory obligations that may apply in this area (eg. ACL, electrical safety, Australian Standards, Building Code, etc).

Most stakeholders strongly supported the use of licenced credit providers although one BTM product supplier indicated that this would deter them from subscribing to the Code. A licensed credit provider has to offer hardship arrangements and be a member of an external dispute resolution scheme. In addition, the responsible lending credit checking process protects consumers. It was felt that BTM product suppliers who provide credit without being licensed are inflating product prices rather than charging interest just to avoid regulation and this is undesirable.

There was also discussion about the need to allow for PPA arrangements which are more about leasing than credit. Some also said that the obligation to be licensed should apply below a funding ceiling.

(B.3.1 needs clarification).

In general, draft Code provisions are sound for good business practice – but the enforcement/penalties need to be clearer/stronger for breaches – finance is one of the major problem areas for customer complaints.

Feedback on connecting to the grid, and around encouraging networks and retailers to play a role was centred around ensuring clear communication occurs and disclosing if any issues exist. It was argued that ideally providers arrange for customers to get connected however, it was pointed out that there are limits to any third party’s ability to act on behalf of the customer, there are many differences in each distributors processes for connection and customers must have the option to arrange this themselves.

Education of the installers was important, as well as consumer education and transparency. The grid connection process was hard for consumers, and there is a disconnect in the process between the network, technology provider, retailer, network and customer. Checklists were suggested for consumers to make it easier for them to understand what to ask for. Also question whether grid connection delays are intended to trigger the refund provisions?

Many issues arise as to responsibility between retailer and wholesaler – code should be ensuring that the customer has backup and that there is as little buck-passing as possible.

In practice, the Code should not be greatly different than the rules that apply to all electricity/energy provision.

# RPS

For good consumer outcomes in contracts, the Code should mandate standard form contracts – approved by the Code Administrator/Panel. Code should also specify standard terminology and definitions – eg. “battery-ready”.

Code Panel and industry associations should be pushing Code as compulsory requirement of large scale procurements.

When asked about electricity charges and how the Code might protect consumers, it was recognised that electricity supplier pricing is not something that the Code can control – and the residential market is already heavily regulated when it comes to offers.

Clear communication with consumers is important to ensure they understand the need to find out how BTM products and services will affect their electricity supply pricing – and the risks of this are made clear upfront – in particular that pricing information is frequently difficult to understand/confusing.

Code will have to distinguish between the way it affects outright ownership and PPAs or leasing.

Code will need to address issues that emerge for responsibility/obligation when the original customer sells or moves premises.

Code may need to distinguish different types of customers to ensure well-targeted protections.

Code may need to allow for issues with application in regional and remote areas (eg. proposed time limits may not be realistically met).

## Behind the Meter Code of Conduct – specific code provisions

### B.1.4. SALES DISCLOSURES

When marketing, we must ensure that:

- all sales agents show you their company-issued identifications;
- any interactive internet marketing channel clearly identifies for you the company whose products, systems or services are being promoted;
- we explain up-front the purpose of any unsolicited contact (whether a visit or telephone call) and inform you that you can ask the sales agent to leave or end the contact at any time;
- we leave the premises or end the contact immediately if you ask us to do so; and
- we explain your rights under the Australian Consumer Law (ACL) including the right to terminate a sales agreement within ten business days for unsolicited sales.

### B.1.5. EXPLANATION OF THE CONTRACT

- We must explain the contract to you prior to you entering into the agreement.
- We must draw your attention to any requirements of the contract with a higher than normal risk of disagreement (e.g. where additional fees may arise, or any difference between a verbal quote and the final price).
- We must clearly explain the process for the payment and trade of any government or regulatory certificates, and of any relevant trading facility (e.g. for the Small-Scale Technology Certificates (STC) Clearing House, this would include that STCs are only sold when there is a buyer with no guarantees of how long they will take to sell or of the price).
- We must advise you that your electricity contract/tariff may change following installation of the distributed energy resource product, system or service and that it is your responsibility to contact your electricity supplier:
  - before signing a contract, to check what new electricity tariff rates may be applied; and
  - after installation of the product, system or service, to confirm that the agreed tariff has been applied.

### B.1.1. FINANCE AND ALTERNATIVE PURCHASING ARRANGEMENTS

Note: The Code does not provide an exhaustive list of the notification obligations which apply to credit providers. Credit providers are required to meet obligations imposed by section 21C of the Privacy Act 1988 (Cth) and clause 4.1 of the Credit Reporting Privacy Code.

- When we offer you a product or system (whether directly or via a third party), with a structured payment option that is an alternative to initial outright purchase, we must ensure that this is structured as a credit contract or credit lease through a licensed credit provider and that you receive the following clear and accurate information:
  - the name of the licensed credit provider to whom you will be contracted for the arrangement;
  - a clear statement that the structured payment option is available only if you wish to take advantage of the finance;
  - the comparative cost of that same product or system if you were to purchase it outright on that day the disclosures required under the National Credit Code including in relation to fees and charges;
  - whether at the conclusion of the credit contract or lease:
    - you own the product or system; or
    - you have any entitlement to any ongoing service or pricing; and/or
    - details, including any associated costs and/or fees, of any option or options available to you to purchase the product or system.
  - a statement that questions and complaints about the arrangement should be directed to the provider with whom you will be contracted.

### B.4.2. CONNECTION TO THE GRID

- To facilitate any required connection to the grid that you authorise us to make in accordance with paragraph B.2.6 we must:
  - prepare and submit within a reasonable timeframe all relevant documentation required by the electricity supplier and/or distributor for meter installation and connection of the product, system or service to the grid;
  - respond within a reasonable timeframe to any additional compliance requests from the distributor or electricity supplier (for example, re-submitting incorrect paperwork), and consult with the customer if necessary; and
  - keep you apprised of progress at each step.
- If, after we provide you with the information required by paragraph B.2.6(a), you take responsibility for submitting the required documentation to obtain grid connection approval, we must clearly explain to you each step in the process for preparing and submitting the documentation to the electricity supplier and/or distributor. We must:
  - provide you with information for where to find and how to complete and submit paper or on-line forms;
  - provide you with expected timeframes and any deadlines for each step of the process;
  - advise you of contact details for queries or following up on progress; and
  - advise of any potential problems that may arise.

## Focus area 2 - Specific code provisions

- **Marketing of products (refer to paragraph B.1.4)**
  - How do you think the code will influence unsolicited marketing and sales?
- **Electricity tariffs (refer to paragraph B.2.5d)**
  - How do you think the code will protect customers considering their electricity tariffs may change?
- **Credit provision (refer to paragraph B.3.1a)**
  - The code requires companies to use a licensed credit provider. Why do you think this is important (not)?
- **Connecting to the grid (refer to paragraph 4.2)**
  - The code encourages retailers to play a role in ensuring that customers are connected to the grid - does this strike the right balance?



### Focus area 3 – Customer information

The Focus area 3 discussion was primarily about information that customers would require and asked three key questions:

1. How should the Code play a role in providing information to consumers?
2. What types of information do you think are needed by consumers?
3. How do we best communicate with them?

Below is a summary of comments and table materials.

*How can the Code could play a role in providing information to consumers?*

There was a consensus that the Code was an important communication mechanism for consumers given the information asymmetry between industry and consumers. The Code should include a responsibility on signatories to provide consumer information products that related to the existence of the Code itself, the products and services covered by the Code and consumer protections. This information could be produced centrally by the Code administrator and reviewed regularly.

*What types of information are required?*

The types of information considered to be useful included:

- Checklist for consumers to ask the right questions of installers including right-sizing their system and compare quotes
- A tool to determine indicative payback (best case and worst-case scenario) based on customer's usage, lists variables and agreed assumptions (e.g. % self-consumption, % of increase in energy bills) and that separates the different technologies (i.e. not rolling up the ROI on solar and batteries together)
- Quick user guide for the products and/or service and how they impact the consumers' energy system e.g. FAQs on what happens when there's a blackout?
- Template contract that incorporates a number of questions about "fit for purpose" to ensure that the customer and installer are on the same page and is signed by both and makes it clear who is responsible for what e.g. customer responsible for structural integrity of the roof, installer responsible for getting the system connected etc.
- Checklist for installers to ensure that they have sufficiently informed customers about key aspects of products, services, rights etc. (e.g. solar export restrictions) and set them up so that they meet expectations e.g. warranty details provided, confirmation of commissioning of the system etc
- Under the code solar inverters must be set to allow online monitoring (where available) and the customer should be informed of this functionality
- Information on how the customer can maximise their return on the BTM products and services (e.g. as set out on [www.solarchoice.net.au](http://www.solarchoice.net.au))
- Specific information for small business customers that is targeted to their circumstances
- Information on consumer protections
- Information on what to do at end of life, particularly for batteries
- Where to go if there is a problem?





*How do we best communicate with consumers?*

The Code could provide checklists, flowcharts, graphics and standard information to BTM providers so that consumers are receiving the same message at the right time (namely pre-sale or at the point of sale). Providers should also display their commitment to the Code on their website or when they are sending quotes and link to the BTM Code website. The consumer information products could also be branded the same as the Code to ensure credibility.

In addition to material in an accessible website that is linked to the Code, there is a need for resources that can be printed and handed to customers by BTM providers, especially for those without access to the internet. Online communications could be done through video, social media and through pop-ups or google ad words when people are researching. Communicating through Choice or consumer advocates could be another way of informing customers of the existence of the Code and directing them to the central BTM Code website.

Reference was also made to the fact that a number of States had information lines e.g. South Australia and New South Wales on energy issues, and that a similar function could be fulfilled by the Code administrator.



## Behind the Meter Code of Conduct – Customer information

### B.6.1. COMPLIANCE WITH THE LAW

- a. We must comply with all local, state and federal legislation, relevant Accreditation Guidelines, and regulations including but not limited to:
  - i. The Renewable Energy Target (Renewable Energy (Electricity) Act 2000 (Cth) and Renewable Energy (Electricity) (Charge) Act 2000 (Cth) which is supported by the Renewable Energy (Electricity) Regulations 2001 (Cth).
  - ii. The Australian Government Do Not Call Registry (Do Not Call Register Act 2006 (Cth)) and associated telemarketing standards including permitted hours for contacting consumers.
  - iii. Schedule 2 of the Competition and Consumer Act 2010 (Cth).
  - iv. Respecting "Do Not Knock" and "No Hawkers" stickers.

### B.6.2. PRIVACY

- a. We have obligations under the Privacy Act 1988 (Cth) and the Spam Act 2003 (Cth) in relation to collection, use and disclosure of personal information. We must be aware of and comply with such legal obligations at all times.
- b. Subject to paragraph a), we may use personal information collected from you:
  - i. for the purpose of the intended sale; and
  - ii. for future marketing of its products, systems and services that relate to the sale; or
  - iii. where you might otherwise reasonably expect to receive marketing material from us.
- c. Although not required by this Code, we may seek your consent to receive marketing material, by way of an opt-in clause in the contract or other appropriate document.
- d. Regardless of whether you consented to receiving marketing material as allowed by paragraph c), we must provide a simple, easy way for you to ask not to receive direct marketing communications and include a clear, prominent opt-out provision in each marketing communication.
- e. We must not use your personal data for purposes other than those described in paragraph b) (for example, we must not provide the data to a third party or use the data to promote a business other than one with which you have a direct relationship), unless we have obtained express permission from you.
- f. This section sets out the minimum standard for use of customer data. We can exceed this minimum standard in our marketing practices, in accordance with all other provisions of this Code and the Privacy Act 1988.

### B.6.3. TRAINING

- a. We must train our sales agents, representatives, contractors and employees about our products, systems and services and their responsibilities under this Code so that they can provide accurate information and quality services to you.
- b. We must 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.
- c. Our people must be appropriately qualified and have completed the relevant safety training modules (as specified by the relevant regulator or by the Code Administrator) appropriate to the work.

### B.7 PROMOTION OF THIS CODE

We must ensure that you are made aware of this Code and:

- a. take all reasonable steps to promote the benefits of this Code to customers, including telling you about this Code and, on request, providing information about the Code approved by the Code Administrator for use by us;
- b. advertise the latest version of this Code on our online presence and in other relevant marketing documents; and
- c. ensure that you are aware of our complaints handling provisions.

**RPS**

### Focus area 3 – Customer information

- How should the Code play a role in providing information to consumers?
- What types of information do you think are needed by consumers?
- How do we communicate best with them?



## Focus area 4 – Signing up

The focus area 4 discussion was primarily about signing up to the Code.

The focus area 4 questions were about any barriers that may prevent companies from signing up, areas of the code that require clarification, potential compliance issues with signatories and the proposal that the Code Administrator develop on-going standards - presumably to ensure that the code provisions are kept up to date and in line with developing technologies.

The first question focused on any potential barriers to uptake of the Code. Participants mentioned that the value in signing up to the Code was unclear, with the proposed governance and ensuring compliance with the Code as key considerations. However, the majority of comments centred on the proposed fee structure and how it would be calculated. Many comments queried the method of calculation and proposed alternatives such as relative to turnover and number of employees. The ease of joining the Code (ie it cannot be too onerous or cumbersome) was identified as a potential barrier to entry.

Clarification on the code was required at the fundamental level on defining 'behind the meter' and how it would be relevant to consumers. Additionally, comments asked for further definitions on 'customer', 'list of equipment exclusions', 'residential and small business' and the delineation between 'residential and commercial' customers. The comments also focused on how to report breaches of the code, and how the provisions of the code can be enforced and regulated. A few comments noted that the code needs to be clear and practical to reduce confusion and ambiguity. The role of educating uninformed consumers was seen as fairly important due to the low understanding that consumers have in a fast changing industry.

Another clarification identified in the Code would be to consider the entire customer journey and that there is more work to do to go further on the scope of the Code. It was felt that the Code ends at the warranty stage and that there are further stages to ensure coverage of the end to end process, including but not limited to the final recycling of the product.

When asked about potential compliance issues, many comments identified the need for compliance, sanctions process or proper enforcement with the Code. A few comments also picked up the requirement to fund the new code, with suggestions for seed funding from federal government. Additionally, a number of comments raised issues on customer awareness of the code, and how the code would fit into the space with several other codes in existence.

The final question was around the role of the Code Administrator, and their role to keep the Code up to date. A suggestion was to get ACCC authorisation on the main code, with a working group to develop the technical schedules. A few comments asked about the actual body that would own the code, as a point to raise issues. Transparency around the fees and revenue of the proposed code would give the Code more credibility, as well as a proper vetting process. It was suggested that the Code committee should be inclusive and one that is representative of the whole industry. A few comments also indicated a preference that joining the code should be mandatory for industry.

It should be noted across the focus areas a fair few comments were on installers (for example, reporting incorrect installations) and the accreditation for installers, the establishment for an insurance fund for consumers as well as the need to stop 'phoenixing' activity within the industry.

## Behind the Meter Code of Conduct – Signing up

### B.8 COMMITMENT TO COMPLY WITH THE CODE

We undertake to you to comply with this Code and we must:

- comply with any standards or guidelines that are made by the Code Administrator and published on the Code website that apply to specific distributed energy resource products, systems or services that we provide;
- be responsible for all actions governed by this Code, whether taken by our employees, contractors, agents, and any other individuals or businesses acting on our behalf;
- ensure that our employees, contractors, agents, and any other individuals or businesses acting on our behalf comply with the latest version of this Code; and
- Incorporate these undertakings into our contract with you.

### C.1 THE CODE ADMINISTRATOR

This Code is administered by [TBC] on behalf of industry, overseen by the Industry Code Advisory Council. The Code Administrator will:

#### C.1.1. APPLICATIONS

The Code Administrator will provide an application form for becoming a Signatory to the Code and specify the supporting documents required:

- set the application fee(s) and revise these from time to time; and
- assess applications to sign the Code including obtaining any legal, integrity, financial or other expert advice required.

#### C.1.2. CODE BRAND MARK

The Code Administrator will set Code Brand Mark guidelines for Signatories and enforce compliance with them.

#### C.1.3. STANDARDS AND GUIDELINES

The Code Administrator will develop standards and guidelines, for example, to provide certainty for industry as to practice expectations or to specify practice expectations for providers of new products, systems or services in order to meet the key commitments in Part A of this Code. Standards and guidelines are not binding on Signatories until at least 3 months after publishing on the Code website.

### C.1.5. MONITORING AND INVESTIGATIONS

- monitor compliance with the Code, for example, undertake regular compliance audits and mystery shopping, assess customer satisfaction, analyse customer complaints and investigate repeat instances;
  - develop and publish a Complaints Procedure setting out how the Code Administrator will respond to and investigate an allegation of breach of the Code;
  - investigate complaints or reports of non-compliance with the Code (whether self-reported, made by customers, another Signatory, regulators or others); and
  - determine when a breach of the Code has occurred and what remedial action or sanction is appropriate and attempt to negotiate an outcome that is satisfactory to both the Signatory and the customer.
- a. enforce remedial actions and sanctions which may include:
- rectify the issues that gave rise to the breach;
  - train staff to minimise the likelihood of repeat breaches;
  - 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);
  - publicise the breach, including the name of the Signatory, on the Code website; and
  - where appropriate, refer cases to the Code Review Panel for consideration.

### C.1.6. FEES

- The Code Administrator will set annual and other fees payable by Signatories, revise these from time to time, publish the details on the Code website and notify Signatories.

### C.1.7. REVIEW OF CODE

The Code Administrator will:

- advise the Code Review Panel about any changes to the Code that are appropriate, for example, because of changes to energy markets, technology, industry make-up and government regulation, so that the Code continues to meet its stated objectives; and
- where the Code Review Panel decides to amend the Code, notify Signatories by email (with at least 3 months notice of any significant change to the Code) and provide information to assist Signatories to comply.

### C.1.8. OTHER

The Code Administrator will:

- perform secretariat functions for the Code Review Panel; and
- oversee promotion of the Code.

## Focus area 4 – Signing up

- Are there any parts of the code that would deter companies from signing up?
- Is anything unclear in the Code that needs to be clarified?
- Do you foresee any compliance issues?
- Are you comfortable with the Code Administrator developing ongoing standards and guidelines to keep the Code up-to-date?



## **Next steps**

### **Technical working groups**

While the consultation was extensive, it was focused on the main Code document, which aimed to be technology neutral. Stakeholders were advised that technical schedules would be produced in early 2019 and consultation would occur through working groups. During the forums, we issued sign-up sheets to and 70 stakeholders have already signed up to be part of the working group for the technical schedules.

### **Webinars**

A series of webinars are planned for early 2019 to promote the code and consultation more widely, especially in regional areas.

### **Communicating with stakeholders**

Once all feedback from stakeholders has been received, and analysed by the Behind the Meter working group, the next stage of communication and consultation will be designed. The aim is to have a working code ready for the second half of 2019.



Mr Matthew Warren  
Chief Executive  
Australian Energy Council  
GPO Box 1823  
Melbourne VIC 3001

Dear Mr Warren

I am writing to request Australian Energy Council, in collaboration with Energy Consumers Australia and other relevant stakeholders, develop an industry-wide Code of Conduct for sellers of behind-the-meter products and services.

Consumers are driving change in the energy market by embracing distributed generation and storage technologies, and in response, the industry is transforming by offering a wider range of energy services and products. While this changing market is offering greater choice to consumers, with commensurate benefits, it can lead to greater complexity and a risk of some consumers getting products that don't meet their needs or offer poor value.

Given this, the Council of Australian Government Energy Council has undertaken a review of consumer protections for energy products and services that fall 'behind the meter' including solar and storage technologies. Ministers wanted to ensure consumer protections continued to balance consumer wellbeing with market efficiency and promotion of innovation. The review was informed by consultation with industry, consumer representative organisations and other stakeholders.

The way energy is regulated depends on how that service is provided. The National Energy Customer Framework (NECF) provides energy-specific consumer protections related to the sale of energy by authorised retailers and exempt sellers. While the NECF has not been adopted in Victoria, similar protections apply under the Victorian Retail Code.

The Australian Consumer Law (ACL) provides universal consumer protections in areas such as unfair contract terms, product safety, misleading information, and product liability. This offers complementary protections in cases where the NECF or Victorian Retail Code does not apply. For example, when consumers are leasing or purchasing technology outright, the ACL serves as the principle form of regulation for these energy products.

[coagenergycouncil.gov.au](http://coagenergycouncil.gov.au)

Secretariat  
GPO Box 787  
Canberra ACT 2601  
Telephone: (02) 6274 1668  
[energycouncil@environment.gov.au](mailto:energycouncil@environment.gov.au)



In March 2017 the Final Report of the ACL Review made recommendations that will improve regulation including, allowing for greater consumer access to consumer guarantees and greater guidance on contract terms and unsolicited consumer agreements. It will also increase the threshold of purchases from \$40,000 to \$100,000.

Noting the above, the Council has concluded that consumer protections offered under the ACL and the NECF provide sufficient protection in relation to new and emerging products, appropriately balancing consumer protection with an innovative energy market. Ministers did not, at this stage, find a case for NECF regulation to be extended to behind- the-meter energy products that currently fall outside the NECF.

That said, stakeholders raised a range of concerns that suggest a more consistent approach by industry in relation to a range of issues is needed. Consistent with this, the Council is seeking industry agreement to cooperatively develop a single, industry wide Code of Conduct for all behind- the-meter electricity supply services and products. Ministers believe an industry led Code would improve the consistency and quality of information and the management of disputes without the need for heavy handed regulation. The Code should address the following issues with further detail provided in the attachment:

- Information provision;
- Dispute resolution mechanisms;
- Ensuring product is fit-for-purpose; and
- Customers in financial difficulty.

The Australian Competition and Consumer Commission (ACCC) has a guideline for developing effective voluntary industry-based codes that could inform this work. The Clean Energy Council's Solar Retailer Code of Conduct has been established since 2013 and is a good example of an effective voluntary code that benefits industry and consumer alike, and could be potentially be expanded to encompass other products.

The Council has also written to the Clean Energy Council, the Australian Solar Council and Energy Networks Australia. While the Code would need to be collaboratively developed across organisations, there may be a need for one organisation to co-ordinate this effort. While the Council sees clear benefits in industry taking the lead, if agreement cannot be reached on developing a single industry-wide code, or the Code is not universally applied, the Council will consider whether further regulatory intervention is required.



Council would welcome the opportunity to review the draft Code of conduct no later than 31 August 2018, and invite a representative of the industry group developing the Code to address the Council at its November 2017 meeting on progress against its development.

Any inquiries on the Code can be directed to Gayle Leaver (07 3166 0170) or Rebecca Knights (08 8226 5500) Co-Chairs, Energy Market Transformation Project Team.

Yours Sincerely

A handwritten signature in blue ink, appearing to be 'J. Frydenberg', with a long horizontal stroke extending to the right.

**The Hon Josh Frydenberg MP**

Chair

COAG Energy Council

16 August 2017



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## Commercial In Confidence

6 February 2019

### BEHIND THE METER DISTRIBUTED ENERGY RESOURCES PROVIDER CODE SUBMISSION

#### OVERVIEW

1. The COAG Energy Council has requested industry, consumer groups and other stakeholders to develop an industry-wide Code of Conduct for sellers of distributed energy resource products, systems and services including solar and battery storage technologies, and as such the Behind the Meter Working Group (**BTMWG**) has prepared a draft Code for comment.
2. We acknowledge the important work of the BTMWG on the draft Code and welcome the opportunity to make a submission in relation to the draft.
3. We trust the BTMWG will treat this submission as confidential and that this submission will not be disclosed to other parties without Brighte's consent.

#### ABOUT BRIGHTE

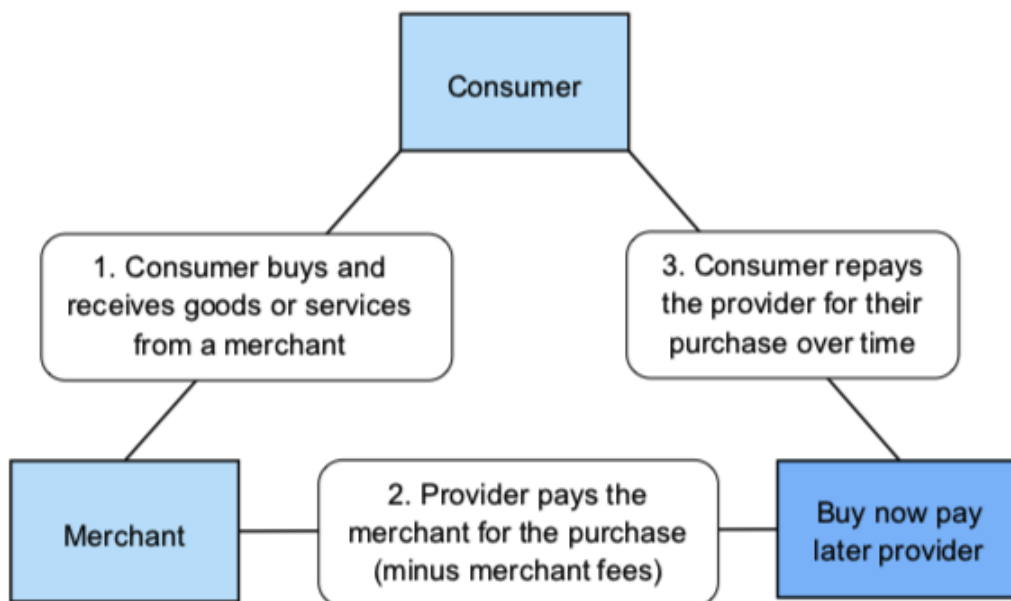
4. Brighte is an on-the-spot finance platform and marketplace for solar, batteries and home improvement products. We provide consumers with tools and resources to assist with purchasing solar and batteries, a matching service to find Brighte accredited vendors and payment plan options that remove the upfront cost and allow the consumer to spread their purchase amounts over time.
5. Brighte provides a continuing credit facility called **BrightePay** to Australian home owners for the purpose of solar, batteries and home improvement products. BrightePay is a "Buy Now Pay Later" product which is part of a fast growing and dynamic non-traditional credit industry. We believe we provide a very specific solution for a very specific problem.
6. We believe that every Australian family deserves access to a sustainable home and our goal is to make it affordable for and empower consumers to purchase goods for that purpose. We operate at the point of sale and work with hundreds of accredited vendors around the country. Our mandate is to make access to credit for solar, batteries and home improvements easy, accessible and flexible.
7. In essence, we make clean energy solutions more affordable to Australians who would not otherwise afford it. With our support, vendors are better equipped to help customers invest in energy resource products, systems and services including solar and battery storage technologies and to move towards a clean energy future for Australia.



### *What Does Buy Now Pay Later Mean*

8. At Brighte we offer a buy now pay later product called BrightePay. A buy now pay later arrangement such as BrightePay is an arrangement which allows consumers to buy and receive goods and services immediately but pay for that purchase in instalments over time.
9. A Brighte buy now pay later arrangement involves three separate transaction:
  - (a) a transaction between the consumer and Brighte for the provision of the payment plan;
  - (b) a transaction between the consumer and the vendor for the provision of goods and services; and
  - (c) a transaction between the vendor and Brighte for the provision of sales and marketing services. This allows the vendor to access lead generation services and marketing tools to increase their sales conversions.
10. There are multiple ways for a customer to apply for BrightePay:
  - (a) an accredited vendor can assist a customer to make an application via the vendor's own device using the Brighte mobile app or Brighte vendor web portal;
  - (b) a customer can apply via their own device using the Brighte mobile app or web portal;
  - (c) a customer can make an application by calling the Brighte Customer Service team.

**Figure 1: How a buy now pay later arrangement works**



Note: This figure illustrates that when a consumer uses a buy now pay later arrangement to buy goods or services, the merchant is paid by the provider of the arrangement. The provider then collects repayments from the consumer to recover the upfront payment over time. Consumers can receive the goods or services immediately, well before the purchase price has been fully repaid.

Table 1. (extract from page 19 figure 1 ASIC Report 600: Buy Now Pay Later)



11. The BrightePay application process involves collection and near instant verification of many data points including many of those collected from the customer. Our customers are required to provide identification details as well as income and expense details. On receipt of the customer's application for a payment plan, we conduct a serviceability assessment. This includes external verification and third-party data checks including land title, DVS and credit bureau. We then make an assessment of the customers overall suitability for the product before approving or declining the application.
12. On installation of the product by the vendor, we ask the customer to confirm that the goods have been installed to the customers satisfaction before we pay the vendor. The customer's payment plan commences after we receive this confirmation from the customer.
13. At any point prior to customer's final confirmation of installation, the customer can withdraw their application for finance without incurring any fees.
14. We offer BrightePay facilities with limits up to \$30,000 for consumers and with terms ranging from 6 to 60 months.
15. BrightePay is not regulated by the National Credit Code as this product meets the exception criteria set out in section 6(5) of the Code. It is a continuing credit contract and it only includes charges for credit that amount to an establishment fee and an account keeping fee that is fixed.
16. We note that in 2018, the Australian Securities & Investments Commission (**ASIC**) released its review into the buy now pay later industry. The aim of the review was to develop a broad understanding of the industry, to identify potential risks for consumers in utilising buy now pay later products and to make recommendations as to whether these products should be brought under the regulation of the *National Consumer Credit Protection Act 2001* (**National Credit Act**).
16. Brighte was one of the six providers that were included in ASIC's review.
17. ASIC's review culminated in Report 600 released in November 2018 (**ASIC Report 600**). Its over-arching finding was that it was not necessary for buy now pay later products to be required to comply with the National Credit Act.
18. We note further that Report 600 found that:
  - (a) the buy now pay later industry was diverse and evolving;
  - (b) buy now pay later arrangements were commonly used and in 2017-18 over 2 million consumers had used a buy now pay later arrangement representing about 10% of the adult population;
  - (c) users found buy now pay later arrangements easy to use and convenient;
  - (d) 90% of users believed that buy now pay later arrangements helped them manage their spending;
  - (e) buy now pay later payment plans were suitable for customers that choose it as a payment option;



- (f) that buy now pay later products had low default rates; and
- 19. We also note that Brighte was mentioned as the only provider in the Report that examined the income and existing debts held by consumers before providing their services.
- 20. The Review can be found here: <https://download.asic.gov.au/media/4957540/rep600-published-07-dec-2018.pdf>.

#### *Brighte's Customers*

- 21. To obtain credit with Brighte, applicants must satisfy our strict eligibility criteria which includes Australian residency, over 18 years old, must own or be purchasing their own home, be employed or self-employed, be working 25+ hours a week and have a good credit history.
- 22. Our applicants must buy approved products from an accredited Brighte vendor.
- 23. A review of our customer profile shows that over 86% of our customers are aged 35 years+ and that more than 94% of our customers are using Brighte so they can invest in solar and batteries for their home.
- 24. Our customers make a considered decision to invest in solar solutions and choose buy now pay later as a payment option for many reasons including its convenience at the point of sale.

#### *Brighte's Accredited Vendors*

- 23. We partner with solar, battery and other installers of home improvement products. We call them our vendors.
- 24. To become a Brighte vendor, a provider must be accredited by Brighte. Our accreditation process involves strict vendor due diligence. This includes checking the vendor's reputation (through researching customer review forums and other methods), business registration details, credit checks on the vendor entity and individual directors, business history and experience, use of reputable equipment and memberships to bodies such as the Clean Energy Council are considered. It is important to us that we work only with reputable vendors so our customers are protected. As such we do not accredit vendors that do not meet our accreditation criteria and note that we refuse more than 30% of vendors who apply to become Brighte partners for failing to meet our criteria.
- 25. Once accredited, our vendors undertake training, agree to our Vendor Code of Conduct and enter into an agreement with Brighte which involves specific obligations such as attending to customer complaints in a prompt manner and adherence to laws.
- 26. Brighte has in place a vendor monitoring program that includes the use of data analysis, direct consumer feedback, customer reviews (ie NPS) and proactive monitoring. We revisit all accreditations on an annual basis to ensure the vendor's business continues to meet our accreditation requirements. We dis-accredited vendors that we have found not to adhered to our strict standards of behaviour.



27. From conversations that we have had with our vendors, we know that we are providing a valued service to the solar and battery market. Our vendors have told us that they need a flexible, fast and affordable payment option at the point of sale as many of their customers are unable to pay the purchase price of the goods upfront. Our vendors are strong advocates of Brighte and at Annexure A you will find some comments from our accredited vendors as to reasons why customers choose buy now pay later to fund their solar purchases and why this service continues to be required in the clean energy industry.

#### *BrightePay consumer fees*

28. Our fees and charges are always clear and transparent to our customers. At all times during a quote and application, we clearly outline our fees, terms and conditions and lending criteria. We believe in transparency and using plain English contracts with our customers.
29. We charge our customers a \$1 a week account fee and a \$4.99 late payment fee which we cap at \$49.90 or 10 payments per year.
30. As BrightePay is not regulated under the National Credit Code we do not charge a customer any interest or fees above \$200 in the first year and \$125 in subsequent years.

#### *Complaints Management*

31. Brighte has an Internal Dispute Resolution function in line with Regulatory Guide 165 and is also a member of the External Dispute Resolution Scheme the Australian Financial Complaints Authority (otherwise known as AFCA). We have clear Complaints Handling and Hardship policies and procedures.
32. In instances where a consumer has raised concerns regarding an installation or connection to the grid, Brighte will actively communicate with the vendor and the customer to ensure the matter is resolved amicably. In the instance where a customer complains about a vendor's conduct or the products purchased, Brighte investigates the matter and depending on the circumstances, has options open to it under its agreement with the vendor.
33. Brighte encourages flexibility and fairness in its approach to collections. Brighte acknowledges and understands those who are vulnerable and experiencing financial hardship. Brighte's flexible approach includes actively working with customers to find amicable solutions, taking into consideration a customer's personal circumstance in a respectful and fair manner.
34. Brighte has not been required to bring any collection proceedings or write off a debt and our default rates are less than 1%.

#### **OUR RESPONSE**

35. In our response we have specifically sought to address Explanatory Memorandum Consultation Issue 5.3 also being Consultation Draft Question 3 which provides:



*The Code requires a product or system structured payment plan to be through a licensed credit provider (ie where the consumer is not required to make payment in full upon installation). This means that the consumer has the benefit of the National Credit Code protections including interest rate requirements, fee disclosures, hardship provisions and external dispute resolution access. Do these benefits outweigh the restrictions for industry?*

36. Consultation Draft Question 3 also has a nexus to Consultation Draft Section A.3 Payment and Finance which states:

*We will only work with Credit Providers that have an Australian Financial Services License (AFSL)*

37. We seek to address these two statements together and will term this **(the Regulated Finance Question)**.

38. In response to the Regulated Finance Question, we have made the following assumptions:

- (a) “*licensed credit provider*” means either an entity which holds an Australian Credit License and/or a holder of an Australian Financial Services License (**Licensed Credit Providers**); and
- (b) that these licensees offer financial products regulated under the NCCP (**Regulated Products**).

39. We are concerned that to limit payment options to Regulated Products offered by Licensed Credit Providers will be detrimental to a large cohort of society for the following reasons:

- (a) **limits options**: it unfairly reduces finance options available to customers wanting to purchase solar related products;
- (b) **limits affordability**: decreases the affordability of solar related products;
- (c) **negative impact**: negative impact on the solar market and the environment;
- (d) **limits innovation**: fails to embrace innovative technology as a means to obtain solar related products;
- (e) **undermines legitimacy**: implies that as buy now pay later is not a product that is regulated by the National Credit Code, that it is not a legitimate payment option.

#### *Limits Options*

40. Our view is that to require sellers to only offer products regulated by the National Credit Code will have a negative impact on the number of people who can access affordable energy. It will also unfairly reduce finance options available to customers who want to purchase solar and battery storage related products.

41. It will negatively impact:

- (a) individuals and business owners: economically through lack of access to affordable energy;
- (b) the community and the environment: through less use of renewables; continued reliance on existing higher cost and carbon producing sources of energy; and
- (c) implies that only providers of the National Credit Code regulated products provide fee disclosures, access to internal and external dispute resolution mechanisms and hardship assistance.





42. Evidence shows that buy now pay later is a preferred and legitimate payment option for many people over and above more expensive or complicated options for finance (for example credit cards, personal loans and accessing home loan redraw facilities). We have been told by many of our over 10,000 customers that they chose Brighte because:
- (a) of the ease of the vendor referral and application process to a buy now pay later product compared to a regulated product: *"simplicity of process and flexibility of repayments"* - Simon W
  - (b) clear and transparent pricing and payment terms. *"honest approach to us. No hidden catches etc. And good contact thru to the install process"* - Matthew K
  - (c) certainty of payment amount. - *"very easy to deal with in the first place. Interest free small payment plan makes shopping and life easy!"* - Zahirul M
  - (d) not having to dip into savings or home loan redraw, thus reducing financial safety net. *"A handy alternative when the better half won't listen to reason and use the mortgage like everyone else. I have already recommended you to a friend."* - Ian M
43. Typical characteristics of Brighte's target market are:
- (a) homeowners who prefer not to, or do not have the means of making a large upfront payment for solar, battery and home improvement products;
  - (b) homeowners with a mortgage/redraw which they wish to preserve for unexpected expenses;
  - (c) homeowners who are looking to reduce their cost of living;
  - (d) home owners who are looking to make a positive impact on climate change through their choice of energy source; abd
  - (e) homeowners who have paid off their mortgage and wish to save their credit card for day to day expenses.
44. In essence, our customers have made a considered decision to use our finance product to purchase behind the meter products and therefore is not an impulse-driven purchase.
45. To limit finance options for this customer segment to Regulated Products, in our view would be unfair and detrimental to the solar and battery industry.

#### *Limits Affordability*

46. As we have previously noted BrightePay provides an affordable way for home owners to pay for solar and behind the meter goods. We noted above that Brighte has in place strict eligibility criteria including identification and credit checks to ensure that our customers are able to afford and service any credit provided by us to them.
47. Section 20 of ASIC's Report 600 noted that buy now pay later arrangements *"can be cheaper for consumers because consumers are generally not charged interest and that there are limits on the fees that buy now pay later providers can charge."*
48. BrightePay also allows households to budget and manage finances without concerns of interest rate rises.



49. The benefits of the buy now pay later model is also that it is suitable for buyers of solar and other energy efficient products who cannot afford to pay cash or wish not to pay cash.

#### *Negative Impact on Solar Market*

50. It is estimated that on top of the existing 2 million homes with solar panel systems, that another 2-3 million homes would be suitable for solar panels.
51. Unlike almost any other purchase that can be made in the consumer market, there is profound evidence on the return on investment of a residential rooftop solar system. Whilst exceptions may exist, there is undeniably a large cohort of homeowners whom may not be eligible for a traditional regulated loan product.
52. We believe it is the social responsibility of our nation to ensure that where a proven positive social impact can be made, then we should ensure that legislation, policies and consumer groups are accelerating making residential rooftop solar systems affordable and achievable.
53. Legislation, policy makers and consumer groups should ensure that they are not placing unnecessary and unproven roadblocks or limitations on the uptake of solar systems including limiting finance options for homeowners wanting to utilise solar technology.

#### *Limits Innovation*

54. Brighte's buy now pay later product allows solar vendors to facilitate an application from the customer. Brighte then undertakes a rigorous and full credit assessment on the consumer and interacts directly with them for review and clarification of any points in the application.
55. BrightePay is offered through a variety of digital mediums enabling the application to be quick and easy. The affordable and streamlined in-home finance solution is well suited to a homeowner looking for an easy on the spot finance option for solar and batteries.
56. In contrast, a product that is regulated under the National Credit Code such as a personal loan can be prohibitive to a purchase decision by a customer as it may not be easily and quickly accessible in the home during the solar and battery consultation process. Financing small amounts of solar may require consideration of approval for small amounts sub \$5,000-\$10,000. A long and lengthy application process that is suited to a larger home loan application may not be as relevant. This is particularly considering this is not an impulsive purchase and the applicant is always a homeowner.
57. We note that purchasing a residential solar system is an already complicated process. The cost of a solar system is a significant investment with a return on investment in many cases being 4-5 years. As such purchasing a system using a finance facility such as BrightePay can, in many cases, offer a minimal cash flow impact on a household budget such as by offsetting reduced utility energy bills.

#### *Undermines Legitimacy*

58. Buy now pay later is a legitimate payment model.



59. We understand and acknowledge consumer protection as our overarching obligation.
60. While the National Credit Code does not apply to BrightePay, BrightePay is a credit facility under Division 2 of Part 2 of the Australian Securities and Investments Act (**the ASIC Act**) and therefore Brighte, as a provider of a credit facility required to comply with the ASIC Act. Specifically, Brighte, in providing Brighte Pay to consumers, is prohibited from engaging in misleading, deceptive or unconscionable conduct.
61. Brighte is also required to comply with the Australian Consumer Law in offering BrightePay to customers. Our vendors are also required to comply and wherever possible we remind them of these obligations.
62. The solar industry is complex and we are aware that there are operators that are not providing appropriate services to consumers. Bearing this in mind, we conduct upfront and ongoing monitoring of vendor performance to ensure we work only with reputable businesses.
63. We also note we have IDR and EDR complaint handling processes and a hardship policy and procedure in place.
64. We have a stringent accreditation and training program for our vendors including how to use the BrightePay product, we provide advertising guidelines to our vendors to ensure that misleading statements are not made. Vendors must obtain Brighte's approval before an advertisement about BrightePay can be made by the vendor.
65. As we have shown, the buy now pay later model is a legitimate model that best serves its customers, its vendors and the community.

## CONCLUSION

66. We thank you for the opportunity to provide a submission to the Draft Code.
67. We agree in the importance of balancing consumer protection with market efficiency and the promotion of innovation. It is important to ensure consumers are protected and yet still have access to innovative products like Brighte's buy now pay later product which removes the upfront barriers and allows consumers to access clean energy solutions.
68. We recommend that Consultation Draft Section A.3 Payment and Finance be amended to include buy now pay later finance options offered by providers with stringent lending assessment criteria in place including suitability assessments and credit bureau checks as well as internal and external dispute resolution processes in place.
69. We strongly support the work that the BTMWG is doing to develop a Code which will provide a much needed industry Code of Conduct. Our submission highlights that a balance can be struck such that an innovative outcome can be provided, consumers can be protected and clean energy can be made accessible to Australian households.



70. As business we have detailed experience in the industry and would welcome the opportunity to share this with the BTMWG and other parties involved in the drafting of the Code.

Yours sincerely,

**Katherine McConnell**  
CEO and Founder





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## ANNEXURE A

For the purposes of this submission, we asked some of our largest accredited vendors questions around customer preference in relation to finance options. Their comments are below.

No	Vendor name	What percent of your customers use cash to pay for their solar purchase?	Since you began offering 0% interest payment plans what percent of your customers have used it for their solar purchase?	What percent of your customers ask you about using a 0% payment plan?	What are the top 2 reasons a customer chooses to use BrightePay to pay for their solar purchase?
1	Vendor A	21-40%	61-80%	61-80%	<i>Can't afford to pay with cash or don't want to pay with cash, 0% interest"</i>
2	Vendor B	1-20%	61-80%	1-20%	<i>Can't afford to pay with cash or don't want to pay with cash, Easy application process; Fast decision about their application, Repayment by instalments</i>
3	Vendor C	21-40%	41-60%	81-100%	<i>Can't afford to pay with cash or don't want to pay with cash, 0% interest, Repayment by instalments, Most customers do not have cash available for a purchase of \$5K-\$8k yet they pay more per week to power companies than the system will cost on payment plan these are struggling families who are hardest hit by high energy prices , with the least amount of cash available other than basics.</i>
4	Vendor D	1-20%	81-100%	1-20%	<i>Can't afford to pay with cash or don't want to pay with cash, Fast decision about their application</i>
5	Vendor E	21-40%	81-100%	61-80%	<i>Easy application process; 0% interest</i>
6	Vendor F	1-20%	81-100%	81-100%	<i>Can't afford to pay with cash or don't want to pay with cash, 0% interest</i>



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22 January 2018

By email: [BTMIndustryCode@cleanenergycouncil.org.au](mailto:BTMIndustryCode@cleanenergycouncil.org.au)

Secretariat  
Behind-the-meter code working group  
C/- Clean Energy Council

Dear Sir/Madam

### **Behind the Meter Distributed Energy Resources Provider Code**

We write to provide feedback on the Consultation Draft Behind the Meter Distributed Energy Resources Provider Code (the **Draft Code**).

In summary, we consider:

- the name of the code should be readily understood by the public;
- the code should promote consumer protection as a means to ensuring innovation benefits consumers;
- the code should prohibit all forms of unsolicited selling, or require an 'opt-in' model for unsolicited selling;
- the code should require signatories to only deal with credit providers that are appropriately regulated; and
- the sanctions available for breach of the code should be robust and the code should not unduly limit their application.

### **About Consumer Action Law Centre**

Consumer Action is an independent, not-for-profit consumer organisation with deep expertise in consumer laws, policy and direct knowledge of people's experiences of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

### **Name of code**

The name of the code needs to better reflect community understanding with the types of products and services that are being regulated.

The current name, "Behind the Meter Distributed Energy Resources Provider Code" reflects an industry-specific view of the sector. For example, the term 'behind the meter' is from the industry's perspective; from

the consumer's perspective the relevant products and services are in front of the meter. Furthermore, the term 'distributed energy resources' is a highly technical term.

We recommend consideration be given to "solar, battery and related energy products and services" as a more appropriate name for the code.

### **Drafting principles**

The explanatory memorandum for the Draft Code outlines certain drafting principles, the first of which is "balancing consumer protections with market efficiency and promotion of innovation". With respect, we consider the premise that consumer protection and efficiency/innovation need to be balanced or traded against one another to be misguided.

Innovation can produce significant benefits for consumers. However, not every product intervention is necessarily in consumers' best interests. This is particularly the case in complex or essential services markets, where the risk of bad product design and mis-selling can have severe consequences. For example, it appears "innovation" in solar retail largely involves finance offerings that evade national credit laws. This is not innovation that benefits consumers.

An effective industry code needs to ensure that innovation and efficiency genuinely meets the needs of Australian consumers rather than simply facilitating the selling of products more effectively.

### **Key commitments**

We support the key commitments articulated in Part A of the Draft Code.

However, we suggest that in addition to sales practices being "responsible", the key commitments acknowledge that sales practices, products and after-sales service be provided fairly, honestly and in accordance with community expectations. This would recognise that community expectations regarding the provision of relevant services cover their full life-cycle and not just the point of sale.

We also note that the key commitment regarding payment and finance (A.3) should reference an Australian Credit Licence, not an Australian Financial Services Licence.

### **Practice requirements**

#### *Unsolicited selling*

We strongly recommend that the Draft Code be amended to specifically prohibit unsolicited selling, including door-to-door selling and tele-marketing. There is substantial evidence of consumer detriment caused by these selling methods, and they do not meet community expectations.

The report *Knock it Off: door-to-door sales and consumer harm in Victoria*, jointly published by Consumer Action Law Centre, the Loddon-Campaspe Community Legal Centre and Westjustice, includes over twenty case studies, more than half of which related to the selling of solar panels. As the report notes, "unsolicited retail sales of solar panels are causing significant consumer harm—this is driven by a number of factors





including consumer anxiety over rising energy costs, limited understanding of the product and appropriate cost, and access to (often inappropriate) finance which makes the purchase achievable”.<sup>1</sup>

The report also outlines a number of psychological or behavioural techniques that contribute to the risk of consumer detriment associated with door-to-door selling, including:

- ‘The foot in the door’—rather than being a literal, physical, foot-in the door, this technique describes a process whereby a person is induced into complying with a significant request by first agreeing to a smaller request, or a number of small requests. The more the subject complies with the requester, the more likely they are to continue complying, despite the potential large or demanding nature of the final request.
- Social norms, politeness and the commercial advantage of familiarity—the act of asking a person to leave your front door, closing the door on them, or hanging up the phone requires greater psychological resources than simply walking away, as a consumer may do in a store setting.
- The cognitive impact of poverty—research suggests that people on lower incomes are less likely to assert themselves and are more likely to agree to an undesirable transaction than others. This is because such people can have reduced “bandwidth” due to the life stresses involved in being poor.

In addition, the report outlined original research that demonstrates that cooling-off periods don’t work. A behavioural experiment showed that where people had to take action to demonstrate regret, they did not do so. The research concludes that the findings are explained by the concept of “inertia”. This concept dictates that those who make a decision are very unlikely to use their cooling-off rights to change their mind.<sup>2</sup>

For this reason, as an alternative to a complete prohibition, the *Knock it Off* report recommended an opt-in model for unsolicited selling. This would require consumers to opt into an unsolicited sale, a certain period after a sale. A major benefit of this approach would be to remove the influence of sales staff on a final purchase decision.

Regulator statistics also show that there is considerable consumer harm and even breaches of the law associated with telemarketing and the sale of solar. The Australian Communications & Media Authority notes that solar is one of the main areas of concern identified by consumers, particularly about telemarketing.<sup>3</sup>

It also appears that lead generation, the process of identifying people who are potential sales targets or ‘leads’, is widespread in solar and related industries. While, for industry, lead generation techniques can connect people with personalised product and service offerings and stimulate consumer demand, such

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<sup>1</sup> Consumer Action, *Knock it Off! Door-to-door sales and consumer harm in Victoria*, November 2018, available at: <https://policy.consumeraction.org.au/wp-content/uploads/sites/13/2017/11/Knock-it-off-Consumer-Action-Law-Centre-November-2017.pdf>

<sup>2</sup> Paul Harrison, ‘Cooling-off periods don’t work: study’ *The Conversation*, 28 November 2016 <https://theconversation.com/cooling-off-periods-for-consumers-dont-work-study-69473>

<sup>3</sup> ACMA, Action on unsolicited communications July to September 2018, available at: <https://www.acma.gov.au/theACMA/action-on-unsolicited-communications-july-to-september-2018>



marketing practices are likely to cause consumers to be disempowered, manipulated or be misled.<sup>4</sup> We consider that the most effective protection against these outcomes is to better regulate unsolicited selling.

#### *Payment and finance (B.3)*

In addition to dealing with credit providers that have an Australian Credit Licence, the Draft Code should specify that signatories will only offer finance or credit arrangements that are regulated by the *National Consumer Credit Protection Act 2009* (Cth) (**NCCPA**) (including the National Credit Code)—this would avoid the situation where some credit providers have an Australian Credit Licence but structure their product to avoid the protections of the NCCPA.

This would prohibit solar sales to use “buy now, pay later” (**BNPL**) services. We note that these services are common in the solar industry, but consider that they should not be allowed by a best practice industry code, given:

- BNPL services do not have to be licensed;
- BNPL are not required to ensure credit offers are suitable or affordable for consumers; and
- BNPL are not required to have dispute resolution procedures in place.

We note that the reference to ‘credit lease’ in clause B.3.1(a) should be ‘consumer lease’.

#### *Grid connection (B.4.2)*

We support the flexibility to allow a consumer to organise connection to the grid themselves, but consider that where the retailer does this on the consumer’s behalf, they should retain responsibility to ensure that the outcome of grid connection and appropriate approvals and requirements are in place. Where the consumer actively chooses to arrange connection themselves, the retailer should assist the consumer with information through the process.

However, we consider that where a consumer chooses to connect to the grid themselves, this should not of itself enable a retailer to deny warranties or guarantees. The retailer should be still required to comply with warranties that are applicable, including those required by the code.

#### *Personal information (B.6.2)*

It is better practice to require a consumer to opt-in to the use of their personal information for future marketing, even where it relates to the sale itself. We note that this should not inhibit a retailer from contacting their customer in relation to after-sale service, but it should limit them from selling additional product unless the consumer has actively sought such communication.

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<sup>4</sup> Consumer Action, *Dirty Leads: Consumer protection in online lead generation*, March 2018, available at: <https://consumeraction.org.au/wp-content/uploads/2018/03/Dirty-Leads-Consumer-Action-Law-Centre-March-2018.pdf>



## Code administration

We note that the code administration section of the Draft Code is still in development, as such, the following comments are high level only.

In further development of this section of the code, we encourage the working group to be aware of the differences between code administration and complaint handling. Code administration should be primarily focused on promoting and monitoring compliance, including determining breaches and appropriate sanctions. Complaint handling, by contrast, is not the central role of code administration. While it may make sense for the code administration to play a concierge role to assist with resolving disputes, we consider that what is needed is an external dispute body to manage disputes between signatories and consumers.

The Victorian Government's Final Response to the Independent Review of the Electricity & Gas Retail Markets in Victoria supported the recommendation to expand the powers of the Energy & Water Ombudsman Victoria (**EWOV**) to cover emerging energy businesses, products and services. We consider that this recommendation should be implemented such that signatories and other providers submit to the jurisdiction of EWOV.

The independence of the code administration process, including through the appointment of an independent code review panel, is essential to confidence in the industry code. We consider that such a panel should be responsible for overseeing the administration of the code, including compliance promotion and monitoring. It should also respond to particular matters referred to it by the code administrator, including hearing of appeals, and drive better practice standards in the industry.

We are concerned that the Draft Code does not include any reference to sanctions for breach or contravention of the code. This is a significant gap. We consider that there should be a wide variety of robust sanctions available, and that it should be discretionary for the administrator to determine the appropriate sanction. The code itself should not unduly limit which sanctions should be applied, noting that a signatory has the opportunity to make an appeal to the code review panel.

Please contact us on [REDACTED] if you would like to discuss this submission further

Yours Sincerely,

**CONSUMER ACTION LAW CENTRE**



Gerard Brody  
Chief Executive Officer





8 February 2019

Behind the Meter Working Group  
Clean Energy Council  
Level 15, 222 Exhibition Street,  
Melbourne VIC, 3000

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Victoria 8001 Australia  
T: 1300 360 795  
[www.ausnetservices.com.au](http://www.ausnetservices.com.au)

Via email to: [BTMIndustrycode@cleanenergycouncil.org.au](mailto:BTMIndustrycode@cleanenergycouncil.org.au)

Dear members of the Behind the Meter Working Group,

### **Draft Behind the Meter Distributed Energy Resources Provider Code**

AusNet Services is pleased to have the opportunity to make this submission in response to the draft Behind the Meter Distributed Energy Resources Provider Code (the draft Code) and participate in its development. The draft Code would establish consumer protections that extend beyond those provided to customers of solar systems by the CEC accredited solar retailer model.

The draft Code proposes consumer protections offering a minimum set of customer service expectations while balancing with efficiency and promotion of innovation. With the small-scale technology certificate losing value the CEC accredited solar retailer arrangements is losing enforceability, making the development of a Behind the Meter Distributed Energy Resources Provider Code essential.

AusNet Services, in principle, supports the intent of the draft Code in providing a minimum set of consumer protections to customers of distributed energy resource products, systems and services, including storage technologies. The draft Code fully acknowledges the need for a Connection Agreement with the network and sets how the installer or customer seeks this agreement, including “respond within a reasonable timeframe to any additional compliance requests from the distributor”. We agree that arrangements with the DNSP are an important consideration for the code and this highlighted provision is a reasonable service expectation, and represents the right balance between consumer protection and consumer autonomy.

In some regards the draft Code does not go far enough in providing this minimum safety net for customers. We recommend:

- It does not recognise that some Distributed Energy installations may have legally binding safety requirements established under jurisdictional safety regulation. We expect the draft Code would have recognised that safety requirements may be applicable and warrant the installer or seller must satisfy those requirements as a condition of sale.
- Privacy provisions should be expanded to outline how the information transmitted from the customer’s purchased Distributed Energy device to the manufacturer’s cloud based systems would be protected and made available to the customer. Customers may want to provide this data to other energy suppliers or distribution businesses as a way of participating in Demand Response initiatives.

We appreciate the above recommendations would expand the Behind the Meter Distributed Energy Resources Provider Code and make it more complicated. However, we consider the additional provisions are warranted in terms of promoting safety and providing customers with more avenues to participate in future energy markets.

Should you have any queries in relation to this submission please do not hesitate to contact Justin Betlehem on [REDACTED]

Yours sincerely,

A large rectangular grey box redacting the signature of Charlotte Eddy.

Charlotte Eddy  
**Manager Economic Regulation**

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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

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## 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").

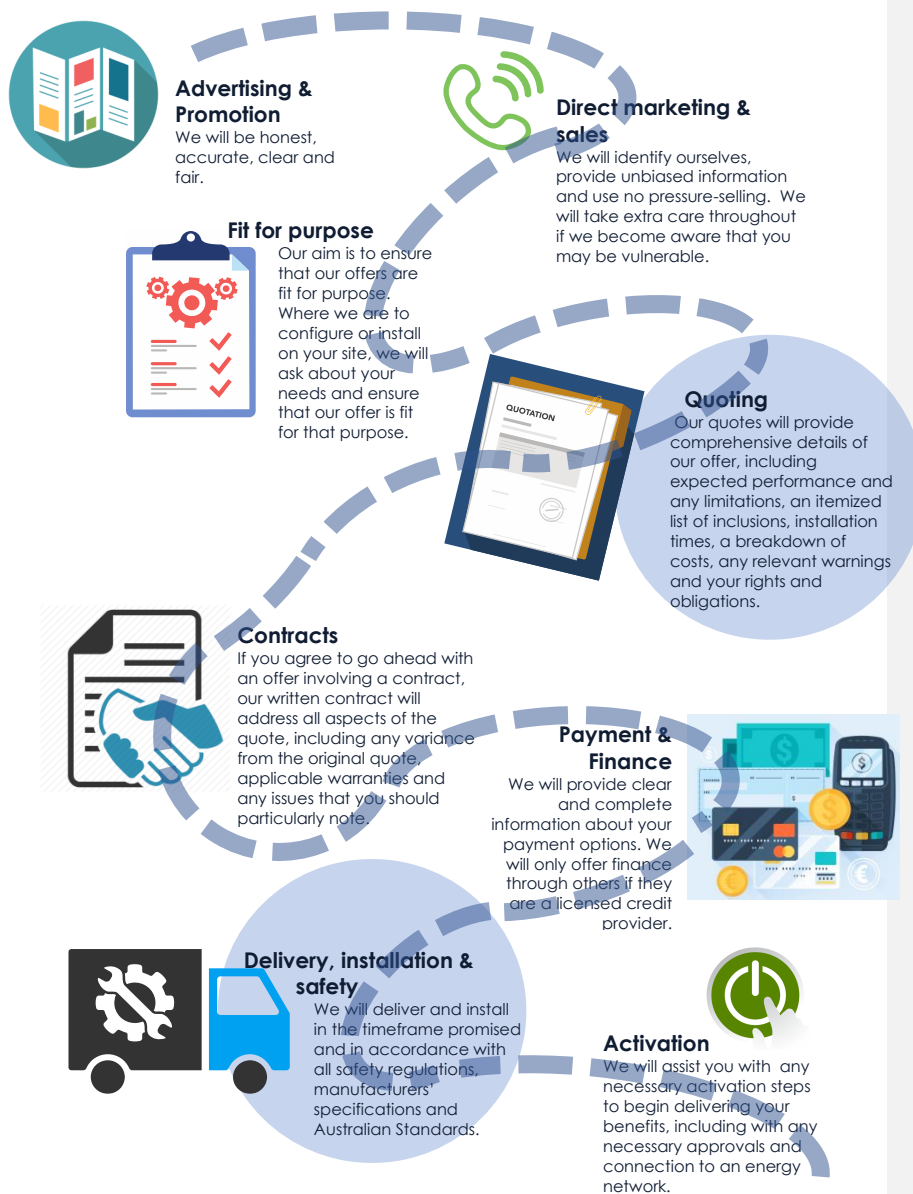
The Code operates alongside a range of existing legal and regulatory protections. Generally, it does not repeat these protections except as needed to provide you with a complete understanding of what to expect from us.

### 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 ~~3-24~~):

- 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) ("NCCCPA")~~
- 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 ~~25-24~~ does not apply if the finance is provided by a government body.

~~25-27.~~ Paragraph ~~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(2-3))~~).

~~26-28.~~ Paragraph ~~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

~~31-33.~~ 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.

~~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.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 ~~35-37~~~~34~~), 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.m)8.m) 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 reasonably 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~~ undertake 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
- 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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~~4e)~~ deciding matters of suspension or expulsion referred under paragraph ~~A25A2524~~ to it by the Administrator

~~4f)~~ referring serious or systemic breaches of law to relevant regulators under paragraph ~~A26A2625~~

~~4g)~~ 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

~~4h)~~ 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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# Residential PV

**CUSTOMER EXPERIENCES AND FUTURE  
DEVELOPMENTS**

**A report for Energy Consumers Australia**

December 2016





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Our ref Residential solar PV: final report

Energy Consumers Australia  
Suite 2, Level 14,  
1 Castlereagh St,  
Sydney NSW 2000

For the attention of Rosemary Sinclair

7 December 2016

Dear Ms Sinclair

**Residential PV: Customer experiences and future developments**

We have been engaged by Energy Consumers Australia to analyse outcomes for residential solar PV customers and the impacts of solar PV on the broader energy market, as well as future developments linked to battery storage. We attach our report in connection with providing these services.

**Scope of work**

Our work has been performed in accordance with the scope of work outlined in our engagement letter dated 14 April 2016. The scope of work is set out in chapter 1 of this report.

**Procedures**

Our work commenced in April 2016 and was carried out up to November 2016. We have not undertaken to update this report for events or circumstances arising after October 2016.

**Information**

In undertaking our work we had access to information provided to us from other consultants engaged by Energy Consumers Australia as well as publically available information. We have not independently verified the accuracy of this information. We have indicated in this report the sources of the information presented.

**Distribution**

This report has been prepared exclusively for Energy Consumers Australia in relation to analysing outcomes for residential solar PV customers. This report must not be used for any other purpose or distributed to any other person or party, except as set out in our engagement letter, or as otherwise agreed by us in writing.

Yours faithfully

Paul Foxlee

Partner

**Important Notice**

If you are a party other than Energy Consumers Australia, KPMG:

- owes you no duty (whether in contract or in tort or under statute or otherwise) with respect to or in connection with the attached report or any part thereof; and
- will have no liability to you for any loss or damage suffered or costs incurred by you or any other person arising out of or in connection with the provision to you of the attached report or any part thereof, however the loss or damage is caused, including, but not limited to, as a result of negligence.

If you are a party other than Energy Consumers Australia and you choose to rely upon the attached report or any part thereof, you do so entirely at your own risk.

**Limitations**

The responsibility for determining the adequacy or otherwise of our terms of reference is that of Energy Consumers Australia.

The services provided under our engagement letter ('Services') have not been undertaken in accordance with any auditing, review or assurance standards. Any reference to 'audit' and 'review', throughout this report, is not intended to convey that the Services have been conducted in accordance with any auditing, review or assurance standards. Further, as our scope of work does not constitute an audit or review in accordance with any auditing, review or assurance standards, our work will not necessarily disclose all matters that may be of interest to Energy Consumers Australia or reveal errors and irregularities, if any, in the underlying information.

In preparing this report, we have had access to information provided by other consultants engaged by the Energy Consumers Australia and publicly available information. We have relied upon the truth, accuracy and completeness of any information provided or made available to us in connection with the Services without independently verifying it. The publicly available information used in this report is current as of October 2016. We do not take any responsibility for updating this information if it becomes out of date.

This report provides a summary of KPMG's findings during the course of the work undertaken for Energy Consumers Australia under the terms of the engagement letter.

Any findings or recommendations contained within this report are based upon our reasonable professional judgement based on the information that is available from the sources indicated. Should the project elements, external factors and assumptions change then the findings and recommendations contained in this report may no longer be appropriate. Accordingly, we do not confirm, underwrite or guarantee that the outcomes referred to in this report will be achieved.

We do not make any statement as to whether any forecasts or projections will be achieved, or whether the assumptions and data underlying any such prospective financial information are accurate, complete or reasonable. We will not warrant or guarantee the achievement of any such forecasts or projections. There will usually be differences between forecast or projected and actual results, because events and circumstances frequently do not occur as expected or predicted, and those differences may be material.

# Executive summary

Over the last decade there has been a rapid increase in the number of households installing solar PV systems on their rooftop. Approximately 1.5 million households now have solar panels and are generating their own electricity. However, there is limited information about the experiences of these customers and whether their investment has met their expectations. Further, there is incomplete evidence on how the residential solar PV market is contributing towards general efficiency of electricity markets.

Energy Consumers Australia has initiated a research project to conduct a stocktake of the residential solar PV market and test whether solar customers are getting the outcomes they expected from their investment in solar PV, including value for money, quality and performance of the systems. To this end, Energy Consumers Australia engaged KPMG and three other technical consultants to gather evidence and identify learnings on a range of matters relating to residential solar PV installations, including the potential integration of battery storage.

In summary, we have found that:

- **Residential customers are generally satisfied with the performance of their system.** However, many customers do not understand how their systems operate or how to get the most value from their systems. There is also evidence that some customers are being sold systems that are not appropriately sized for them.
- The factors affecting outcomes for both individuals and the market are influenced by multiple entities in both the solar industry and the traditional electricity industry. **Incentives on these entities do not always align and policies between the two industries have historically been inconsistent.** Going forward, however, incentives are becoming better aligned.
- Future uptake of solar PV will depend on a number of factors. **There are limitations on the capacity of distribution networks to incorporate PV without additional investment. Barriers remain to certain customers, including the majority of apartment dwellers and renters, and those that cannot afford the upfront costs of installation.** In the short term it is uncertain how battery storage will influence the uptake of solar PV, but in the long run it may strengthen uptake.
- **Customers need access to the information and tools they require in order to make informed decisions.** Battery storage adds an additional dimension to an already complex energy market and requires the customer to make decisions on multiple variables relating to the use of batteries and how to integrate batteries with a solar PV installation.
- Battery storage also has the potential to contribute to market efficiency provided incentives for customers are aligned with efficient market outcomes. Also the financial value will need to improve –either through reduced costs or tariff changes - before battery storage becomes cost effective for the majority of customers. The battery storage market is in its infancy and **further policy work is needed on a range of matters including regulation, standards and safety.**

## Background and context

Energy Consumers Australia initiated a project to obtain evidence on residential customers' experiences when they install solar PV and assess whether customers' expectations about their solar PV are being met. To this end, the objective of this project was to gather evidence and identify learnings on a range of matters relating to residential solar PV installations. Further details on the scope and methodology for this project are set out in Chapter 1.

Energy Consumers Australia initiated this report partly in response to the rapid increase in households installing solar PV. Between 2006 and 2011 the number of installations grew rapidly. Approximately 1.5 million households now have solar PV on their rooftop.

The factors affecting outcomes for both individuals installing PV and the wider electricity market are influenced by multiple entities in both the solar industry and the traditional electricity industry. These entities include policy makers, regulators, complaint handlers as well as businesses. These entities each have their own objectives, whether it be to develop policy in a specific area, create or enforce standards, or make profit. As a result, different frameworks and approaches have not always worked in a complementary way.

The development of the market and the various influences in the solar industry, including those entities that can assist customers with certain issues relating to their solar PV system, are discussed further in Chapter 2.

There are a number of financial benefits from installing solar PV. These are derived from government incentive schemes, such as feed-in tariffs that provide a payment for generation that is exported, and savings in a customer's electricity bill from avoiding importing electricity from the grid. Determining the savings available to a customer from installing solar PV is a complex exercise that depends on a number of factors.

Once installed, the incentives on a customer to shift their consumption to a different time of day will depend on the level and structure of their retail tariff relative to the payment they receive for exporting electricity. In principle, all new solar PV customers have a financial incentive to align their consumption patterns to the times during the day when solar PV output is maximised. However whether customers respond to this incentive will depend on the information provided, whether the customer has the ability to shift their consumption and their preference to do so.

Under current regulatory arrangements, solar PV customers are rewarded by the volume of their electricity generated and not by when during the day the electricity is generated. There are current reforms being progressed to network tariffs which result in a time of day incentive to solar PV customers. However, the effectiveness of these tariffs rely on the underlying structure of the network tariff being incorporated into retail price structures and the necessary metering technology to implement those tariffs.

The value proposition for customers installing solar PV and the impact of various tariff structures on the incentives customers face to shift their consumption is discussed in Chapter 3.

### **Assessing the customer experience**

We have framed our analysis based on the sales and installation process, as outlined in the following five steps:



#### *Pre-sales*

The majority of customers install solar PV to reduce their energy bills or for other financial reasons. A smaller, but still high proportion of customers are seeking greater control over their energy and, related to this, greater independence. Some customers also cite environmental reasons as a factor influencing their decision to install solar PV.

However, many customers that have not yet installed solar PV face a number of barriers to doing so. The greatest barriers are faced by people who cannot afford the capital and installation costs, renters who must negotiate with their landlord to install solar PV, and apartment dwellers, who face issues around joint ownership of property.

Future uptake of solar PV is likely to be linked to the attractiveness of battery storage and changes to network tariffs, as well as reducing the barriers discussed above. Uptake of solar PV could be either tempered or strengthened by the introduction of battery storage. Some potential solar PV customers may choose to wait until battery storage becomes more cost effective and established to install solar PV so as to avoid risks around technology becoming obsolete. On the other hand, some customers may value the additional flexibility and independence from combining solar PV with battery storage.

The motivations for residential customers to install solar and the likely future uptake of solar PV by households are discussed further in Chapter 4.

### *Sales*

We found that customers rely on their solar installer to obtain information. While most customers considered they had sufficient information to make decisions about their system, almost a third wished they had more information before installation.

Based on case studies undertaken by Moreland Energy Foundation, systems generally appear to have been sized and installed appropriately for individual customers. However, Moreland Energy Foundation found instances where customers have had systems installed that are larger than they need, and where the panels suffer from shading.

There is also anecdotal evidence that some customers are being sold systems that are not sized appropriately for them. First, some customers appear to not have a full understanding of how different factors influence the payback period for a system, and simply assume that larger systems will provide greater returns. Second, some customers are having systems installed that are too small for their needs as a result of the capacity threshold under which a Distribution Network Service Provider (DNSP) will automatically pre-approve a system to connect to their network. This threshold could be acting as an artificial constraint on the sizing of residential PV, creating a market distortion.

Chapter 5 sets out our more detailed findings on residential solar customers' experience of the sales process, such as the information that they use to inform their decision and whether systems have been designed appropriately for customers, including system size and panel orientation.

### *Installation*

Most customers appear to be satisfied with the installation process. There do not appear to be any systemic issues associated with sub-standard or unsafe installations and, based on a number of case studies, solar installers for the most part are installing the systems so as to maximise value to the customer, for example by avoiding panel shading. Our findings relating to customers' experiences of the installation process are set out in Chapter 6.

### *Connect and Commission*

Individual DNSP policies appear to be driving a number of outcomes for individual customers wanting to connect solar PV systems to the grid. First, the ease with which customers can obtain approval to connect to the network depends on the size of the system. This is resulting in installers advising customers to install a smaller system than would best suit them to avoid the additional cost and challenges of seeking approval for a larger system.

Second, for larger systems that require network approval, the ability to connect is effectively on a "first come, first served" basis. Some networks have had to turn down applications due to system

constraints. In some circumstances, customers that want to connect a larger system must wait until the network is augmented to install their system or pay for the network to be upgraded.

Network capacity could create an additional barrier to new solar customers. This may raise equity concerns, particularly where customers that have not yet installed solar PV have not done so because of financial barriers, or barriers due to renting or living in an apartment.

These issues are discussed further in Chapter 7.

### *Customer outcomes*

We found that residential customers are generally satisfied with the performance of their solar PV system. The majority of customers consider their system is performing about as well as expected or better. Similarly, most customers are satisfied with the impact that their system has had on their retail electricity bills.

However, evidence suggests that many customers do not understand the detail of how their system works or how they can maximise value from their system. Knowledge of warranties is low, and some customers incur unnecessary costs to clean and maintain their systems. Instances have been identified where customers were satisfied with the performance of their system, yet inspection and testing revealed the design, and therefore system output, was sub-standard.

Close to half of customers surveyed indicated that they had taken steps to use more energy when the sun is shining and/or less when it is not. This indicates that many customers are willing to modify their behaviour to maximise the value of their system. However, it is not clear that all customers have sufficient knowledge or understanding of how to do so. This is evidenced by the survey results which suggest that more than one in five customers did not know if the tariff they paid for mains electricity changed after they installed solar and were also not sure what feed-in tariff they were being paid. Without knowing these tariffs, they would not have the information to determine how to change their consumption in order to minimise the payback period for their system.

Chapter 8 explains in more detail our findings in relation to overall customer outcomes and the extent to which their expectations about their solar PV systems are being met, as well as the impact that having a solar PV system has had on customers' behaviour.

### **Market outcomes**

Historically, potential network benefits have not been signalled to solar PV customers when they make decisions that influence network costs, such as the orientation of the panels and the time at which a customer is incentivised to export versus consume electricity. Rather, investment in solar PV and incentives on customers to shift their consumption to different times of day has been driven by factors other than alleviating network congestion, including the level and structure of feed-in tariffs relative to retail tariffs. Specifically, under premium net feed-in tariffs, customers have had an incentive to maximise their export throughout the day, rather than in the evening when the distribution network is most under stress.

This disconnect between the solar PV market and the electricity market means that the wider benefits of solar PV have only partially been captured. To date, on the whole, there has not been a material reduction in peak demand across distribution networks. While solar PV has resulted in a lower level of demand on some parts of some networks, this has not always resulted in lower infrastructure costs. In addition, there are costs associated with managing the network impacts of high penetration of solar PV and the level of energy being exported.

Going forward, we expect incentives will become better aligned. Changes to feed-in tariffs through the cessation of the premium schemes are providing customers with incentives to consume, rather than export, their generation. Complementing this, DNSPs are required to better signal the

costs of using their networks, including at different times of day. The impact of these changes to network tariffs will depend on the extent to which network tariff structures are incorporated into retail price structures, the individual customer's consumption profile relative to network usage, and the nature of the tariff structure.

Together, these signals could provide solar PV customers with a more consistent set of incentives to shift their grid consumption away from times when there is the most stress on the distribution network. This may allow DNSPs to defer expenditure that would otherwise need to occur, reducing costs to all electricity customers.

Further discussion of our findings relating to overall outcomes for the wider energy market is provided in Chapter 9.

### **Future developments**

The combination of battery storage and solar installation at the residential level will lead to greater flexibility for customers and also increased complexity in the decisions that they face. Energy storage systems are both more technically and economically complex than solar PV systems, and customers face more decisions on how to operate battery storage.

Providing reliable and accurate information that is easy to access and understand will be important to help solar customers consider their options with respect to battery storage. This includes whether to purchase batteries, and also to help them evaluate how best to use and integrate battery storage into their decisions relating to energy. This will need to be coupled with appropriate consumer protections.

Modelling conducted by the Alternative Technology Association (ATA) found that for many solar PV customers, investing in batteries will not become cost effective until after 2020 when payback periods will be less than the assumed 10 years asset life for the battery and inverter. This applies for customers either retro-fitting battery systems or investing in new solar-battery combination systems. ATA also found that the financial viability of solar-battery combinations varies greatly across different jurisdictions and customer consumption profiles and is sensitive to how the customer intends to charge and discharge the battery.

The value proposition of installing batteries will be unique to each customer as it will depend greatly on a customer's total consumption, the battery capability and the way the customer uses electricity over a day. Even if the price of batteries falls as anticipated over the next decade, the additional investment in batteries may never make financial sense for some consumers.

Battery storage has the potential to contribute to market efficiency. The value of solar PV installations with battery storage as a measure to reduce system peak is less reliant on individual consumers' abilities and preferences to actively shift consumption to align with solar PV output. An integrated solar PV and battery system will automatically help to dampen the contribution of residential consumption towards system peaks.

Battery integration therefore has the potential to improve the market efficiency impacts of existing residential solar PV. To achieve this, better alignment of individual decisions with market efficiency is essential. As the network tariff structure will influence the financial value of combining batteries with solar PV current reforms to network tariffs may go some way to assisting with the efficient integration of battery storage. The effectiveness of these reforms at promoting the efficient integration of batteries will depend on a range of different factors, including the design of the network tariff structures, how well those tariff structures align with the battery management technology and preferences of customers, how retailers pass through the network tariff signal into the retail offer, and government policy.



A solar customer with a battery will have the incentive to opt for tariff structures where they can avoid the most charges that relate to the energy they use. The relative proportion of tariffs recovered through the fixed component is key as this component cannot be influenced by the operation of the solar-battery installation.

The current trends toward increasing fixed component to retail prices and having a higher fixed component to time of use/demand tariffs compared to flat consumption tariffs may impact on the viability of investing in batteries. In addition, existing customers on premium feed in tariffs will lose payments if they combine batteries with their existing solar PV installation.

Current reforms to network tariffs may not necessarily promote increased uptake of battery storage. Network businesses, retailers and policy makers may need to consider whether additional incentives are required to promote efficient uptake of battery from the market perspective.

The battery storage market is in its infancy and further policy work is needed on a range of matters including regulation, standards and safety matters. It is important that this policy work draws on the lessons learned from addressing similar issues during the emergence and development of the solar PV market. For example, difficulties that have arisen at the interface between individual customers and the grid, as observed in the solar industry, are also likely to occur in the battery storage market. There does not appear, at this stage, to be a consistent framework to guide DNSPs in developing policies for grid-connected residential battery storage nor an accreditation framework for businesses installing batteries.

Providing customers with the tools and protections they need, as well as ensuring individual decision making is aligned efficient market outcomes, relies on multiple entities working together. Policy makers and industry should draw on the experience of, and lessons learned in, the solar PV industry to ensure that benefits from battery storage are realised by both customers and the broader market.

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# 1 Purpose and approach

The chapter sets out the reasons why this project was initiated, and provides details on the scope and methodology for this project.

## 1.1 Energy Consumers Australia

Energy Consumers Australia (ECA) was established on 30 January 2015 as an initiative of the Council of Australian Governments (COAG) Energy Council, in order to advocate on national energy market matters of strategic importance and material consequence for energy consumers, in particular household and small business consumers.

The objective of the ECA reflects the National Electricity Objective (NEO), the National Gas Objective (NGO) and the National Energy Retail Objective (NERO):

*To promote the long term interests of consumers of energy with respect to the price, quality, safety, reliability and security of supply of energy services by providing and enabling strong, coordinated, collegiate evidence based consumer advocacy on national energy market matters of strategic importance or material consequence for energy consumers, in particular for residential and small business customers.*

ECA's objective aims to foster a greater appreciation of the issues faced by consumers amongst energy market participants and policy makers.

One of four strategic priorities identified by ECA's Board is the area of new technologies and their disruptive effect on traditional business and impact on consumers. To this end, ECA has initiated a research project to better understand issues relating to customer and market impacts associated with the proliferation of rooftop solar PV and batteries for households.

## 1.2 Purpose and objective of this project

ECA initiated a project to understand residential customers' experiences when they install solar PV and assess whether customers' expectations about their solar PV system are being met. Specifically, the project considered whether:

- residential customers are getting the outcomes they expected from their investment in solar PV, including value for money, quality and performance of the installations and an understanding of how they use their solar panels;
- existing installations are capable of integrating battery storage;
- the wider benefits to the electricity market of residential solar PV installations are being captured; and
- there are any emerging issues that might impact future solar or battery storage options for households.

The objective of this project is to gather evidence and identify learnings on a range of matters relating to residential solar PV installations. This includes:

- the process employed for installations and connections;
- the technical capability of existing installations, including quality and performance;
- how customers use their solar PV and their understanding of its capabilities; and
- expectations held by customers with solar PV and whether those expectations have been met.

ECA's objective for this project is to improve understanding on the current operation of the various frameworks that influence solar PV installations and provide a preliminary assessment of how effective such frameworks – in terms of both provide customer outcomes and market efficiency - will be going forward with the advent of residential battery storage.

## 1.3 Scope of this report

This project has a number of distinct technical and research components. As such, the ECA engaged several consultancies to obtain the necessary breadth of skills, including:

- UMR Research (UMR), to conduct a survey of 1,821 households with solar PV, and 630 without, to understand their experience, preferences, knowledge and intentions of these consumers with respect to solar PV and battery storage;
- Moreland Energy Foundation (MEFL), to conduct a number of desktop and/or on-site assessments of solar households (from UMR's sample), for in-depth understanding of emerging issues by gathering stories of consumers' experience, and independently assessing the design and performance of existing solar systems; and
- Alternative Technology Association (ATA), to conduct a detailed review and assessment of existing and emerging battery options for households in Australia, undertake technical analysis of readiness of solar PV systems (existing and future) for energy storage and model the cost effectiveness of energy storage for households in 2016, 2020, 2025 in each NEM.

The ECA engaged KPMG to synthesise these various work streams and provide this overview report, which has also incorporated additional research and analysis conducted by KPMG. Our role was to:

- research and analyse policies and processes that effect consumers' experience with solar now and into the future.
- understand whether current energy market arrangements support households to access technology choices; and
- consider whether the sale and installation process likely to be fit for purpose in the future given market developments such as battery storage, tariff reform and more renewable generation.

KPMG also assisted the ECA with project management, including a non-technical review of outputs by the other consultancies.

This report provides an overview of the research undertaken and findings identified for this project. As such, this report incorporates aspects of the analysis and findings of each consultancy, which are set out in full in separate reports provided to the ECA. KPMG has not undertaken a technical review of these reports and is not responsible for the quality or accuracy of the final reports delivered by the above consultants, nor of the findings from their reports that are incorporated in this report. The views of UMR, MEFL and ATA stated in this report do not necessarily reflect the views of KPMG.

The scope of this report is to:

- provide an overview of the key analysis and findings from research conducted by UMR, MEFL and ATA;
- identify any market failures;
- identify customer outcomes relative to what those customers expected from their solar PV investment and the perceived satisfaction to them of that investment;
- consider whether the wider market benefits from household solar PV are likely to be able to be captured and utilised for the benefit of all electricity customers;
- identify potential implications of this research; and
- identify possible future work to extend this research.

This report does not:

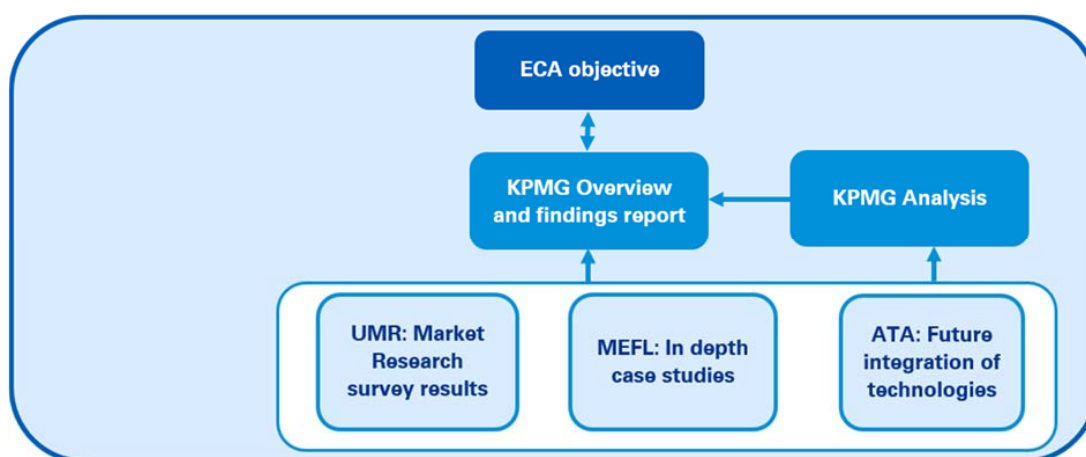
- discuss experiences of solar PV customers other than residential customers;
- assess the supporting reports provided by ATA, MEFL and UMR
- provide suggestions for technical developments other than those identified by other consultants and incorporated into this report;
- consider solar hot water, electric vehicles or other technologies; or
- provide policy recommendations.

## 1.4 Methodology

### 1.4.1 Overview

This project comprises a number of individual research components, summarised in Figure 1 and described in more detail below.

**Figure 1: Overview of our methodology**



### 1.4.2 Market research

UMR was engaged by ECA to conduct a customer survey to understand a range of customer experiences in the solar PV market. The survey was web-based and had 2,442 respondents.<sup>1</sup> Of these, 1,812 had solar PV on their rooftop and 630 did not have solar PV installed.<sup>2</sup> Respondents were distributed across NSW, Victoria, Queensland, South Australia, Tasmania and the ACT.<sup>3</sup>

For further information on the methodology used by UMR, please refer to its report *Usage of solar electricity in the national energy market: A quantitative study*, available on the ECA's website.

### 1.4.3 Case studies

MEFL was engaged by ECA to conduct a number of in-depth case studies with customers that have solar PV installed. MEFL conducted telephone interviews with 74 participants and visited 29 customer premises to obtain more in-depth insights into customer experiences than could be provided via a customer survey. The site visits, conducted in NSW and Victoria, permitted greater understanding of aspects of the installation and operation of systems. The site visits also investigated the potential for batteries to be installed at the property.

### 1.4.4 Modelling and desktop research

ATA was engaged by ECA to provide analysis and advice regarding the current and future economics and technical aspects of solar plus energy storage for residential customers in the National Electricity Market (NEM).

In particular, ATA was tasked with advising on:

- the economics of grid connected solar PV plus energy storage in the NEM, both now and into the future for residential consumers; and
- the battery 'readiness' of both existing and new solar homes with regards to technical aspects including system configuration, metering and grid connection.

### 1.4.5 KPMG analysis

KPMG was engaged by ECA to analyse the impact of the proliferation of roof-top solar PV on the broader market, as well as better understand aspects of the customer experience. KPMG conducted qualitative analysis on a range of issues relating to the interface between energy market policies and residential solar PV policies and behaviour. To inform this analysis, KPMG interviewed a number of industry participants to obtain their views on issues such as the impact of solar PV on networks, the role of solar providers and the effectiveness of the Clean Energy Council (CEC) accreditation and code of conduct.

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<sup>1</sup> The margin of error for a 50% figure at the 95% confidence level for a sample of n=1,821 is  $\pm 2.3\%$ .

<sup>2</sup> The margin of error for a 50% figure at the 95% confidence level for a sample of n=630 is  $\pm 4.0\%$ .

<sup>3</sup> Note that while the survey reflects the known number of households with solar in the relevant states and territories, it may not accurately reflect the yearly profile of installations. Specifically, respondents in the survey were more likely to report a higher level of installations prior to 2011 and a lower level of installations from 2011 onwards compared to actual installations. This could either reflect either a bias in the survey towards customers who installed their systems early, or an error in reporting by respondents. It could in part reflect a delay in updating DNSP or ORER/CER databases

## 1.5 Analytical framework

We have framed our analysis based on the sales and installation process, as outlined in the following five steps:



Pre-sales considers issues that a customer will take into account when considering whether to install a solar PV system. This primarily relates to their motivation for installing solar PV. For customers that have not installed solar PV, it considers what barriers or reasons may prevent them from doing so.

Sales relates to the sources of information used by customers to inform their decisions on installing solar PV and design features, including the size of the system and panel orientation.

Installation primarily assesses whether customers face difficulties associated with the installation of their solar PV system. This includes, for example, delays in installation or poor installation practices.

Grid connection considers the interface between the distribution network and a customer wishing to connect their system to that network. This includes any policies that distribution network service providers may have that influence connection, and the implications for future solar PV customers.

Finally, in relation to solar PV, we consider outcomes for customers and the actual operation of their solar PV system, as well as broader market outcomes in chapters 8 and 9. For individual customers this includes discussion on issues relating to system performance and perceived impact on retail energy bills. For the broader market, it considers issues such as the impact of increased solar PV penetration on network costs.

In addition, we consider whether there are any lessons to be learned from the solar PV experience that should inform solar PV policies regarding battery storage. This includes the likely uptake of battery storage and issues that customers may face in considering their options, as well as the possible impacts on the broader market from the potential proliferation of residential battery storage.

## 1.6 Structure of this report

The remainder of this report is structured according to the above analytical framework:

- chapter 2 sets out background information relevant to this project;
- chapter 3 explains the solar PV value proposition for residential customers;
- chapter 4 sets out our findings related to pre-sales;
- chapter 5 sets out our findings related to sales;
- chapter 6 sets out our findings related to installation;
- chapter 7 sets out our findings related to grid connection;
- chapter 8 sets out our findings related to customer outcomes;
- chapter 9 sets out our findings related to market outcomes; and
- chapter 10 discusses issues relating to battery storage.



## 2 Background

The ECA initiated this report partly in response to the rapid increase in households installing solar PV. Between 2006 and 2011 the number of installations grew rapidly. Approximately 1.5 million households now have solar PV on their rooftop.

The factors affecting outcomes for both individuals installing PV and the wider electricity market are influenced by multiple entities in both the solar industry and the traditional electricity industry. These entities include policy makers, regulators, complaint handlers as well as businesses. These entities each have their own objectives, whether it be to develop policy in a specific area, create or enforce standards, or make profit. As a result, different frameworks and approaches have not always worked in a complementary way.

There are a number of different entities that a customer can turn to if they have an issue relating to their solar PV system. However, it may not always be clear to the customer which entity has the authority to resolve, or help resolve, their particular issue. These customer protections are governed via a number of mandatory and voluntary frameworks.

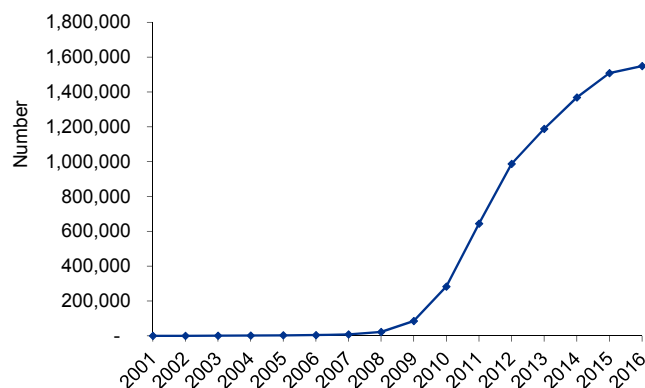
This chapter provides relevant context and background information for this report. It sets out:

- an overview how the solar PV industry has grown and where it is at today;
- a discussion of the various players in the solar PV industry and other frameworks and parties that have influenced the development of the solar PV market; and
- a summary of the customer protections that are available to solar PV customers.

### 2.1 Facts and figures

Over the last few years there has been a rapid increase in households installing solar PV. Between 2006 and 2011, the number of installations per year grew rapidly, reaching a peak of approximately 360,000 in 2011.<sup>4</sup> This is shown in Figure 2. Now approximately 1.5 million households have solar PV on their rooftop.

<sup>4</sup> Australian Photovoltaic Institute, [www.pv-map.apvi.org.au](http://www.pv-map.apvi.org.au)

**Figure 2: Cumulative rooftop solar PV installations**

Source: Australian Photovoltaic Institute

This rapid growth has been driven in part by generous feed-in tariffs (FiTs) offered by jurisdictional governments to encourage the adoption of solar PV, combined with the Small Renewable Energy Scheme (SRES). These schemes are discussed in the next chapter.

Uptake of solar PV has differed across jurisdictions. This is in part because of differences in solar FiTs, charges for energy consumed, and the number of sunshine hours in different locations. For example, conditions in Queensland and South Australia are more favourable for solar PV, reducing the payback period of a system compared to Victoria and Tasmania. Of the 14 suburbs across Australia that now have over 50% of households with installed solar PV, the majority are in Queensland and South Australia.

Since 2011 the rate of installations has lessened, however the average size of installations has grown over time as the cost of solar panels has decreased. In 2010, the average system size for new installations was 1.5 kW. By the end of 2015 the average system size for new residential installations (using systems under 10kW as a proxy for residential customers) had reached approximately 5.5 kW.<sup>5</sup>

The increase in the number of installations combined with the increase in the average system size installed means that overall household solar PV capacity has increased significantly. Across Australia, over 5,000 MW of rooftop solar PV generation capacity has been installed. This represents approximately 12% of total generation capacity in the NEM.<sup>6</sup>

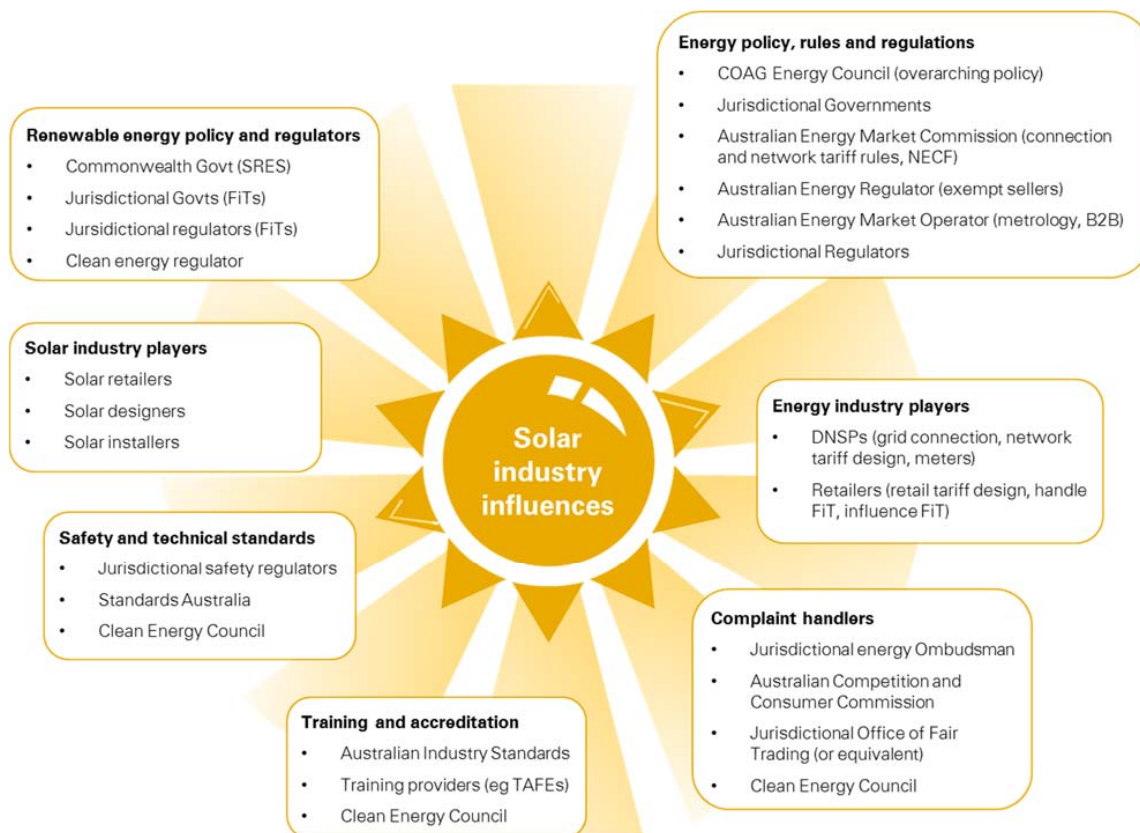
## 2.2 Influences in the solar industry

Figure 3 provides a snapshot of the various entities that influence the solar market.

As can be seen in the diagram, there are many different entities that have, and will continue to, influence the solar PV market.

<sup>5</sup> APVI website data

<sup>6</sup> <https://www.aer.gov.au/wholesale-markets/wholesale-statistics/generation-capacity-and-peak-demand>

**Figure 3: Influences on solar market outcomes**

First, there are the entities that have shaped renewable energy policies, including governments and jurisdictional regulators. These entities have been instrumental in driving the uptake of residential solar PV through various policies and schemes that provide solar PV customers with subsidies and other forms of incentives. The Clean Energy Regulator (CER) is responsible for administering schemes legislated by the Australian Government for measuring, managing, reducing or offsetting carbon emissions.

Customers interact directly with solar retailers, designers and installers. This market is fairly fragmented, with even the largest players only commanding a relatively small market share. The large number of businesses offering solar PV services means that there is strong competition. However, it can also make it more difficult to regulate and make sure that customers are getting a safe product that is delivering what they paid for.

A number of entities help regulate the market in this regard. First, jurisdictional safety regulators enforce safety standards and making sure electrical work is completed safely. Standards Australia specifies requirements for safety, performance, installation, maintenance and fitness for purpose, and covers solar PV and inverter installations. It has no role in enforcing those standards or certifying compliance. The CEC, as discussed in more detail below, has a role in managing and enforcing industry-based schemes.

Multiple organisations are involved in developing the required training packages, conducting the training and accrediting solar service providers. Australian Industry Standards is responsible for managing the Electrotechnology Training Package, which all solar installers must complete. Training is

conducted by Registered Training Organisations, such as TAFEs. Subject to completing the relevant training units, a solar service provider may apply to the CEC to become an accredited solar installer.

There are also multiple organisations that can help a customer resolve a dispute regarding solar PV. The nature of the dispute will determine which entity has scope to assist. This is discussed in more detail in the next section.

Solar PV has a number of important cross-overs into the traditional electricity industry. These include involvement by retailers in passing on, and in some cases determining, the value of feed-in tariffs. Further, the majority of PV systems are connected to the distribution network. Consequently, DNSPs also have an interest in the rooftop solar PV market to the extent that its network is affected, and their own policies will, in turn, influence the solar PV market.

Finally, the behaviour of electricity retailers and DNSPs is shaped to some extent by electricity market policies, rules and procedures. The Commonwealth Government, Australian Energy Market Commission (AEMC), Australian Energy Regulator (AER) and Australian Energy Market Operator (AEMO) all have a hand in shaping the policies and every day procedures that govern how retailers and DNSPs operate.

While each of these entities has an influence on the outcome and experience of solar PV customers, they have their own objectives, whether it be to make profit, create or enforce standards, or develop policy in a specific area. Consequently, different frameworks and approaches have not always worked in a complementary way. This can cause confusion for customers, particularly if they face unexpected difficulties when installing their system or they do not know who they can turn to help resolve disputes when things go wrong. It can also cause a disconnect between the solar PV market and the electricity market, meaning that the wider benefits of solar PV are only partially captured.

## 2.3 Customer protections

As discussed above, there are a number of different entities that a customer can turn to if they have an issue relating to their solar PV system. However, it may not always be clear to the customer which entity has the authority to resolve, or help resolve, their particular issue.

In all jurisdictions except Victoria, Western Australia and the Northern Territory, the electricity industry has its own specific customer protections known as the National Energy Customer Framework (NECF) given effect through the National Energy Retail Law (NERL) and National Energy Retail Rules (NERR). The NERL requires that anyone selling energy to customers must either hold a retailer authorisation or a valid exemption, which the AER may grant. Where a valid exemption is obtained, the retailer is not subject to the full requirements of the NECF. Similar protections are provided via jurisdictional legislations where the NECF does not apply, such as the Retail Code in Victoria.

The AER has decided that a person that sells energy to customers to supplement the energy that the customer buys from a retailer, such as energy generated by rooftop solar panels under a power purchase arrangement (PPA)<sup>7</sup>, may be eligible for a retail exemption.<sup>8</sup> As a consequence, many of the energy-specific customer protections under the NECF generally do not apply to solar customers.<sup>9</sup> Rather, voluntary industry-based schemes overseen by the CEC, combined with general consumer

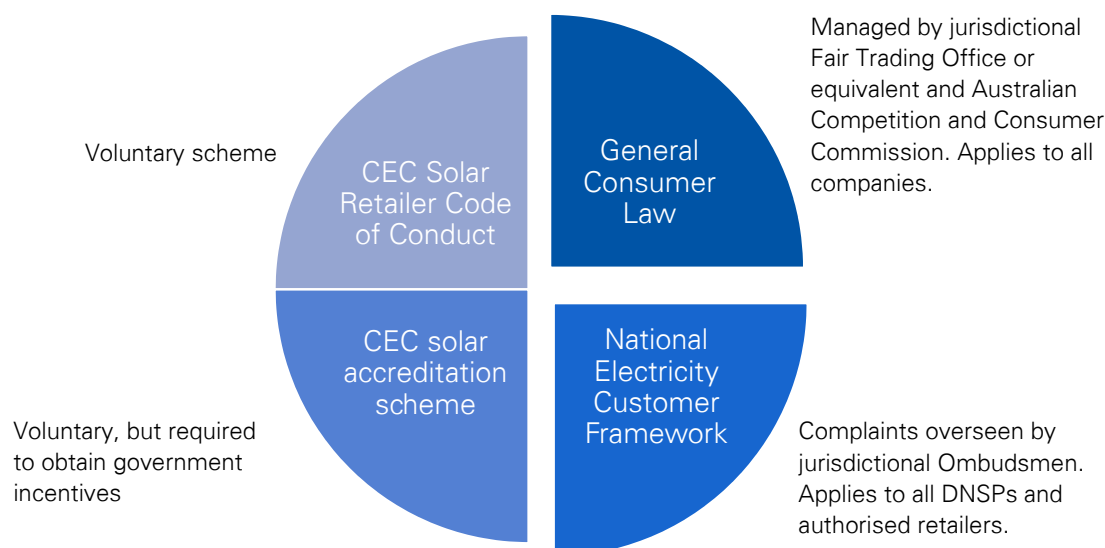
<sup>7</sup> A power purchase arrangement is a financial arrangement in which a business provides, installs and maintains, at no initial cost, an electricity generation system at a customer's premises and in exchange, the customer buys the energy generated for an agreed period.

<sup>8</sup> AER, (Retail) Exempt Selling Guideline – version 4 – March 2016, p6.

<sup>9</sup> Other than in their capacity as a grid-connected electricity customers that purchases electricity from the grid through an authorised retailer.

law, generally govern the protections available to customers. There are a number of exceptions, where the issue relates to an authorised energy retailer or a DNSP and is therefore governed by the NECF.

**Figure 4: Customer protections for solar PV customers**



### 2.3.1 Role of the CEC

The CEC manages the industry-based schemes. It has a role to:

- approve accreditation for individual solar designers;
- approve accreditation for individual solar installers; and
- manage the Solar Retailer Code of Conduct.

All installers must be accredited by the CEC for their customers to be able to take advantage of government subsidies and schemes. Accredited installers must abide by the Accreditation Code of Conduct and, through this Code, the CEC's System Design Guidelines. These are described in more detail in Appendix A. The intention of the Code and Guidelines is to guide the behaviour of accredited installers and designers, as well as the standards to which they design and install solar PV systems.

The CEC deals with complaints involving a breach of the Accreditation Code of Conduct as well as Australian Standards relating to solar PV system installation. Issues generally cover faulty or poor workmanship such as faulty wiring and labelling, and the use of modules and inverters that do not meet the Australian Standards. The CEC will only investigate complaints where the system has been installed within the past two years.

The Solar Retailer Code of Conduct is voluntary, and only approximately 5 per cent of solar retailers have signed up.<sup>10</sup> The CEC will consider complaints where an Approved Solar Retailer has breached the Solar Retailer Code of Conduct. It has no jurisdiction over solar retailers that have not joined this scheme.

<sup>10</sup> MEFL, Energy Consumers Australia – Experience of Solar Consumers, 10 October 2016, p12.

## 2.3.2 Role of jurisdictional Fair Trading Offices

The jurisdictional Fair Trading Offices (or equivalent Government entity) enforce safety standards and can assist with the resolution of installation issues that are covered by warranties and guarantees. These Offices provide advice when a customer has a complaint regarding a solar product or installation of a solar product. Typically, they recommend the customer attempt to resolve the dispute with the retailer or installer first. However if no resolution is able to be reached, the Government provides an informal mediation process followed by a formal, court orientated resolution. The Office of Fair Trading (or state's equivalent) can negotiate on a customer's behalf and arrange mediation if required.

As an example, the Fair Trading Office of NSW provides a proactive consumer checklist to help customers avoid solar PV disputes.<sup>11</sup>

If the checklist has been followed and a dispute arises or cannot be resolved with the installation electrician or building, the customer has several options:

- First, a customer is afforded statutory protection by way of warranties and consumer guarantees. Installations are covered by statutory warranty for a period of 2 years and Consumer Law provides guarantees.
- Second, if a dispute cannot be resolved between a customer and a builder / electrician or they refuse to provide relevant certification for their work, the customer may lodge a formal complaint with the Office of Fair Trading.
- Finally, if the dispute cannot be resolved with the assistance of the Fair Trading's dispute resolution team, then either party may lodge an application with the NSW Civil and Administrative Tribunal.

## 2.3.3 Role of the Ombudsman

Jurisdictional Energy Ombudsmen can assist in resolving complaints that relate to an authorised electricity retailer or a DNSP. This includes issues such as connection and metering problems or the application of the feed-in tariff.

The capacity of the Ombudsman to assist is similar across all NEM jurisdictions. The Ombudsman can assist by facilitating contact between a customer and their supplier, investigating the circumstances that led to the complaint or trying to negotiate a settlement or resolution between the customer and supplier. The Ombudsman has the power to make an independent binding decision without interference to resolve matters where applicable.

Solar retailers are not captured by this scheme unless they are also an authorised retailer operating under a single entity. This has led to a number of existing authorised retailers, such as Origin Energy and AGL, setting up separate entities from which they provide solar and other energy services so they are subject to the same requirements as exempt solar retailers.

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<sup>11</sup> This includes: ensure the contractor was properly licensed to undertake the work. Details should be provided on the contract and Certificate of Compliance for the solar work completed by a builder or electrician; ensure that the solar panels comply with Australian wiring requirements. This is provided on the Certificate of Compliance for Electrical Work; engage expert advice from a qualified electrician accredited with solar panel installation training. The Clean Energy Council can provide an independent inspection by a qualified electrician; and Check whether home warranty insurance was provided. If the value of work and materials exceeds \$20,000 a Home Warranty Insurance certificate should be provided.

# 3 Value proposition of PV

There are a number of financial benefits from installing solar PV. These are derived from government incentive schemes, such as feed-in tariffs that provide a payment for generation that is exported, and savings in a customer's electricity bill from avoiding importing electricity from the grid. Determining the savings available to a customer from installing solar PV is a complex exercise that depends on a number of factors.

Once installed, the incentives on a customer to shift their consumption to a different time of day will depend on the level and structure of their retail tariff relative to the payment they receive for exporting electricity. In principle, all new solar PV customers have a financial incentive to align their consumption patterns to the times during the day when solar PV output is maximised. However whether customers respond to this incentive will depend on the information provided, whether the customer has the ability to shift their consumption and their preference to do so.

Under current regulatory arrangements, solar PV customers are rewarded by the volume of their electricity generated and not by when during the day the electricity is generated. There are current reforms being progressed to network tariffs which may result in a time of day incentive to solar PV customers. However, the effectiveness of these tariffs rely on the underlying structure of the network tariff being incorporated in retail price structures and the necessary metering technology to implement those tariffs.

This chapter explains the financial value proposition for customers to install solar PV and the incentives governing how customers can utilise and maximise the financial value of their system. As explained in chapter 4, customers will install solar PV for a wide range of reasons, including non-financial considerations. However, the impact of solar PV on market efficiency will depend on how the policy and regulatory frameworks compensate solar PV customers for the market benefits which, in turn, influences the financial value proposition for installing PV.

## 3.1 Financial Value for customers

### 3.1.1 Financial benefits from solar PV

The financial returns for residential customers will depend on a combination of different factors. The value of solar PV is often marketed, and understood by consumers, in terms of the payback period, ie, how long it takes for financial returns to pay off the initial costs of installations.<sup>12</sup> The length of the payback period will depend on the upfront installation costs of the solar PV system, including any required grid connection and metering upgrade costs, relative to:

- the Commonwealth Government's subsidy under the SRES, which effectively provides an upfront reduction in the cost of installation;

<sup>12</sup> There are two possible ways to calculate payback periods – a simple approach based on the absolute values in each year or a discounted approach based on a net present value calculation. While discounted approach is more accurate, it is suspected that most customers will make decisions on the simple approach to evaluating payback.



- FiT payments for solar PV generated and exported to the network (either through a Jurisdictional Government mandated scheme or a retailer scheme); and
- savings in a customer's electricity bill.

The first two sources of return are relatively certain and straightforward to predict for solar PV installers, who would then translate those returns into their marketing for customers. Savings in electricity bills resulting from a reduction in energy imported from the grid will likely be the biggest component to the financial value for new installations. The value of these savings is equal to the net reduction in energy consumed at the household multiplied by the applicable level of retail electricity volume based tariff.<sup>13</sup>

Energy bill savings may be difficult to accurately predict as it will depend on the following factors specific to the individual customers.

- the configuration of the solar PV installation in terms of size and location as this determines energy generated and the time of generation;
- the level and structure of retail tariffs; and
- the consumption patterns of the customer, and whether the customer changes its consumption behaviour following the installation.

Solar PV installers are likely to make simple assumptions and generalisations on these factors when converting the investment into a payback period.

The level of solar PV generated will primarily be driven by size of the installation and the geographical location (in terms of solar radiation). The specific conditions under which the installation occurs — for example, available roof space, the presence of shade, roof tilt and the direction the PV array faces — will also impact on the volume of electricity generated.

The time of day when solar is generated is important as the financial value will depend on the alignment between the timing of solar generation and consumption within the household. Savings in avoided energy imported from the grid occur when the household is consuming the electricity produced by the installation. Electricity generated that is surplus to immediate needs is exported and the customer rewarded through the feed in tariff. Both contribute to reducing the energy bills.

For this reason, the difference between the variable component of the retail tariff and the feed in tariff will determine the value to the customer from consuming its solar PV output (self-consumption) and hence the incentive on the customer to shift its consumption to align with the solar PV output.

For most customers, the variable component of their retail tariff will be around 15 cents to 25 cents per kWh higher than their feed-in tariff and hence the customer has the incentive to shift its consumption to the middle of the day to better align with the solar PV maximum output period. However this is not the case for those customers on a net premium feed in tariff where the feed-in tariff is actually 20 to 30 cents per kWh higher than the variable component of the retail tariff. In such circumstances, the customer has the financial incentive to maximise exports and therefore to shift consumption away from the middle of the day when solar PV output is greatest. This incentive is explained further in section 3.3.1 below and the implications for market efficiency discussed in chapter 9.

In summary, the capability of a consumer to maximise the financial value from the investment in solar PV will depend on the alignment of their consumption with the output of the solar PV. This will vary

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<sup>13</sup> Residential electricity tariffs are (currently) generally made up of a) a fixed price that typically applies on a daily basis and is independent of the amount of electricity consumed; and b) a variable volume tariff (also referred to a "usage" or "energy" charge) for each unit of electricity consumed.

by household characteristics and it may not be possible to shift consumption to the middle of the day. It will also depend greatly on the information provided and incentives facing customers.

For example, while the customer may have strong knowledge of the maximum output capacity of its installation, he/she may not have the skills to express solar PV output in terms of household appliance use (eg dishwashers, air-conditioners, TVs). Also there will always be a proportion of customers who will not actively engage with such decisions regarding how to maximise the value of their installations and therefore will not consider how to shift their consumption.

This incentive to align consumption with the times of maximum output may not be consistent with maximising the market efficiency benefits from solar PV installations. Market benefits depend on the ability of solar PV installations to dampen peak consumption across the market. The period when the distribution network is at greatest peak is often in the late afternoon and not in the middle of day. This misalignment between consumer incentives and market efficiency is explored in chapter 9.

### 3.1.2 Financial costs and payback period

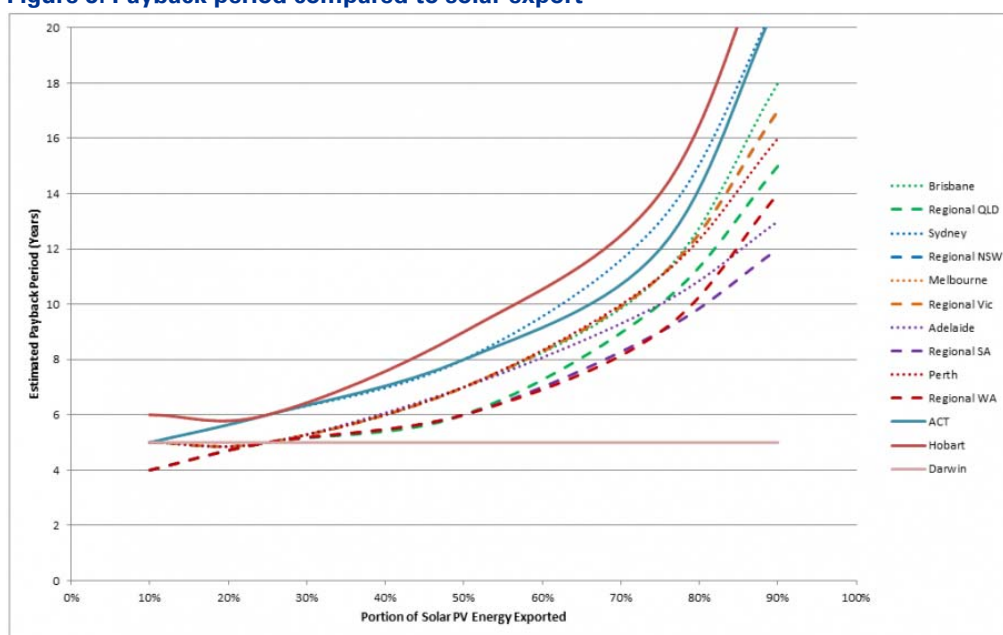
Costs will be mostly driven by the size of the installation and the costs of installation. The price of an installed system will depend on the installer, the design of the system, date of installation and the level of competition in the market.

There are potentially some hidden costs which the customer is not aware of or does not consider when making the purchase. These include: the costs of maintaining the installation (although these should not be high); the need to replace the inverter (usually around 10 years after installation); and the potential for the retailer to change the tariff structure when the customer installs solar PV.

Given these cost drivers, it is not straightforward to assume that amount of the financial value is directly dependent on the size of the installation. A bigger installation does not necessarily mean greater returns and a shorter payback rate.

This is supported by the analysis in Figure 5 which shows this relationship between payback period and the volume of exports for customers that are not on premium FiT rates.

**Figure 5: Payback period compared to solar export**



Source: Moyses, Damien, *Solar Payback: Smaller is better*, Business Spectator, 24 September 2013.

This chart demonstrates that the estimated payback period increases as the percentage of solar PV energy exported increases.<sup>14</sup> Therefore where a greater share of output is exported instead of consumed, the payback period will be longer. This means that to minimise the payback period, customers should match the size of their system as closely as possible to their daytime consumption levels.

The remainder of this chapter explores two aspects of the policy and regulatory framework which impact on the financial value from solar PV installation and therefore can influence consumer behaviour. Before doing so, the next section briefly explains that there are different types of customers based on the technology that they currently have in place. These different customers will have different incentives when it comes to changing tariff types and behaviours.

### 3.1.3 Different customer types

Before discussing the different influences on the value of solar PV for customers, it is important to note that there are broadly three customer types:

- potential solar PV customers that do not currently have solar PV;
- existing solar PV customers that do not have a smart meter and therefore cannot take advantage of certain tariff types without incurring additional costs; and
- existing solar PV customers that have a smart meter and therefore may have access to wide range of tariff types.

The value of solar PV to each of these customers, and the potential change in value associated with a change in tariff, may differ.

For example, potential solar PV customers will likely need to upgrade their meter at the time they install solar PV. There would be a small incremental cost to installing a smart meter rather than the required bi-directional meter with less functionality, which would enable them to access a wider range of tariffs that may increase the value of their solar PV. On the other hand, existing solar PV customers that do not currently have a smart meter will incur the full cost of installing a new meter in order to access different tariffs. The costs for these types of customers associated with upgrading their meter may outweigh any benefits associated with changing their tariff.

Each of these customer types should be considered when identifying the incentives on customers in relation to their consumption behaviour.

## 3.2 Retail Tariff level and structure

Currently, residential electricity prices generally comprise of a fixed (standing) charge and a variable charge for each unit of electricity consumed. Such tariffs are referred to as two part tariffs. Some retail offers have only one price for the variable component. Others are structured such that the first block of energy is charged at a different price to subsequent blocks of consumption (i.e. inclining or declining block).

Different tariff structures are emerging at both the retail and network level. This is due not only to the recent reforms to promote more efficient network tariffs but also driven through more diversification in retail products as retailers offer new products (e.g. Powershop, Mojo Energy). Table 1 provides an overview of the different structures and general implications for solar PV customers. It is possible

<sup>14</sup> This chart is from 2013 and therefore may no longer accurately reflect system costs and therefore payback periods

that the retail tariff could combine elements of different tariff structures, for example, a demand tariff and a variable charge.

**Table 1: Tariff design structure options and implications for solar PV customer**

<b>Tariff Design</b>	<b>Description</b>	<b>Implication for solar PV customer</b>
<b>Time varying tariffs</b>	<p>Time varying tariffs are tariffs which differ during the time of day when electricity is consumed. Their objective is to incentivise customers to shift consumption away from peaks by charging higher rates at peak time.</p> <p>A time varying tariff can be designed in a number of ways. The most common categories of time-varying rates are Time-of-Use (ToU), Critical Peak Pricing (CPP), Peak Time Rebates (PTR)<sup>15</sup>, and Real Time Pricing (RTP).</p>	Such tariffs could provide greater rewards for solar PV customers depending on the alignment of the solar PV output and peak periods where rates are highest.
<b>Capped Usage Allowance tariff</b>	<p>Horizon Power is piloting a new tariff whereby customers have an allocated usage allowance during the peak period and are provided with a financial incentive to use less electricity during this time.<sup>16</sup> This can be considered to be a variation on a time varying tariff, where the rewards and penalties are made more explicit and easier to understand.</p>	Solar PV customers will have a greater reward when they align their consumption with solar PV output and minimise their net consumption during the peak period.
<b>Demand Tariffs</b>	<p>A demand tariff is based on a customer's maximum kW demand over a specified time period – for example, the monthly billing cycle. It is typically based on the customer's maximum demand across all hours of the month or on their maximum demand during peak hours of the month, or sometimes on both.</p> <p>Demand tariffs for residential customers are expected to be introduced in 2017, except in NSW.</p>	The implications for a solar PV customer will depend on how the demand tariff is calculated and the ability of the solar PV to reduce the maximum demand during the charging period. If the maximum demand occurs at night or during a day whether solar output is low (due to weather) then there is little difference for the solar PV customer compared to a non-solar PV customer under a demand tariff
<b>Wholesale price pass through products</b>	<p>New retail products are emerging which provides residential customers with access to wholesale prices or more flexibility in how to purchase electricity</p> <p>Currently such products are being offered by Powershop and Mojo Energy and are available to solar PV customers</p>	Such products could benefit solar PV customers through the greater flexibility and ability to structure their electricity purchases to best align with their solar PV output and consumption patterns

Any comparison between the tariff structures options presented in table 1 and current two part tariffs must also assess any difference in the fixed charge component. The fixed charge component does not vary with generation or consumption, and potential savings from changing tariff structures from volume based charges to time of use or demand tariffs could be offset if such tariffs contained a higher fixed charge. Generally any increases in the proportion of tariffs recovered through the fixed charge will diminish the value of the solar PV installation.

<sup>15</sup> While not strictly a time varying tariff, PTRs provide an incentive for customers to reduce their demand at peak times.

<sup>16</sup> See <https://www.horizonpower.com.au/about-us/our-projects/power-ahead-research-pilot/>

Some customers may also be on a time of use retail tariff structure. Time of use offers vary the variable charge by different periods of the day and provide consumers with the opportunity to save on their electricity bills by consuming electricity during cheaper 'off-peak' periods.<sup>17</sup> Such pricing structures are more closely aligned to the costs of providing consumers with electricity services, thereby providing consumers with the option of reducing their peak demand to save money, or continuing to use electricity at those times when the value they place on that use outweighs the costs.

Generally solar customers stand to benefit more by shifting from a flat offer to a retail time of use offer than consumers who do not have solar, even before shifting their consumption.<sup>18</sup> This is because solar generation offsets some of the relatively more expensive peak and shoulder consumption for time of use consumers, while allowing them to benefit from cheaper off-peak consumption.

However the extent of any additional savings from moving to a time of use tariff compared to a flat tariff (all other factors remaining the same) will depend on the structure of the time of use offer. We note that the typical structure of retail time of use offers varies between jurisdictions and network regions, with differences in the length of peak period, and the potential saving from shifting consumption from peak and off-peak. In some jurisdictions, such as South Australia, the length of the peak ranges from 42 percent to 58 percent of weekly hours while in NSW, the length of the peak period varies from 6 percent to 21 percent of total weekly hours.

In principle the ability of a solar PV customer to opt into a time of use retail tariff offer will improve the financial returns from the solar PV installations.<sup>19</sup> There is still a financial incentive for solar customers to shift consumption to align with the solar PV generation maximum periods, which could overlap with the retail offer peak period, although the time of use structure diminishes that incentive. This incentive is different to customers without solar installations where moving to the time of use retail tariff structure provides an incentive to shift consumption to non-peak periods.

From a market efficiency perspective, there are two observations to note regarding retail tariff offers:

1. Solar PV installations are not required to have interval metering capability. Outside of Victoria, current rules only require solar PV installations to have bi-directional metering capability. To date, this has constrained that value that solar customers can obtain from their systems. Metering issues are discussed further below.
2. The structure of retail tariff offers influences the incentive for solar PV customers to align consumption with the periods when solar PV output is highest. Therefore tariff design has a role to play in addressing alignment between consumer incentives and market efficiency. As discussed above, this matter explored further in chapter 9.

Another market observation is that some retailers do not make all of their offers available to solar households. There may be a wide range of reasons for this and this report has not explored this matter.

### 3.2.1 Structure of network tariffs

The structure of the fixed and variable charges in a retail offer is influenced by the structure of the underlying distribution network tariff, which also includes fixed and variable charges. Distribution

<sup>17</sup> Typically these periods are classified as 'peak', 'shoulder' and 'off-peak' periods.

<sup>18</sup> This holds true where there are no cross-subsidies between customers on flat tariffs and those on time of use tariffs. In some network areas, customers on flat tariffs are able to access a cheap, legacy network tariff which is no longer open to new customers. There is a possibility that customers on these legacy tariffs will be better off remaining on a flat tariff.

<sup>19</sup> This analysis assumes a flat feed in tariff structure. A time of use feed in tariff structure could change this finding.

network tariffs tend to account for between 20% and 40% of retail offers, depending on the jurisdiction.

The structure of distribution network tariffs is currently the subject of reforms, following the AEMC Rule change on distribution network tariffs. This introduced obligations on distributors to structure their tariffs to reflect better the efficient costs of network services so that customers can make more informed decisions about their electricity usage.<sup>20</sup> New tariff structures are required to be implemented in 2017.

Expected changes to network tariffs are likely to have implications on the financial return earned by solar PV customers and the incentives driving consumption patterns. This section briefly explores a number of potential changes:

1. **A shift away from volume charges to higher fixed charges:** Under current tariff offers, volume based charges tend, on average, to account for around 80% of the total bill. Changes to network tariffs to recover a higher proportion of costs through fixed charges will likely be fed through to higher fixed charges in retail offers. This will decrease the financial value for solar PV installations given that the customers are required to pay the higher fixed charge irrespective of network usage levels. This will also impact on the viability of additional investment in battery storage as discussed in chapter 10.
2. **Introduction of demand charges:** Most of the distribution business are proposing to introduce a demand tariff in addition to the fixed and volume based charges. A demand charge is based on a customer's maximum kW demand over a specified time period – for example, the monthly billing cycle. These charges would change customers' incentives by encouraging them to consider reducing the maximum energy they take from the network during the peak period, as distinct from lowering their average consumption over a peak period as they would under a time of use energy charge. Even if a customer still uses the same total energy, they would benefit financially if they can reduce their maximum peak demand.

For solar PV customers, demand charges make the financial return consideration more complicated. As explained above, under volume charges, the incentive is to maximise consumption at times when solar PV output is greatest in order to minimise the volume of electricity which the customer purchases from its retailer. Under demand charges, a solar PV customer's incentive is to minimise its peak consumption during the peak charging period. There is still an incentive to shift consumption to align with solar PV output, however the customer may not receive the benefit of this if having solar does not impact on its peak consumption which could be during times when solar PV output is lowest (i.e. evening, or a cloudy day).

3. **Critical peak day pricing –** Under a critical peak day price, the network business is able to notify customers of a temporary large price increase which will apply on a limited number of critical days when the system demand is at its highest. Notification is usually provided 24 hours in advance of the critical day and the customer is incentivised to minimise their electricity consumption or seek alternative supply sources between the nominated peak period (eg 2pm to 6pm). Under this tariff design, the value of solar PV is through its contribution to reducing the customers' consumption on the nominated days. Similar to demand charges, a solar customer may not benefit from this if their solar PV is not generating at the time of the nominated peak period. This option may therefore present increased risks to customers, due to the relatively high critical peak price that would be incurred if their solar PV was not generating during the critical peak period.

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<sup>20</sup> Details of the AEMC's Rule change are available at - [www.aemc.gov.au/Rule-Changes/Distribution-Network-Pricing-Arrangements](http://www.aemc.gov.au/Rule-Changes/Distribution-Network-Pricing-Arrangements)

How retailers represent the changes to network tariffs in their offerings to customers could influence the impact on solar PV customers and affect the choices customers make. Retailers will have their own commercial and regulatory factors to consider in this regard.

Some network businesses are proposing the changes in tariffs to be voluntary, while other changes will be applied to all residential customers. Some changes could diminish the expected financial returns which the customer based its decision to install solar PV on and therefore extend the payback period. It will be important that there is sufficient engagement with customers to help them understand and adapt to the changes.

The changes to distribution network tariffs are currently being considered by the AER. The role of retail tariff structures in promoting the efficient combination of battery and solar PV installations is discussed in the ATA report. The ATA's analysis is discussed in section 10.

## 3.3 Incentives to encourage solar uptake

All jurisdictional governments and the Commonwealth Government implemented schemes to encourage the uptake of rooftop solar PV by residential customers to support renewable energy targets. There were two main mechanisms for this:

- State based Feed-in Tariffs (FiTs); and
- small-scale technology certificates (STCs) provided under the Commonwealth Government Renewable Energy Target scheme. This replaced the Commonwealth Government's earlier Solar Homes and Communities Plan, which provided a rebate for solar installs.

### 3.3.1 Feed-in tariffs

FiTs are a payment to a customer for generating electricity, paid per kWh. The type and level of FiT differs between jurisdictions and has reduced over time. As a consequence of these changes, different FiTs now apply to different customers, depending on when they installed solar PV.

There are effectively two different categories of feed in tariffs:

- Government Scheme Premium FiTs; and
- retailer FiTs.

To encourage the adoption of solar installations, jurisdictional governments offered premium FiT rates, which were significantly higher than the wholesale cost of electricity. These rates are subsidised through distribution network charges and recovered across all customers in the jurisdiction. While these premium FiT schemes are now closed for new entrants, existing schemes have been grandfathered and so customers will continue to receive the premium rate until the scheme terminates.

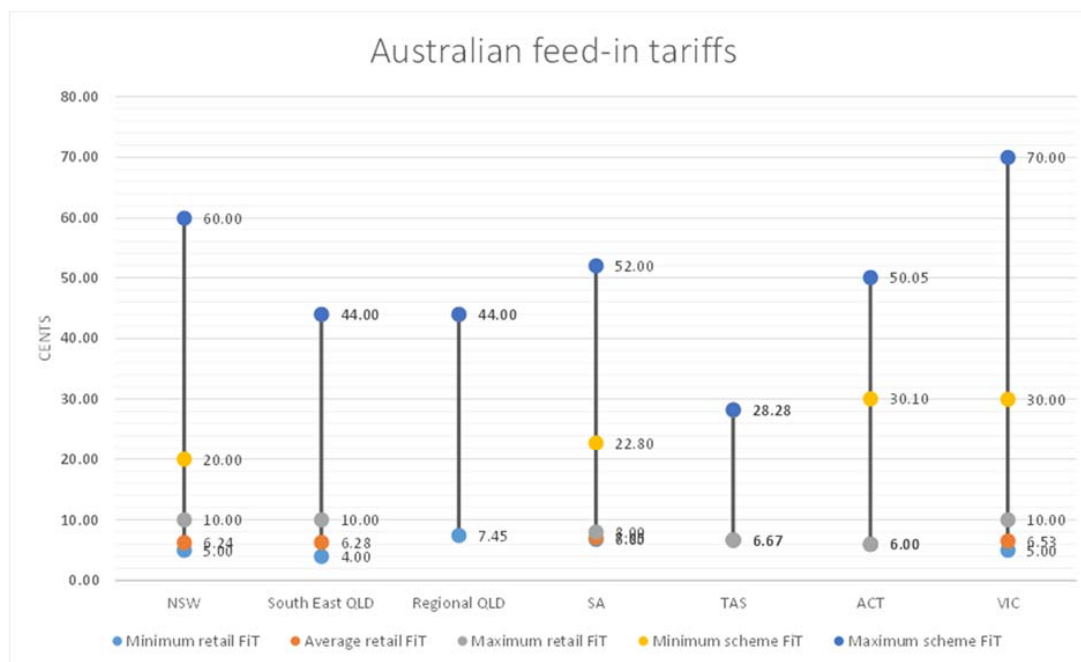
As discussed in section 2, these premium rates were highly effective in fostering uptake of solar PV installations. In response to the success of these schemes, most jurisdictional governments closed eligibility for new entrants from 2011 onwards. Since then, new installations have been able to qualify for schemes available from their retailer. Generally these schemes provide a tariff payment that is equivalent to the avoided cost of supply due to the operation of a rooftop solar generator and are significantly lower than the government schemes premium rates. These retailer schemes can either be regulated where the jurisdictional regulator sets the minimum rate that retailers must offer, or competitive, where retailers are free to offer their own rate in competition with each other.



As part of a package of energy market reforms endorsed by the Council of Australian Governments (COAG) on 7 December 2012, COAG agreed to a revised set of National Principles for Feed-in Tariff Arrangements. These arrangements were amended to provide for all forms of micro generation technologies, including household solar PV, to be offered a fair and reasonable tariff for any energy that is exported.

Figure 6 shows the current range of FiTs available in each jurisdiction and demonstrates the gap between the closed premium rates and retail rate.

**Figure 6: Range of feed-in tariffs available by jurisdiction**



Source: KPMG analysis of FiT levels

The level of FiTs has changed dramatically since the introduction of Government premium schemes. As a result of these changes:

- some customers now, or will, face different FiTs compared to when they installed the system;
- two customers with the same system could face very different incentives regarding how they maximise the value of their system (one on premium, one on market); and
- the rolling back of premium schemes in New South Wales, South Australia and Victoria at the end of 2016 will impact on the net electricity bills of the affected customers. It is estimated by the ATA that 275,000 customers will be affected by these changes with the largest impact in NSW, where customers' payments for solar generation could reduce by up to \$4,000.

These changes could lead to confusion for customers seeking to maximise value from their system. For example, a customer that installed its system while on a net premium FiT has an incentive to export as much of its generation as possible by shifting their consumption to the evening or overnight. Conversely, once they come off a premium FiT, their incentives switch to consuming as much of their own generation as possible, implying that they would shift their consumption to during the day. As discussed in section 8.2, evidence suggests that many customers may not fully understand these implications.

Table 2 provides a summary of the premium schemes which were introduced by the jurisdictional governments and also explains the current approach to FiTs for residential customers. Further information is provided in Appendix B.

**Table 2: Summary of FiT arrangements by jurisdiction**

Jurisdiction	Government Premium Scheme <sup>21</sup>	Current approach to FiTs
ACT	Pre July 2011 customers receive a gross rate between 30.1 and 50 cents per kWh depending on date of connection and capacity. Rates will be paid for 20 years from installation	Rates for new installations are set competitively by retailers
NSW	Scheme ends on 31 December 2016. Pre April 2011 customers received either gross 60 cents or 20 cents per kWh depending on date of installation	Rates are competitively set by retailers with the regulator setting a recommended (non-binding) benchmark range.
NT	No scheme has been provided	Retailers operate a buyback scheme voluntarily. <sup>22</sup>
QLD	Pre July 2012 customers will continue to receive a net 44 cents per kWh until 2028 subject to continuing to meet eligibility requirements	In South East Queensland, retailers offer customers with new installations competitive rates. In regional Queensland, retailer minimum rate are regulated.
SA	Customers between July 2008 and Sept 2011 receive 44 cents per kWh until June 2028. Customers who installed between Oct 2011 and Sept 2013 received 16 cents per kWh until Sept 2016	For new installations, there is a minimum rate which is set by the regulator
TAS	Customers in Tasmania could apply for the Transitional Legacy Tariff until August 2013. This scheme pays 28.283 cents per kWh until December 2018	For new installations, the regulator sets the regulated rate each year.
VIC	3 schemes were available depending on time of installation. The standard and transitional schemes end on 31 December 2016. The Premium schemes applied to installations between Nov 2009 and Dec 2011 and customers received 60 cents per kWh until Nov 2024.	Regulator sets minimum retailer FiT for new solar installations. This rate must be offered by retailers with more than 5000 customers.
WA	Customer installations between July 2010 and August 2011 receive 40 cents per kWh while installations after August 2011 receive 20 cents per kWh up to a capacity cap. Under the scheme, eligible customers receive the payment for 10 years from installation.	Retailers must offer new installations a buyback rate. Terms and conditions of the buyback scheme are reviewed by the Government.

The remainder of this section explains:

- how FiTs influence customer behaviour; and
- the future direction of FiTs.

<sup>21</sup> In some States, retailers offer a top-up payment in addition to the government premium rate. For example, in Victoria as of 19 February 2015, some retailers offer a 'top-up' of 8 to 10 cents per kWh.

<sup>22</sup> As of January 2016, Jacana Energy offers an energy flat buy-back rate of 25.54 c/kWh for residential consumers

## Interactions between feed in tariffs and consumer behaviour

The design and levels of the FiT payments will impact on customer consumption behaviour and hence the potential efficiency benefit to the market from solar PV installations. This section briefly explores how the design of the FiT will change the value proposition for solar and whether the behavioural incentives regarding consumption would result in market efficiency. By this we mean, whether the consumer is incentivised to install a solar PV system that is configured to align generation with existing consumption patterns, or shift consumption to align with its solar PV output generated over the course of a day.

### *Net versus Gross Payments*

There are two types of payment mechanisms, 'net' payment and 'gross' payment. These different types of payments require different metering configurations for measuring generation and consumption, however there is no impact on the flow of energy. That is, whether a customer has a 'net' or 'gross' payment will not influence whether the energy flows into the home or network.

A net versus gross metering arrangement has significant implications for the level of financial benefit that households receive from their solar PV investments. Under a net FiT,<sup>23</sup> the customer receives a payment only for the surplus energy that is exported to the grid from their solar PV unit. However under a gross mechanism, the customer receives the payment for every kWh produced regardless of how much of the solar generated electricity is used by the household and how much is fed back into the grid.

The difference between a net and gross payment mechanism will impact on customers' behaviour. Under a net payment the customer is incentivised to minimise personal consumption during the times of the day when the installation is producing the most electricity. However under a gross mechanism, there is no incentive on the customer to change its behaviour. Where the retail rate is higher than the FiT rate, customers on net payments have increased returns compared to gross payment customers because under the net scheme, customers avoid paying the retail rate and get the value of consuming their own energy.

Whether such behaviour promotes market efficiency and saves system costs will depend on the alignment between the times of the day when the solar production is highest (and hence the incentive to defer consumption is greatest) and the times of the day when the system is at peak demand. This issue is discussed further in chapter 9 when the report explores the impact of solar PV installations on network costs.

In Australia, the majority of FiT schemes operate under a net payment mechanism, with the exception of NSW and ACT government premium schemes which operated on a gross payment mechanisms. These schemes have been closed to new installations since the middle of 2011, and the NSW Solar Bonus scheme will end on 31 December 2016, with customers reverting to the retailers' net payment schemes.

### *Customers on Premium Feed in Tariff Rates*

The financial return to consumers from maximising their export is increased if the customer is on a subsidised net premium rate as compared to a retailer FiT. As shown in figure 6, the difference between these rates is substantial at around 40 to 60 cents per kWh. This difference reflects the extra value to consumers from deferring consumption away from times when solar generation is at

<sup>23</sup> There are different variants of net metering. For example, the FiT could apply to total energy produced less total energy consumed. This is the case in the Northern Territory. Alternatively, where customers may have two separate retail tariffs (for example in Tasmania, where customers have one tariff for light and power and a different tariff for heating and hot water), export may be netted off only one of these elements. These different arrangements will have different implications.

the highest compared to consumers on retailer offered rates and for those customers, there is a possibility that the premium FiT rate is more than the variable component of their retail tariff.

This applies to those customers on high premium net rates such as Victoria, Queensland and South Australia. Whether such behaviour promotes market efficiency and saves system costs will depend on the alignment between solar production and the system peak. It also depends on the customer's response to higher returns. Higher returns should, in theory, provide a greater incentive for customers to maximise their export. However, some customers may prefer to "set and forget" and instead see the higher returns overall as a reason to be less concerned about shifting their consumption.

Premium feed in tariffs rates will also impact on the incentives for such customers to install batteries and could actually act as a barrier to install such new technologies. This disincentive applies equally to customers on net and gross premium rates. There are two issues here:

- In some jurisdictions, a customer on a premium rate would become ineligible for that rate if it installs batteries. This is case in ACT, SA and Queensland. The rationale for this prohibition is that it may be impossible with the metering technology at the premises, to tell if the exported energy has solely been produced by the solar PV installation.
- In addition, there is a financial disincentive under current retail tariffs. If the premium FiT is more than the variable component of the retail tariff then the customer would lose revenue if it uses the battery to stored solar generation for later use at the premises. As explained above, the behavioural incentive on customers with premium rates is to maximise their solar exports and hence there is very little value from installing a battery to support the solar PV installation. This disincentive may change if the retail rate becomes time varying and there is value for the consumer to stored solar generated electricity for consumption at times when the time varying retail rate is highest. The issues associated with combining batteries and solar are discussed further in chapter 10.

## Future Reforms to Feed in Tariff design

A number of different reviews are exploring the question on the appropriate design and level of feed in tariff designs:

- The Essential Services Commission of Victoria (ESCV) has conducted a review into the true energy value of distribution generation, including solar PV, and whether current policy and regulatory frameworks governing the remuneration of distribution provide adequate compensation consistent with the true value.<sup>24</sup> The Victorian Government has accepted most of the ESCV recommendations including the introduction of time-of-use feed-in tariffs that align with the time blocks operating for flexible retail prices (peak, shoulder and off-peak) plus the addition of a payment to recognise the environmental and social value of distributed generation<sup>25</sup>
- The Queensland Productivity Commission has recently completed its inquiry into solar feed-in pricing in Queensland. Its recommendations are currently being considered by the Queensland Government.<sup>26</sup>

<sup>24</sup> The Essential Service Commission of Victoria initiated this review on 22 December 2015 following receipt of terms of references from the Victorian Minister. <http://www.esc.vic.gov.au/document/energy/30381-inquiry-into-the-true-value-of-distributed-generation-to-victorian-consumers-our-proposed-approach/> A final report was released on 21 August 2016.

<sup>25</sup> See more at: <http://www.delwp.vic.gov.au/energy/electricity/victorian-feed-in-tariff/esc-enquiry-into-energy-value-of-distributed-generation>

<sup>26</sup> Queensland Productivity Commission final report was submitted to the Queensland Government on 20 June 2016 and has not been released. <http://www.qpc.qld.gov.au/inquiries/solar-feed-in-pricing/>

- The Essential Services Commission of South Australia is currently considering whether or not there should be a minimum regulated retailer-paid FiT which must be paid to residential and small business electricity customers with solar PV installations.<sup>27</sup>

The focus of these reviews is to consider whether current FiT levels represent a fair price given the benefits from solar power produced by residential customers and exported into the electricity grid. This also includes whether the small scale technology certificates provide adequate compensation for environmental benefits from reducing the need for electricity from fossil fuel sources.

Currently none of the regulated FiT rates includes an allowance for any benefits to networks from solar PV generation and the Queensland and Victorian reviews are also considering the value of solar PV installations to network costs.

An important issue regarding potential reforms to FiT design is whether the rates should vary with time of day (i.e. Time of Use pricing) to better reflect the energy value from solar generation. Currently FiT payments made to solar PV customer for the electricity they export has been the same irrespective of whether that electricity is being delivered at a time of high demand or at a time when supply is in abundance.

It is worth noting that AusNet Services previously had a solar-specific network tariff for small customers with grid-connected solar PV systems up to 5kW. The tariff included an offset for electricity generated equal to the price that was paid for electricity consumed. During the summer peak period, an additional payment for excess generation was provided.<sup>28</sup> No other networks developed such a tariff, and AusNet Services has removed this tariff (with effect from 1 January 2017) to comply with new pricing principles that do not permit discrimination based on different technology types.

In addition, Horizon Power offers a FiT that varies by geographic location.<sup>29</sup> The rates are set by Horizon to reflect their cost of electricity generation and distribution in that area. This approach provides customers in areas with a high cost to serve a greater incentive to export.

Wholesale prices vary throughout the day peaking in the late afternoon. Therefore the value of electricity generated by solar PV installation to the market changes during the day. A FiT tariff design which better reflects the changing value would, in theory, provide stronger incentives on the solar PV customer to maximise net exports at the times of the day when the wholesale prices are high.

The ESCV has recommended that the current single tariff should be replaced by a framework that allows for a time and location varying FiT and that the regulated minimum FiT is expressed as a multi rate tariff aligned with the time blocks operating for flexible retail prices (namely: peak, shoulder and off-peak). This time varying feed-in tariff should be supplemented with a 'critical peak' tariff that would be paid when the wholesale price of electricity is equal to or exceeds \$300 per MWh.<sup>30</sup>

There are impediments to making time-varying export pricing workable for FiT design, notably the low presence of advanced meters with interval metering capability, as discussed below.

Another issue being considered is whether retailers will have the incentive to offer time varying FiT rates. In theory, retailers should have the incentive to minimise consumption (and hence, maximise solar PV generation) at the time of day when wholesale prices are highest as doing so will lower their costs of supply. In practice, this incentive will depend on the particular circumstances of each retailer including its business model, hedging arrangements and whether it owns any generation.

<sup>27</sup> <http://www.escosa.sa.gov.au/projects/246/electricity-retailer-feed-in-tariff-review-of-regulatory-arrangements.aspx>

<sup>28</sup> AusNet Services, Electricity Distribution, Annual Tariff Proposal 2015, 1 January 2015, p24

<sup>29</sup> <https://horizonpower.com.au/being-energy-efficient/solar/eligibility-to-install-and-buyback-schemes/>

<sup>30</sup> Essential Service Commission, The Energy Value of Distributed Generation – Draft Report, April 2016.

### 3.3.2 Small-scale technology certificates

Under the Commonwealth Government Renewable Energy Target Scheme, owners of small-scale renewable systems (i.e., solar) are able to create and sell certificates for every megawatt hour of power they generate. These certificates are labelled small-scale technology certificates (STCs).

STCs are effectively a financial incentive for both individuals and businesses to install renewable energy systems including solar, wind and hydro. One STC is equal to one megawatt hour of renewable electricity either generated or displaced by the system. However, because STCs are paid up-front the financial incentive does not reflect the actual output of a PV system. Rather, the system is deemed to generate a certain amount of energy based on its location and the deemed life of the system.

The value of an STC is subject to supply and demand conditions in the market. If owners elect, they may sell STCs on the market for an uncapped price or through a clearing house operated by the Clean Energy Regulator. The clearing house offers a fixed price of \$40 however the STCs will be only be sold on the clearing house once a buyer becomes available. Therefore, the sale may be delayed.

In earlier years of the scheme, early adopters of small generation units were incentivised by multipliers that allowed additional STCs to be created for the first 1.5kW of capacity. This was reduced over the years from a factor of 5 times (which applied between June 2009 to June 2011) and has now been phased out completely. Generally, one STC is equal to one megawatt hour of eligible renewable electricity either generated or displaced by the system. An STC can only be created within the first 12 months of installation of an eligible system.

Generally, householders who purchase these systems assign the right to create their certificates to an agent in return for a lower purchase price and therefore the STCs effectively provide a subsidy to the installer. This subsidy reduces the up-front cost of purchasing and installing a solar PV system by around 30–40 per cent on average. Further, since there is no ongoing benefit, there is no impact on customer behaviour in terms of shifting consumption.

The level of this benefit differs across the country depending on the geographical location (i.e., level of solar radiation, installation date and the expected amount of electricity that is generated in the lifetime of the system (up to a maximum of 15 years)). In Queensland, based on average solar PV system prices, the level of the SRES subsidy is between 2.8 and 2.9c/kWh for predicted generation.<sup>31</sup>

As there is no binding target for the SRES, there is no limit on the number of STCs that can be surrendered across the scheme. Any system under 100kW is eligible to generate STCs.<sup>32</sup> Under the Renewable Energy (Electricity) Act 2000, certificates can be created until 31 December 2030.

## 3.4 Metering

As discussed above, solar PV customers may maximise the value of their solar PV system by switching to different forms of retail tariffs, such as time of use tariffs. Further, different types of FiTs may evolve in the future that incentivise customers to export at certain times of day, such as during peak periods. The availability of these types of tariffs relies on a customer having the necessary metering technology to enable electricity consumption to be measured at different times of day. This is known as interval metering.

<sup>31</sup> Queensland Productivity Commission, Draft Report: Fair Price for solar pricing – Overview, March 2016. <http://www.qpc.qld.gov.au/files/uploads/2016/03/Fact-Sheet-Solar-Draft-Report-Revised.pdf>

<sup>32</sup> Systems with a capacity above 100kW are eligible for Large-scale Generation Certificates. This scheme operates on a very different basis.

Currently, Victoria is the only jurisdiction with widespread access to the necessary metering technology, following a mandate roll out of smart meters in that jurisdiction. Of the approximately 2.9 million households with access to retail time of use offers<sup>33</sup>, more than 2.75 million are in Victoria.<sup>34</sup>

Current Rules (outside of Victoria) only require solar PV installations to have bi-directional metering capability. Given that solar PV installations had to incur metering costs at the time of installation, there would only have been incremental costs associated with requiring meters to be capable of interval reading. Ensuring that solar installations have up to date metering technology would have, on average, improved the financial returns to solar PV installations and provided a platform to encourage solar PV customers to help minimise system peaks.

This issue is will be resolved from 1 December 2017, under the AEMC metering contestability change to the NER when all new and replacement meters, including those for solar PV installations, will be required to be capable of being remotely read and recording data on an interval basis. However this is a lost opportunity for existing solar customers who have to include new costs if they want to install such a meter.

This could also be an issue for NSW gross FiT customers between 31 December 2016, when the gross FiT scheme is no longer available and 1 December 2017, when the new metering rules take effect. The change in the structure of the FiT from gross to net will require some affected solar PV customers to change their meter. While the NSW Government has amended its Electricity Supply Act to facilitate the competitive roll-out of smart meters prior to the new national arrangements taking effect,<sup>35</sup> there is no requirement for any newly installed meters to be an interval read meter.

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<sup>33</sup> AEMC 2015 Residential Electricity Price Trends Final Report. In Victoria, offers with different rates for different times of the day are also referred to as flexible pricing offers.

<sup>34</sup> See <http://www.smartmeters.vic.gov.au/installation>

<sup>35</sup> Electricity Supply Amendment (Advanced Meters) Act 2016



## 4 Pre-sales

We found that the majority of customers install solar PV to reduce their energy bills or for other financial reasons. A smaller, but still high proportion of customers are seeking greater control over their energy and, related to this, greater independence. Some customers also cite environmental reasons as a factor influencing their decision to install solar PV.

However, many customers that have not yet installed solar PV face a number of barriers to doing so. The greatest barriers are faced by people who cannot afford the capital and installation costs, renters who must negotiate with their landlord to install solar PV, and apartment dwellers, who face issues around joint ownership of property.

Future uptake of solar PV is likely to be linked to the attractiveness of battery storage and changes to network tariffs, as well as reducing the barriers discussed above. Uptake of solar PV could be either tempered or strengthened by the introduction of battery storage. Some potential solar PV customers may choose to wait until battery storage becomes more cost effective and established to install solar PV, in order to avoid risks around technology becoming obsolete. On the other hand, some customers may value the additional flexibility and independence from combining solar PV with battery storage.

The impact of changes to network tariffs will depend on the extent to which network tariff structures are incorporated in retail price structures, the individual customer's consumption profile relative to network usage, and the nature of the tariff structure.

This chapter sets out our findings relating to what motivates residential customers to install a solar PV system. The findings draw on evidence from surveys and interviews conducted by UMR and MEFL, as well as from available literature both within Australia and internationally.

The chapter also considers the broader market conditions, including government policies, that have influenced customers' decisions to consider solar PV and what factors might drive the continued development of the residential solar PV market.

### 4.1 What motivates a customer to install solar PV?

In assessing the experiences and outcomes of customers it is important to recognise that not all customers are the same and, as such, they may have different expectations about how their solar PV system will perform. A customer's motivation for installing solar PV is an important characteristic to consider when exploring these differences. For example, a customer who installs solar PV primarily to reduce their electricity bills will assess the performance of their system against a different metric from a customer that has installed a system primarily for environmental reasons.

Results from the UMR survey suggest that the majority of customers install solar PV systems to reduce their energy bills. However, there is also a strong sense that customers are seeking greater energy independence. Environmental concerns, while important, featured less strongly.

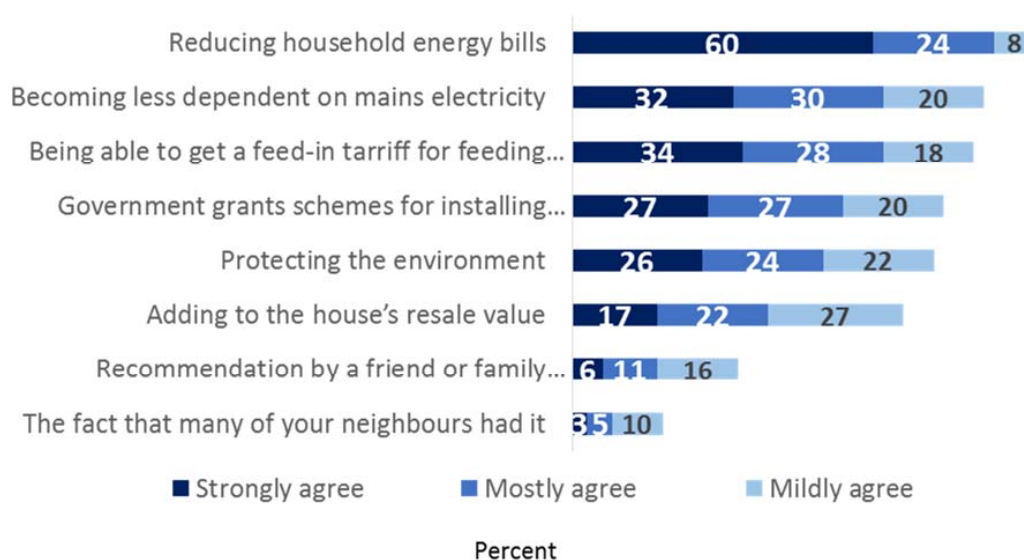
These results suggest that for the majority of customers, a lower electricity bill and reduced grid consumption are important outcomes. A smaller group of customers is less concerned about the financial outcomes, but wish to see a reduction in their carbon emissions.

#### 4.1.1 Most customers want to save money on their energy bills

To date, the main driver for customers to install solar PV systems appears to be a desire to save money on their electricity bills. Of customers with solar PV that were surveyed by UMR, 60% strongly agreed that reducing household energy bills was a factor contributing to their decision to install solar. Other financial reasons, including being able to get a feed-in tariff and government grant schemes, also featured strongly.

**Figure 7: Reasons for installing solar**

*How much have the following factors contributed to your decision to install a solar electricity system?*



Source: UMR report.

The findings from the UMR survey are consistent with other surveys, both within Australia and in the UK, that examine motivations for installing solar PV. In Australia, a survey undertaken by CSIRO<sup>36</sup> found that 70% of customers surveyed that had installed solar PV had done so primarily to save money on their power bill. A further 11% had done so to benefit from government rebates and 4% had done so to be less reliant on energy retailers.

A survey conducted on behalf of Energex, Ergon Energy and Powerlink in Queensland ("the 2015 Queensland household energy survey") also found that the primary drivers for investing in solar PV were financial<sup>37</sup>, although fewer customers felt strongly about this in 2015 (60%) than in 2014 (66%). Forty-five per cent wanted to make the most of their current feed-in tariff and 34% thought solar was a good investment.

<sup>36</sup> Romanach, L., Contreras, Z., and Ashworth, P. (2013). Australian householders' interest in active participation in the distributed energy market: Survey results. Report nr EP133598. CSIRO, Pullenvale, p21.

<sup>37</sup> Colmar Brunton, Queensland Household Energy Survey 2015, Insights Report, 11 February 2016.

Similarly, a UK study found that the key drivers for customers installing solar PV are also financial, although environmental considerations have become increasingly important since 2011.<sup>38</sup> This contrasts with the UMR research, where reputational issues appear to be becoming more important.<sup>39</sup> Of the UK customers surveyed that had solar PV, 74% installed it because the feed-in tariff represented a good investment. Just over 50% specified environmental considerations as a reason, while 44% and 37% cited rising electricity prices and feed-in tariffs making solar PV affordable as reasons, respectively.

#### 4.1.2 Customers also want energy independence

The UMR results also suggest that customers with solar PV have a strong desire for energy independence. Over 30% of customers surveyed strongly agreed that becoming less dependent on mains electricity was a factor contributing to their decision to install solar PV. A further 50% mostly or mildly agreed with that statement. This could be due in part to the sustained increases in electricity prices over the last few years, which may have led some customers to feel increasingly as though they lacked control over their energy bill.

Similar responses came through ECA's first Energy Consumer Sentiment Survey which was released in July 2016, where customers stated that the value for money of electricity services (and gas services) are significantly less than compared with their banking, water, mobile phone, insurance and internet services. Also customers are not confident that the markets are working in their interest nor than they expect outcomes to improve in the next five years.<sup>40</sup>

#### 4.1.3 Environmental concerns are also a factor, but less important

Twenty-six per cent of customers surveyed by UMR strongly agreed that protecting the environment was a factor in their decision to install solar PV. A further 46% mostly or mildly agreed.

The CSIRO<sup>41</sup> survey found that 11.7% of respondents had installed solar PV so as to reduce household carbon emissions. Environmental reasons were the fourth most common factor found in the Queensland survey.

In the UK, a survey found that just over 50% of respondents cited environmental considerations as a reason for installing solar PV.<sup>42</sup>

These results suggest that while environmental considerations are an important driver for some customers to install solar PV, the majority of customers are more concerned about reducing their electricity bills and reducing their reliance on the grid, rather than reducing their carbon emissions or protecting the environment.

#### 4.1.4 Installation cost and renting are the main barriers to solar PV

There is a cohort of potential customers that would be interested in installing solar but have concerns about the cost, or are currently renting their home and see this as a barrier to doing so.

Approximately half of the respondents to the UMR survey that had not installed solar had considered getting solar. A further 37% had not given any serious thought to it, while 12% had rejected the idea.

<sup>38</sup> Purple Market Research, Final Report to Citizens Advice: A review of consumer experience of solar PV systems, June 2015, p22.

<sup>39</sup> UMR, Usage of solar electricity in the national energy market, A quantitative study, July 2016, p.14.

<sup>40</sup> Energy Consumer Australia: Energy Consumer Sentiment Survey Findings, July 2016

<sup>41</sup> Romanach, L., Contreras, Z., and Ashworth, P. (2013). Australian householders' interest in active participation in the distributed energy market: Survey results. Report nr EP133598. CSIRO, Pullenvale, p21.

<sup>42</sup> Purple Market Research, Final Report to Citizens Advice: A review of consumer experience of solar PV systems, June 2015, p22.

Of those that had considered installing solar PV or had rejected the idea, the main drivers were the same as for those respondents that had installed solar; that is, to reduce household energy costs and to reduce dependency on mains electricity.

The cost of installation appears to be the main barrier to respondents installing solar PV. Approximately a third of customers surveyed that do not have solar PV consider it to be too expensive to install.<sup>43</sup> This is consistent with research conducted by Newgate Research (Newgate) on behalf of the AEMC regarding new and emerging technologies. Newgate's report for the AEMC found that the upfront financial outlay was a large barrier for many.<sup>44</sup> Newgate also found that some customers see the reduction in solar rebates as an example of energy providers and/or the government hampering the uptake of technology.<sup>45</sup>

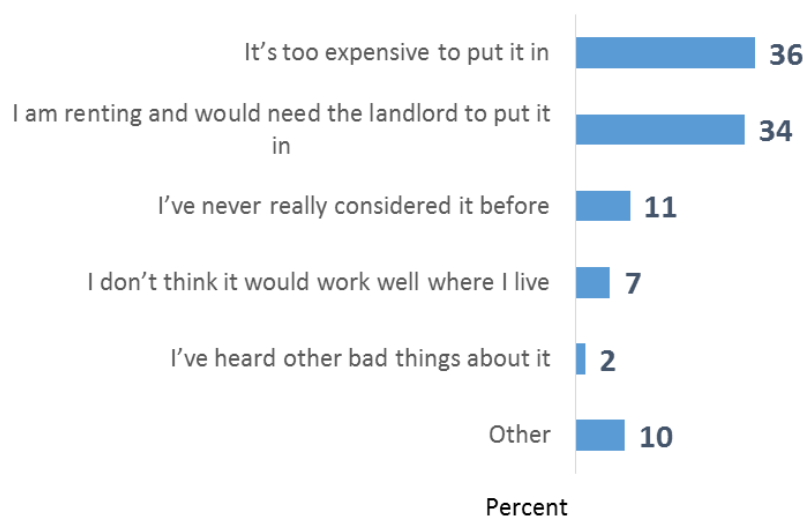
Another third of respondents to the UMR survey were renting their home and cited this as the main barrier to installing solar PV. Again, this is consistent with the Newgate's research for the AEMC, which found that renters assumed that their landlords may not allow solar to be installed.<sup>46</sup>

However, living in a rental property was not a barrier to some customers arranging for solar to be installed at their property. Sixty-one per cent of renters with solar PV had it installed after they moved in. Interestingly, 40% of renters said that they made the decision to install the system.

These results suggest that although renting may present a barrier to many householders, there is at least a small group of customers that have managed to successfully negotiate with their landlord to install solar PV.

#### Figure 8: Reasons for not installing solar

*Which of the following best describes the reason why you don't have solar electricity at your home?*



Source: UMR Report.

<sup>43</sup> UMR, Usage of solar electricity in the national energy market, A quantitative study, July 2016, p.95.

<sup>44</sup> Newgate Research, AEMC 2016 Retail Competition Review: New and Emerging Energy Technologies and Services, Consumer Research Report, June 2016, p30.

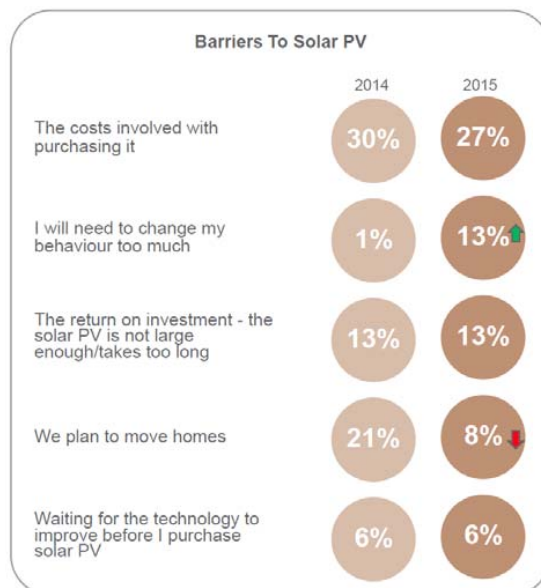
<sup>45</sup> Newgate Research, AEMC 2016 Retail Competition Review: New and Emerging Energy Technologies and Services, Consumer Research Report, June 2016, p20.

<sup>46</sup> Newgate Research, AEMC 2016 Retail Competition Review: New and Emerging Energy Technologies and Services, Consumer Research Report, June 2016, p35.

The CSIRO survey found that, even amongst those that had not installed solar PV or other distributed technologies, on average householders support solar PV technologies.<sup>47</sup>

The survey conducted on behalf of Queensland network businesses found that the primary barriers to solar PV were financial and a perception that they would need to change their behaviour.

**Figure 9: Barriers to Solar PV in Queensland**



Source: Colmar Brunton, *Queensland Household Energy Survey 2015, Insights Report*, 11 February 2016.

#### 4.1.5 Apartment dwelling may also be a barrier

While not explicit in the UMR survey, it also appears that living in a dwelling that has a strata may also be a barrier. Of the solar users surveyed, 84% lived in a detached house. Only 5% lived in a unit or apartment, and 4% in a townhouse. In contrast, of the non-solar users surveyed, 20% lived in a unit or apartment, and a further 8% lived in a townhouse.

Similarly, Newgate found that apartment dwellers assumed solar (and battery storage technologies) could not fit or be retrofitted into their properties.<sup>48</sup>

Modelling of forecast solar PV and battery uptake that underpins AEMO's 2016 National Electricity Forecasting Report assumes a limit for residential solar PV of 55% of all households in a region. This limit was set on assuming that only private, separate dwellings could install PV system.<sup>49</sup>

## 4.2 Future uptake of solar PV

In the last five to ten years, the up-take of solar PV has been driven, at least in part, by premium feed-in tariffs and government rebates. These schemes were used by governments to motivate the

<sup>47</sup> Romanach, L., Contreras, Z., and Ashworth, P. (2013). Australian householders' interest in active participation in the distributed energy market: Survey results. Report nr EP133598. CSIRO, Pullenvale, p21.

<sup>48</sup> Newgate Research, AEMC 2016 Retail Competition Review: New and Emerging Energy Technologies and Services, Consumer Research Report, June 2016, p35.

<sup>49</sup> Jacobs, Projections of uptake of small-scale systems, 6 June 2016, p11.

uptake of solar PV by making it more cost effective for customers. However, the level of the feed-in tariffs has reduced significantly over time and, in some jurisdictions, is no longer regulated. The value of the certificates created under the SRES has ramped down. As a consequence the residential market for solar PV has slowed.

While the pace of connections may have slowed, sales are likely to continue. The cost of solar PV installations has reduced sufficiently such that for many customers it is now a cost effective option, even without premium feed-in tariffs. The ECA Energy Consumer Sentiment Survey found that households have also made significant investment in rooftop solar panels and solar hot water systems with the highest uptakes in Queensland, South Australia and Western Australia and that proportion of households with rooftop solar and solar water systems could double in most jurisdictions in the next 5 years.<sup>50</sup> As discussed in the previous section, customers also have a desire to be less dependent on the grid for their energy needs. This motivation will continue to drive sales, albeit at a slower pace.

This is consistent with forecasts underpinning AEMO's 2016 National Electricity Forecasting Report, which suggests that residential uptake of solar PV will continue steadily, but at a slower rate than previous years.<sup>51</sup>

There are a number of factors that could contribute to ongoing uptake of solar PV:

- reforms or technology developments that make it easier to install solar PV in rental properties and units;
- increased availability and reduced cost of battery storage; and
- network and retail tariff reform.

Each of these is discussed in turn.

#### 4.2.1 Reforms or technology developments to remove barriers to uptake of solar PV

As discussed above, one of the major barriers to some householders installing solar PV is that they rent their home. Making it easier for renters to install solar, as well as making it easier for apartment dwellers to do so, could strengthen residential demand for solar PV. However, while some work has been conducted to consider how these customers can benefit from solar PV (see Box 1 below), the barriers to individual electricity supply from solar PV remain.

##### Rental properties

As discussed above, approximately a third of respondents surveyed who have not installed solar PV cited renting their home as the primary reason. A number of barriers exist for these potential customers. First, they would need the owner's permission, and second, there is no guarantee that a renter will continue living in that property for a sufficient period of time to make the installation of solar PV financially worthwhile.

One option that has been mooted for addressing these barriers is the advent of leasing panels and solar power purchase agreements. Under these arrangements, a renter could avoid the upfront cost of the panels by instead leasing the panels or entering into a solar power purchase agreement with a solar provider. However, this solution does not fully address the barriers since the landlord's consent

<sup>50</sup> Energy Consumer Australia: Energy Consumer Sentiment Survey Findings, July 2016. The survey also found that although not many small businesses have invested in solar technology, 48% of businesses expect to invest in this technology in the future

<sup>51</sup> Jacobs, Projections of uptake of small-scale systems, 6 June 2016, p27.

would still be required. Further, there would be no certainty for the solar provider that a new tenant would be prepared to enter into an agreement if the initial tenant moved out.

There is a possibility the owner could install a solar PV system at their own expense and charge their tenant for use of electricity. However, it may not be in the owner's financial interests and it is not clear what customer protections may apply to the renter.

Despite these issues, the UMR survey shows that there are some customers renting their home that have arranged for solar to be installed, and similarly some landlords that have decided to install solar in their rental properties.

From the landlord's perspective, there may be a number of reasons for installing solar. These include:

- historically, they intended to move into the property in the near future and wanted to take advantage of premium feed-in tariffs when they were available;
- to increase the value of their property;
- to obtain tax deductions; and
- to increase the likelihood that their tenants will stay, or because they view it is a way to attract tenants to reduce the vacancy rate.

Where the landlord decides to install solar, to obtain the feed-in tariff the electricity account would need to be in their name. The landlord would need to have an agreement in place with the tenant regarding how electricity usage charges would be passed through. Further, the landlord may need to consider offering the tenant financial incentives in order to encourage them to change the way in which they use electricity to maximise the value of the solar PV system to the owner.

### **Residences subject to strata**

Unit owners also face barriers to installing solar PV. This is primarily because they would require consent from their strata. Issues include:

- who owns the roof space (typically it is jointly owned);
- insurance;
- maintenance; and
- responsibility for any damage to the roof.

These difficulties are reflected in the small proportion of solar customers surveyed by UMR that live in a dwelling other than a detached house. Only 5% of solar respondents lived in apartments, and even lower proportions lived in a semi-detached house, a terrace or a townhouse/villa.<sup>52</sup> In contrast, 20% of non-solar respondents lived in apartments, and a further 16% lived in a semi-detached house, a terrace, or a townhouse/villa.

Smart Blocks is an initiative developed by the City of Melbourne and City of Sydney. The purpose of the program is to assist apartment owners and their managers to improve the energy efficiency of common property in apartment buildings. One option that they suggest is solar PV. The Smart Blocks website states:<sup>53</sup>

*Installing a solar system can not only make your building more attractive to property buyers and tenants, but can potentially improve resale values and occupancy rates.*

<sup>52</sup> UMR, Usage of solar electricity in the national energy market, A quantitative study, July 2016, p97.

<sup>53</sup> <http://smartblocks.com.au/what-can-i-do/install-solar/>



The website provides a useful source of information to apartment owners. However, they have not been able to resolve any of the barriers listed above for these potential solar customers, including how individual apartments can obtain the benefits of solar PV directly. Rather, the focus is on using solar PV to supply electricity to common areas.

#### **Box 1: Renewables for All**

“Renewables for All”<sup>54</sup> is a project that is advocating amendment of policy settings and regulatory arrangements to help all Australians access the benefits from clean energy solutions, including solar PV. Some of the proposed aimed at renters and apartment dwellers include:

- Solar gardens, where energy from a centralised, shared, off site facility is sent directly to homes.
- Community owned renewable energy, where households and businesses own shares, or solar panels, in a centralised solar facility and receive credits on their bills from energy generated.
- Tax incentives, which allow people to invest in renewable energy outside of their own home without facing tax consequences.

Each of these mechanisms provides a means for people to invest in solar PV outside of their own homes. While the solar garden option would allow customers to directly benefit from investment in PV, the remaining options do not directly address the barriers to renters and apartment dwellers installing systems in their own homes.

### 4.2.2 Uptake of battery storage

Complementing the desire for independence, battery storage is now becoming a plausible option for many customers. While batteries may not yet be cost effective, this may not be a deterrent for those customers that are seeking energy independence. Of those customers surveyed by UMR who had undertaken serious research on installing batteries, 76% agreed that they were considering batteries so as to become less dependent on mains electricity. This compares to 73% who agreed that they were considering batteries to reduce household energy costs.

However, it does not appear likely that battery storage will lead to another period of high growth in solar PV at the residential level, at least not for some time. Modelling by the ATA on the economics of battery storage suggests it is unlikely to be cost effective for many customers until at least after 2020. AEMO is forecasting that battery storage will not become economic for the average consumer until the early 2020s, and so this technology will have limited impact on the solar PV market until then.<sup>55</sup>

Further, some customers may choose to delay installing solar until battery storage becomes more economic. Operating parameters such as DC voltage ranges may change, operating standards may change, and there may be other developments that mean that solar PV systems installed today may not be completely fit for purpose for incorporating storage at a later date. Consequently, such customers may face additional capital costs to install a battery that they would not face if they delayed installation of solar.

Those customers that do not want to defer the installation of solar PV but are not prepared to install batteries at today's prices have at least two options:

<sup>54</sup> <http://cpagency.org.au/renewables-for-all-resources/>

<sup>55</sup> AEMO, National Electricity Forecasting Report 2016, June 2016, p5.

- Install solar PV with a battery-ready ('hybrid') inverter and install the battery system once prices reduce. This approach has the advantage that, subject to changes in technology or standards, a new inverter will not be required in order to install battery storage. However, hybrid inverters are more expensive than standard inverters and there is no guarantee that the technology or standards will not change and so render the inverter obsolete.
- Install solar PV with a standard inverter and purchase a new, hybrid inverter or DC to DC converter once battery prices reduce. This approach has the advantage that a standard inverter is cheaper and avoids the risks around the hybrid inverter becoming obsolete. However, it is likely that the standard inverter would not have reached the end of its useful life prior to battery storage becoming economic. Consequently there would be some cost associated with replacing it early.

Customers seeking to install solar PV and battery storage therefore face a trade-off between installing systems now and facing higher costs, as well as the risk of technology changing, versus waiting until battery storage becomes economic to install the solar PV system. It should be noted that a solar PV installation without batteries today will likely deliver faster payback times as the lower upfront cost will typically outweigh the smaller bill savings. It is also likely that new technology will emerge and become commercial that would remove the need for a hybrid inverter in a retro-fitted battery project for a solar PV installation.<sup>56</sup>

This issue may become a source of confusion for some customers if their options are not clearly articulated by the solar retailer, particularly for those customers that may not be aware of the different inverter required to be battery-ready.

#### 4.2.3 Reforms to network tariffs

Network tariffs are currently being reformed to better signal the costs associated with investing in, operating and maintaining the distribution network. As discussed in chapter 3, the effects on current and potential solar PV customers will depend on the extent to which network tariff structures are incorporated in retail price structures and whether the customer has a smart meter that can record energy consumption at different times of day. The effects will also depend on an individual customer's consumption profile relative to network usage, and the nature of the tariff structure.

Assuming that the new tariff structures are visible to the customer, the value to potential customers of installing solar PV will change compared to under existing tariffs. For example:

- **Time of use tariffs**<sup>57</sup> could make solar PV a more attractive option for those customers whose load profile coincides with the average load profile on the network, compared to if they are on a flat tariff. These customers would typically use most of their electricity in the evening, when there is the most stress on the network and so prices are higher. Provided the network peak is in daylight hours, these customers would benefit from solar PV as they could use their own generation at times of high network prices.
- Similarly, **demand charges**<sup>58</sup> may make solar PV an attractive option for customers that have peaky energy use, where the peak demand period coincides with generation. Again, provided a customer's maximum demand is during daylight hours, they could reduce this maximum demand by drawing on their solar PV, and so minimise their demand charge.

<sup>56</sup> In its report, ATA notes that there is a current opportunity for retro-fit solar-battery projects to utilise a separate DC to DC converter, as an alternative to a more expensive hybrid inverter with battery control functionality. This approach can save in the order of \$5,000 on the cost of a new, replacement hybrid inverter as part of a retro-fit project.

<sup>57</sup> Time of use tariffs are consumption charges that vary with the time of day at which electricity is consumed.

<sup>58</sup> Demand charges are a charge based on a customer's highest recorded demand during a billing period.

- Conversely, a higher **fixed charge** may reduce the attractiveness of solar PV. Solar PV can only be used to offset variable charges, since the fixed component does not change with energy use. Therefore a relatively high fixed charge compared to the variable component will reduce the proportion of the bill that solar PV can offset, and therefore raising the relative cost of solar PV.

# 5 Sales

We found that customers rely on their solar installer to obtain information. While most customers considered they had sufficient information to make decisions about their system, almost a third wished they had more information before installation.

Based on case studies undertaken by MEFL, systems generally appear to have been sized and installed appropriately for individual customers. However, MEFL found instances where customers have had systems installed that are larger than they need, and where the panels suffer from shading.

There is also anecdotal evidence that some customers are being sold systems that are not sized appropriately for them. First, some customers appear to not have a full understanding of how different factors influence the payback period for a system, and simply assume that larger systems will provide greater returns. Second, some customers are having systems installed that are too small for their needs as a result of the capacity threshold under which a Distribution Network Service Provider (DNSP) will automatically pre-approve a system to connect to their network. This threshold seems to act as an artificial constraint on the sizing of residential PV, creating a market distortion.

This chapter sets out the findings from research related to residential solar customers' experiences of the sales process, including the information that they use to inform their decision. The findings draw on evidence from surveys and interviews conducted by UMR and MEFL, as well as from available literature both within Australia and internationally.

This chapter also considers whether systems have been designed appropriately for customers, including system size and panel orientation.

## 5.1 Do customers have the right information?

Most customers surveyed by UMR considered they had sufficient information to make an informed decision about whether installing solar is right for them. However, the customer survey also indicates that many customers lack important knowledge, such as the specified output of the panels and the level of their FiT. This suggests that while customers are generally satisfied with their solar PV system, they may not have been provided with the information they need to make the right decisions for them about their systems.

Thirty-two percent of customers surveyed agreed, to varying degrees, that they wished they had been given more information about their solar system before installation. These tended to be the customers that were approached by solar marketers rather than those customers that decided to install solar and then sought a provider. This suggests that some customers are not being provided with the information they need, or are not aware of the questions they should be asking.

There are a few websites that provide useful information on the factors that customers should consider when installing solar PV, and the various factors that will affect the system's performance.

These websites include, for example, the CEC's website, jurisdictional government websites and some DNSPs' websites. However, these websites do not appear to be widely known or used.

Rather, the majority of customers surveyed by UMR relied on information provided by the solar installer. Approximately a fifth of customers used product review websites and forums such as Whirlpool or looked at other solar electricity providers. Approximately a tenth consulted other sources of information such as their electricity retailer (if not their solar installer), state or federal government agencies, the CEC or environmental organisations.<sup>59</sup>

A CSIRO survey published in 2013 found that customers were most likely to trust CSIRO, consumer organisations such as Choice, scientists or engineers and experts in solar energy technology when seeking information on solar PV.<sup>60</sup> Conversely, the least trusted sources were the media, electricity and gas companies, government departments and agencies and solar industry organisations. However, as the UMR survey found customers do not appear to be utilising the "more trusted" sources of information, perhaps because they are not aware they exist or do not know where to look.

The UMR survey results also suggest that the majority of customers are unlikely to be undertaking their own financial assessment of the value of installing solar and the impact of different sized systems on their return. Rather, they are relying on information provided by the installer. This is despite most respondents suggesting that the primary reasons for installing solar was for financial reasons. Consequently, to ensure that customers are obtaining value for money, system designers must have incentives to install the right system for their customers.

#### **Box 2: Customers aren't always getting the right information**

One of the key pieces of information to assist with the purchase decision is the predicted output of a solar PV system. CEC accredited retailers are required to disclose the predicted output of a system as part of the quotation process to potential purchasers.

Phone consultations undertaken by MEFL found that more than 60% of solar customers interviewed were not given, or at least could not recall being given, any indication of predicted output of the system.<sup>61</sup> Even fewer (seven in total) have retained this documentation as part of their records.

This is an issue for consumers where their perception of their system's output significantly exceeds the actual capacity of the specified system to generate electricity – either because the provider has inflated the predicted output or where they have relied on other sources of information.

Where predicted output was documented in writing, for the most part the predictions were accurate or conservative. However, some evidence was found of over-prediction. The evidence gathered did not demonstrate this was systemic or the domain of a particular provider or jurisdiction.

Generally in the energy market, the ECA Energy Consumer Sentiment Survey found that while consumers are confident in their own abilities to choose the energy products and services that are right for them, they are less confident that information is available to help them make good decisions.<sup>62</sup>

<sup>59</sup> UMR, Usage of solar electricity in the national energy market, A quantitative study, July 2016, p20.

<sup>60</sup> Romanach, L., Contreras, Z., and Ashworth, P. (2013). Australian householders' interest in active participation in the distributed energy market: Survey results. Report nr EP133598. CSIRO, Pullenvale, p30.

<sup>61</sup> MEFL, Energy Consumers Australia – Experience of Solar Consumers, 10 October 2016, p12.

<sup>62</sup> Energy Consumer Australia: Energy Consumer Sentiment Survey Findings, July 2016

## 5.2 Are systems being designed appropriately?

System design is very important for customers to obtain the best value from their systems. Two important factors influencing solar PV performance that designers can control are system size and solar exposure (orientation, tilt of panels and shading).<sup>63</sup>

### 5.2.1 Size of system

Roof space and budget are key factors that will determine system size for customers. However, the size of solar systems has also been influenced to varying degrees over time by a number of other, external factors, including:

- the cost of the solar panels;
- the type, structure and level of FiTs; and
- the capacity limit at which DNSPs will automatically approve connection to their network.

In the early 2010s, the cost of solar panels was a significant limiting factor on the size of systems being installed. Prior to 2012, limits on government rebates also appear to have been a consideration in limiting system size.

As the cost of panels decreased, the design and level of FiTs became an important determinant of system size – generally, the bigger the system, the better the return with a premium FiT. Since 2013, more 2.5 to 4.5kW and 4.5 to 6.5kW systems are being installed than systems less than 2.5kW. Since mid-2015, the number of 4.5 to 6.5kW systems installed has exceeded the number of 2.5 to 4.5kW systems.<sup>64</sup> The average system size for residential customers is now over 5kW.

As governments have moved away from generous FiTs, so that customers now face a net FiT that is significantly lower than their retail tariff, system sizes should more closely reflect individual customers' load profiles if they want to minimise the payback period for the system (see chapter 3). This implies that every installation should be considered in the context of the individual customer.

Some retailers provide a guide on the appropriate system size based on the number of people in the house as a proxy for energy use, as well as average daily use for that household size.

Others provide a system size calculator with varying degrees of sophistication. However, it is not clear to what extent retailers are tailoring systems to individual customers' circumstances. MEFL found that in determining system sizing for customers, solar providers did not routinely investigate customer bills to determine the right size of system. They also found no evidence that solar installers in Victoria had taken the step of interrogating available smart meter data.

Even where solar providers do consider a customer's consumption patterns, to do so effectively requires understanding the time of day at which a customer uses the most electricity. Where installers base the system size on a customer's average daily use rather than average daily day time use, a customer that uses most of their electricity in the evening and overnight may end up with a system that is bigger than their needs.

Anecdotal evidence suggests that some new solar systems are not being matched to consumption. Rather, some system sizes appear to be driven by two factors:

<sup>63</sup> Quality of the main components and wiring and installation design are also important. These are discussed in the next chapter.

<sup>64</sup> APVI, Monthly Installations by Size Category.

- an assumption by customers that larger systems are better; and
- the limit at which DNSPs will automatically approve connection to their network.

### Customer misperceptions that bigger is better

Anecdotal evidence suggests that many customers assume that larger systems will provide greater returns. This assumption could reflect customers' experiences under historical incentive schemes, or more generally a lack of information or understanding about the various factors that influence the payback on panels and how those factors interact.

Some customers may wish to install a system that is larger than necessary for their household load profile. For example, they may install a large system for environmental reasons so as to displace other, more carbon-intensive generation. Provided the customer is aware that this will increase the payback period for the system, then this is a logical choice for that customer.

However, as discussed in chapter 4, most customers that install solar do so primarily for financial reasons. Installing a system that is larger than necessary is unlikely to be the right outcome for them. Consequently, we would expect to see larger systems than necessary in a minority of cases and only where the customer had installed the system for non-financial reasons.

Site visits conducted by MEFL indicated that customers did not have a good understanding of the implications of the system size on the expected financial returns. Rather, most households visited assumed that a larger solar system would increase returns.

As discussed above, most customers rely on their solar provider for information relating to the design of their system. This was confirmed by MEFL's site visits, which found that although customers were offered a number of system sizes, they tended to opt for the one recommended by the installer. Solar providers may have an incentive to install a system that is larger than necessary where their profitability is related to the size of units that they sell. Consequently if a customer has the impression that "bigger is better", the solar provider may have no incentive to inform them otherwise. Based on the site visits, MEFL suggested that most installers appeared to be recommending the largest system that a customer could afford, or could fit on their roof.

Despite these concerns, MEFL did not find evidence of significant problems with over-sizing.<sup>65</sup> MEFL's findings are set out in Box 3 below.

#### Box 3: Evidence of over-sizing

MEFL undertook analysis to determine whether customers had been sold a system that was larger than necessary to meet their on-site energy needs.

To do this, MEFL analysed customer data where the customer was on a FiT of less than 10c per kWh. Of the 19 systems that met this criterion, there were four examples of systems that had very low (less than 50%) self-consumption of generated electricity. A fifth customer had 51% self-consumption.

Of the five customers with the lowest self-consumption, three identified themselves as environmentalists, indicating that they may have been willing to oversize their systems despite a reduction in financial return.

*Sandra and Ken had an existing system that catered for their needs but installed another system to improve their environmental impact even though it did not benefit them financially.*

<sup>65</sup> MEFL, Energy Consumers Australia – Experience of Solar Consumers, 10 October 2016, p13-15.



However, the UMR survey did not find any correlation between system size and protecting the environment being a key reason for installing solar PV.

These results suggest that there are instances of larger systems being installed than is necessary, increasing the payback period for these customers. However, it is difficult to conclude whether this issue is widespread.

## Influence of DNSP policies on system size

Observations from both DNSPs and solar providers that we spoke to suggest that installers are recommending systems that are no larger than the size at which the relevant DNSP will auto-approve the installation, even where a larger system may be appropriate. As discussed further in chapter 7, systems over a certain size require a network impact assessment to be conducted by the DNSP. The threshold at which an assessment is required depends on the DNSP, but is generally around either 5kW or 10kW for urban customers. This is consistent with the average system size that is currently being installed (5.2kW).

Where a network impact assessment is required, this incurs an additional cost with no guarantee of the outcome. To avoid this additional cost and risk, some installers simply recommend a lower system size to their customers, even where a bigger system is more appropriate.

Consequently, a DNSP policy decision on the size at which they will set the auto-approve threshold appears to be placing an upper limit on the system size. From an individual customer perspective, this is a market distortion that is preventing them from installing a system that best suits their needs.

### 5.2.2 Panel orientation and shading

Under the CEC's System Design Guidelines, the designer's responsibilities are to, amongst other things, provide a site-specific full system design including all shading issues, orientation and tilt. While a small sample and therefore not statistically significant, MEFL's site visits suggest that this framework is broadly driving the right outcomes for customers in terms of panel orientation and shading.

To date, FiTs have encouraged orientation of panels towards the north to maximise output and so financial return under the premium and gross FiTs (subject to a customer's load profile and physical constraints). Some government websites that are intended to assist customers in installing PV also note customers should install their panels facing north if possible.<sup>66</sup>

Consistent with this, in their site visits MEFL found the majority of systems faced north. While some faced east or west (or a combination of more than one orientation), this is in line with the expectation that some systems will be designed to match generation times with high energy use, in which case a western or even eastern orientation may be preferable. In one instance, MEFL found that the customer had opted for east facing panels for aesthetic reasons.

Anecdotally, some customers are starting to orient their panels further towards the west, possibly in response to lower FiTs which provide an incentive to export as little as possible. These incentives will be amplified with new cost-reflective tariffs, and so we would expect to see more panels facing west as these tariffs are implemented.

MEFL found that most panels were oriented appropriately so as to minimise shading.<sup>67</sup> In some instances, overshadowing impacts were seen to have been dealt with very well. However, there

<sup>66</sup> For example see <http://www.yourhome.gov.au/energy/photovoltaic-systems>

<sup>67</sup> MEFL, Energy Consumers Australia – Experience of Solar Consumers, 10 October 2016, p7-191.

were five instances where shading was a problem. MEFL concluded that most of these issues could have been addressed by making changes to the system placement. In one instance, overshadowing resulted in performance of approximately 60% of what would have been expected for a system of its size.

## 5.3 Effectiveness of voluntary codes

As discussed in section 2.3, there are a number of frameworks in place to help protect solar customers with solar PV systems. Of these, it is primarily the CEC's industry codes that guide system design issues.

It is difficult to be conclusive about the effectiveness of these voluntary codes without a greater sample of site visits to ascertain the extent to which systems are being appropriately tailored to individual customers. From the small sample of site visits conducted by MEFL, there are instances where customers either have a system that is bigger than they need, or their system is not performing optimally due to shading issues. However, there do not appear to be any systemic issues.

The CEC's System Design Guidelines impose requirements, amongst other things, to consider all shading issues, orientation and tilt, along with the system's site-specific energy yield. However, the guidelines do not appear to require the designer to consider the appropriate system size for the customer. This could be a useful addition.

Enforcement of compliance with the Accreditation Code is likely to be effective. The CEC has the power to remove an accreditation. The CEC has a demerit system whereby a total of 20 demerit points can be accrued within a 24 month period before accreditation is suspended. If a business loses its accreditation, it cannot provide customers with the STC. Consequently solar installers have an incentive to comply with the Accreditation Code and relevant Guidelines.

There is a risk that this mechanism may be less effective in the future if the government subsidy is removed, and so the business need to be accredited falls away. This issue may also arise with battery storage, if any accreditation scheme remains voluntary and there is no incentive in the form of a government subsidy to become accredited.

This is the case with the Solar Retailer Code of Conduct, which is voluntary and does not have the "hook" of the government incentive. Many solar PV retailers have chosen not to sign the Solar Retailer Code of Conduct. Of the ten solar retailers that installed the most rooftop PV systems in Australia in 2015 (based on quarterly volume of registered capacity), only one has signed the Solar Retailer Code of Conduct.<sup>68</sup> This could cause two issues:

- customers that do not contract with a solar retailer that has signed the Solar Retailer Code of Conduct do not have access to the complaints mechanism managed by the CEC (although they would still have access to the other complaint mechanisms); and
- even if customers do have complaints about a CEC-accredited retailer, the Solar Retailer Code of Conduct is not enforceable in any meaningful way. While the CEC could remove the accreditation, it cannot impose any other penalties, such as financial penalties. Given the number of retailers that successfully operate without CEC accreditation, removal of this may not be viewed as a sufficient constraint on behaviour.

<sup>68</sup> The top ten retailers as cited by Sunwiz, [www.sunwiz.com.au](http://www.sunwiz.com.au) are: True Value Solar; Euro Solar; Powerark Solar Pty Ltd; AGL Solar; SolarGain; Origin Energy; Advance Finance Solutions Pty Ltd; Green Engineering; Infinite Energy; and Country Solar Pty Ltd.

It is important to note that a solar retailer that has not signed the CEC's Code of Conduct may still be operating consistently with the Code. Further, there may be a number of valid reasons why solar retailers have chosen not to sign the CEC's Code of Conduct.

# 6 Installation

Most customers appear to be satisfied with the installation process. There do not appear to be any systemic issues associated with sub-standard or unsafe installations and, based on a number of case studies, solar installers for the most part are installing the systems so as to maximise value to the customer, for example by avoiding panel shading.

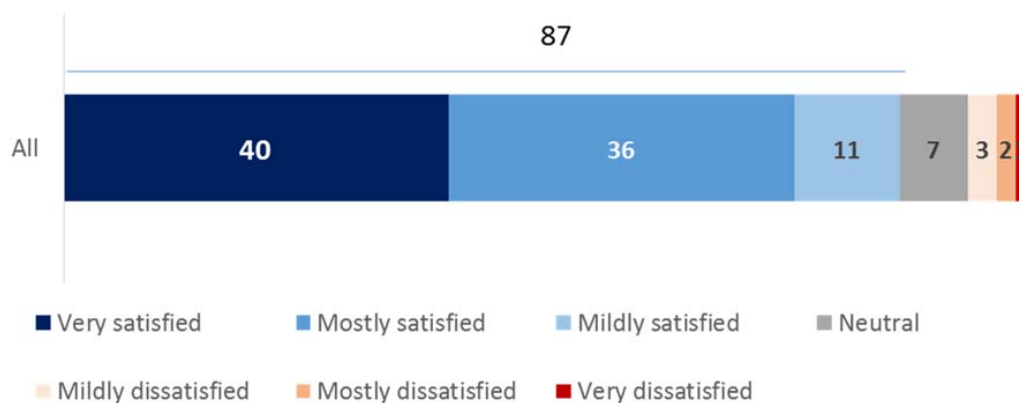
This chapter sets out the findings from research related to a customer's experience of the installation process itself, such as the time taken for installation and whether there were any issues with the safety or functioning of the installation. The findings draw on evidence from surveys and interviews conducted by UMR and MEFL, as well as audits undertaken by the CER.

## 6.1 Customer experience with installation

UMR found that a significant majority of customers (87%) were satisfied to some degree with the installation process. Only 6% expressed a degree of dissatisfaction with the installation process.

**Figure 10: Satisfaction with the installation process**

*How satisfied were you with the installation process?*



Source: UMR Report.

A survey conducted by CHOICE found that 32% of owners reported having problems with their installer.<sup>69</sup> The most common problem reported for installers was a significant delay with the installation work (12% of all solar customers). Major issues such as incorrect wiring or labelling and safety issues were uncommon.

<sup>69</sup> Sheftalovich, Zoya, Which solar power system should you get?, 14 January 2015, available at [www.choice.com.au](http://www.choice.com.au)

## 6.2 Quality and safety of installation

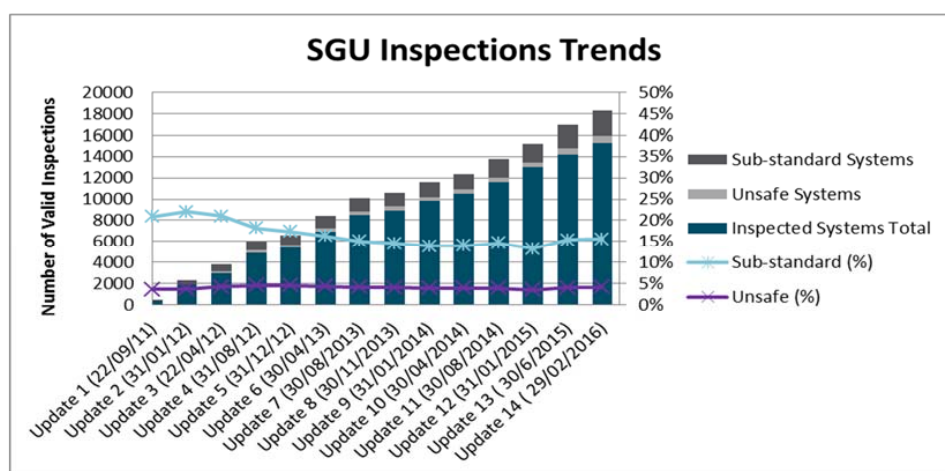
### 6.2.1 CER inspections

The CER is required to inspect a statistically significant sample of installed systems each year for compliance with SRES eligibility criteria. This includes relevant standards related to electrical safety. The objective of the inspection program is to ensure that the increased installation demand resulting from Renewable Energy Target incentives does not lead to any reduction in installation standards.

The CER's inspection reports are referred to state and territory electrical safety regulators as well as the CEC, in its capacity as the manager of accreditation of solar panel installers. If the CER inspector finds an unsafe system he/she is required under his/her electrical license conditions to render it safe. He/she is then required to notify all relevant parties of the extent and nature of the safety risk. Any follow-up is at the discretion of the state or territory regulator.

Figure 11 below shows the trends in the systems inspected that were considered safe, unsafe<sup>70</sup> or substandard<sup>71</sup> since monitoring began 2011. The results are presented on a cumulative basis. The chart shows that the proportion of unsafe systems has hovered around 4% since inspections began. The proportion of sub-standard systems has fallen.

**Figure 11: Inspection trends**



Source: CER, *Inspections update No.14, February 2016, p3.*

The majority of unsafe installations are attributed to water entry to direct current isolator switch enclosures. The majority of substandard installations are attributed to installers failing to ensure that all direct current wiring in the building is enclosed in heavy duty conduit

<sup>70</sup> An unsafe system has a safety hazard which poses an imminent risk to a person or property. The inspector shuts down the system or renders it safe. The inspector also advises the relevant state or territory regulatory authority of the nature and extent of the safety risk. The system owner should contact the installation company or a qualified installer to rectify the items listed for improvement.

<sup>71</sup> A substandard small-scale system does not meet key clauses in the standards and requirements for installation and may lead to premature equipment failure or other issues. The inspector advises the relevant state or territory regulatory authority of the nature and extent of the identified issues. The installation work and or equipment should be improved. The system owner should contact the installation company or a qualified installer to rectify the items listed for improvement.

The inspections program provides a source of information for electrical safety regulators and peak industry bodies to consider whether current standards and practices are adequate. To aid this, the CER publishes an annual analysis of the data collected from the inspection program.

As necessary, a committee is convened by the CER to discuss the results of previous inspections with state and territory electrical safety regulators and peak industry bodies. The committee may refer matters to Standards Australia where changes to standards are required. The committee may also refer issues to the CEC where their System Design Guidelines require updating.

Overall, it appears that the framework for escalating and resolving issues relating to sub-standard or unsafe installation practices appears to be working. There is no evidence from the CER inspections to suggest there are any systemic issues associated with installation practices. As discussed in the previous chapter, the CEC's Accreditation Code of Conduct and System Design Guidelines appear to provide sufficient incentives to promote safe practices.

### 6.2.2 MEFL findings

The CER audit results are consistent with MEFL's site visits, which showed that in general there were no systemic failures in quality of installation. However, there were isolated examples of a lack of compliance plates on individual pieces of equipment and poor finishing on wiring.<sup>72</sup>

In respect of installation issues, MEFL considered the location of the inverter and quality of installation. Poor inverter placement can lead to a higher rate of decline in performance, which is an issue for consumers if this leads to faults which incur a replacement cost (out of warranty) and lost generation.

The majority of inverter placements were found to be appropriate, in that they were:

- out of direct sunlight;
- protected from rain;
- convenient to the switchboard; and
- appropriately located to allow for regular checking of status / performance.

There were two examples out of the 29 site visits where the placement of the inverter was suboptimal. The installer had opted to locate the inverter close to the switchboard for convenience. As a result, both inverters were in direct sunlight, diminishing the readability of the inverter, and they lacked rain protection. In some instances direct sun can cause seals to perish, resulting in water ingress to the inverter. As noted above, this appears to be one of the primary causes of unsafe systems in the CER inspections.

In general, MEFL found the site visits demonstrated good quality installation. However, there was at least one example of a lack of compliance plates on individual pieces of equipment and poor finishing on wiring. A lack of compliance plates may indicate that non-compliant components were used.

Other quality considerations such as irregularities in framing were occasionally observed by MEFL. However, they found no evidence to suggest poor quality work has led to any sub-standard performance or infrastructure fault.

Given the differing ages of installations visited, it is not possible to determine whether there was any non-compliance with the appropriate Australian Standard (AS5033) in place at the time. While some of the older systems would fail today's standard, which mandates the use of conduits for wiring, this change to the standard did not occur until 2012.

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<sup>72</sup> MEFL, Energy Consumers Australia – Experience of Solar Consumers, 10 October 2016, p21.

# 7 Connect and commission

Individual DNSP policies appear to be driving a number of outcomes for individual customers wanting to connect solar PV systems to the grid. First, the ease with which customers can obtain approval to connect to the network depends on the size of the system. This is resulting in some customers installing a smaller system than would best suit them to avoid the additional cost and challenges of seeking approval for a larger system.

Second, for larger systems that require network approval, the ability to connect is effectively on a “first come, first served” basis. Some networks have had to turn down applications due to system constraints. Customers that want to connect a larger system must wait until the network is augmented to install their system.

Network capacity could create an additional barrier to new solar customers. This may raise equity concerns, particularly where customers that have not yet installed solar PV have not done so because of financial barriers, or barriers due to renting or living in an apartment.

This chapter sets out the findings from research related to a customer’s experience of the grid connection process, including the ease with which a customer can gain approval to connect to the grid and, subsequently, the ease with which the connection takes place. In respect of the commissioning of the system, this chapter also considers customers’ experiences in having their system recognised by their retailer to reflect the FiT in their retail bill. The findings draw on evidence from interviews conducted by MEFL, as well as other published research where possible.

This chapter also considers the impact on potential solar PV customers of the limited capacity of networks to accommodate increasing penetration of solar PV.

## 7.1 Customer experience

### 7.1.1 Approval to connect

The National Electricity Rules set out the requirements for connecting embedded generators, including solar PV, to the distribution network. This includes obligations on both DNSPs and the connecting party, from when an initial connection enquiry is lodged through to the acceptance of a connection offer. For basic connections, which includes a typical residential rooftop PV system, the DNSP must make an offer to connect using a model standing connection offer that has been approved by the AER.

Each DNSP has a threshold system size under which systems are automatically pre-approved for connection to the network. Over the threshold, customers must apply for pre-approval. This is so the DNSP can assess the impact on its network as well as on the quality of supply to other customers as a result of a larger system being connected. Typically this involves a desktop analysis by the DNSP.

The level of the threshold differs between DNSPs and also depends on the type of line a customer is connected to.



In Victoria, four of the five DNSPs have a threshold of 10kW, while AusNet Services has a threshold of 4.6kW. This may have led to some confusion for customers, particularly those on the edge of the AusNet Services network. Customers may intend to install a system greater than 4.6kW on the assumption that it will automatically be pre-approved, only to find that they actually need to seek approval.

Customers connected to Single Wire Earth Return (SWER) lines (typically in non-urban areas) may be subject to a lower kW threshold for automatic pre-approval and may have faced similar confusion.

As discussed in chapter 5, the threshold at which a DNSP will auto-approve a connection appears to have driven the size of the system installed in some instances. Anecdotal evidence suggests that some installers consider applying to the DNSP to obtain approval for a larger system difficult and costly, and they are not willing to take the risk that the DNSP will not approve the system.

On the other hand, DNSPs tell us that the majority of residential customers that apply for pre-approval have their applications approved for the system size that they applied for. Overall, a minority of customers are required to reduce their system size in order to connect, and a very small proportion are denied approval to connect. One DNSP told us that they do not reject many applications, and those that they do reject are generally for administrative, not technical, reasons.

MEFL only inspected one site where a system that was larger than 5kW had been installed, so they were not able to ascertain whether there were any particular issues associated with applying for pre-approval for larger systems.

However, research conducted by Newgate for the AEMC with a group of 66 customers across the NEM found that some customers have been told that the solar capacity in their area had been reached and so they could not connect.<sup>73</sup> This issue is discussed in section 7.2 below.

### 7.1.2 Ease of connection and commissioning

There is limited information on customer views of the connection process itself. However, many customers may not differentiate between the solar PV installation process and the grid connection process, particularly where the whole process goes smoothly and is organised by the solar provider.

In the interviews that MEFL conducted, they found that customers considered the connection and commissioning of the system was the second most difficult part of the process after deciding on the system. This was due to two factors:

- delays in distributor connection sign-off; and
- retail billing and commissioning coordination.

Although it was only a small sample, MEFL found that delays in achieving sign-off for connecting the system to the grid were more prevalent in Victoria than in NSW. This is despite almost all customers in Victoria having smart meters already installed, and so not requiring a meter change.

In Victoria it is difficult to determine which entity participating in the process is at fault for any delays. Once the system is installed an Energy Safe Victoria inspector is required to carry out an inspection, before the installer can lodge the necessary forms with the electricity retailer. The retailer then notifies the distributor to install the meter, if required. There could be delays at any point in this process, and it is not necessarily transparent to the customer where the delays have occurred.

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<sup>73</sup> Newgate Research, AEMC 2016 Retail Competition Review: New and Emerging Energy Technologies and Services, Consumer Research Report, June 2016, p35.

MEFL also found that, due to a number of entities being involved in coordinating the necessary paperwork, there was some degree of confusion regarding whose responsibility it is to lodge it with the retailer. This resulted in some customers missing out on higher FiTs.

*A Victorian customer was assured of the transitional feed-in-tariff and was told that his system install had 'made the cut-off date'. When he still wasn't receiving a solar feed in on his first bill he enquired and found a paper trail gap - the solar provider claimed he sent the paperwork but it was never received.*

MEFL found that some customers are not gaining the full value of their systems due to delays in their retailer recognising their system. This appeared to be predominantly an issue with smaller retailers. Of the 74 interviews undertaken, nine rated their experience with their retailer as not enjoyable (the lowest rating). Of these, six were with smaller retailers. Conversely, the larger retailers, particularly Origin and AGL, had very little negative feedback.

## 7.2 Issues for future solar customers

Outcomes and costs for potential solar customers are being driven in part by individual DNSP policies and network capacities, as well as decisions by existing solar customers. This is likely to raise equity concerns over time, as more customers seek to connect to networks that are at, or close to, their solar capacity. Many of the customers that have not yet installed solar PV have not done so because of financial barriers, or barriers due to renting or living in an apartment. Network capacity issues could present an additional barrier to these potential customers that was not experienced by earlier adopters.

To date, residential solar PV customers that are connected in the grid have primarily faced administrative costs, or costs associated with upgrading their meter or undertaking testing. Importantly, existing solar customers have not paid a fee for their use of the network to export solar generated from their system. While many solar customers consider this is reasonable on the basis that they are providing other benefits, it may present a growing issue for new solar customers.

While existing networks may be able to handle a certain penetration of solar PV, there is a limit at which the network cannot cope with additional solar PV without impacting the quality, reliability and security of supply of electricity to all customers. Some DNSPs have already had to turn down connection applications that require approval due to system constraints (although they suggest this is a minority) and, as discussed above, research suggests that some customers have been told that they cannot connect their system due to capacity limits in the system.

It is not clear how widespread and significant these issues currently are. Fourteen postcodes already have solar PV penetration of over 50% of households. In these areas it is likely to be increasingly difficult for new solar customers to connect their systems to the grid.

In some areas, the capacity of the network to manage solar installation may currently be lower than 50% of premises. In its most recent regulatory proposal, South Australia Power Networks (SAPN) presented modelling by Power Systems Consultants that examined the impact of increasing penetration of embedded generation, including solar PV, on the quality of supply. The study found that, in the older areas of SAPN's low voltage network, existing network infrastructure and voltage

regulation approaches limit the acceptable level of solar PV penetration to around 25% of customers.<sup>74</sup>

On the other hand, Ausgrid has recently announced plans to streamline the application process for solar PV and battery systems up to 30kW.<sup>75</sup> The new application process will remove the requirement for a more detailed technical assessment of systems sized from 5-10kW for single phase connections. Both the fees and time associated with the application process are intended to be reduced.

In the current context of low FiTs, customers that are installing systems for financial reasons ought to be sizing the system to match their daytime consumption. Therefore smaller households in urban areas should still be able to connect a system that suits them financially with automatic pre-approval. These issues are more likely to affect customers with large daytime loads or that want to install larger systems for environmental reasons.

In regional and rural areas where customers are more likely to be connected to SWER lines with lower thresholds for auto-approval, a higher proportion of customers are likely to be affected.

In both urban and rural areas these issues will continue to grow as solar PV penetration rates increase. There is a possibility that DNSPs could seek to recover the costs associated with managing their network to allow for increased solar PV on a cost reflective basis. That is, future solar PV customers may face additional costs that existing customers have not had to pay to connect to the network. Again, this creates equity issues in the context of where future solar customers may have lower incomes or have faced other barriers to connecting solar PV.

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<sup>74</sup> SAPN, Regulatory Proposal 2015-2020, December 2013, p215.

<sup>75</sup> Ausgrid, Ausgrid to cut fees and fast-track solar and battery applications, 27 July 2016, available at <http://www.ausgrid.com.au/solarfasttrack>

# 8 Customer outcomes

We found that residential customers are generally satisfied with the performance of their solar PV system. The majority of customers consider their system is performing about as well as expected or better. Similarly, most customers are satisfied with the impact that their system has had on their retail electricity bills.

However, evidence suggests that many customers do not understand the detail of how their system works or how they can maximise the value of their system. Knowledge of warranties is low, and some customers are incurring unnecessary costs associated with cleaning and maintaining their systems. Instances have been identified where customers were satisfied with the performance of their system, yet inspection and testing revealed that the design, and therefore system output, was sub-standard.

Close to half of customers surveyed indicated that they had taken steps to use more energy when the sun is shining and/or less when it is not. This indicates that many customers are willing to modify their behaviour to maximise the value of their system. However, it is not clear that all customers have sufficient knowledge or understanding of how to do so. This is evidenced by the survey results which suggest that more than one in five customers did not know if the tariff they paid for mains electricity changed after they installed solar and were also not sure what FiT they were being paid. Without knowing these tariffs, they would not have the information to determine how to change their consumption in order to minimise the payback period for their system.

This chapter sets out our findings relating to overall outcomes for customers and the extent to which their expectations about their solar PV systems are being met. The findings draw on evidence from surveys and interviews conducted by UMR and MEFL, as well as from other published research where available.

The chapter also considers the impact that having a solar PV system has had on customers' behaviour.

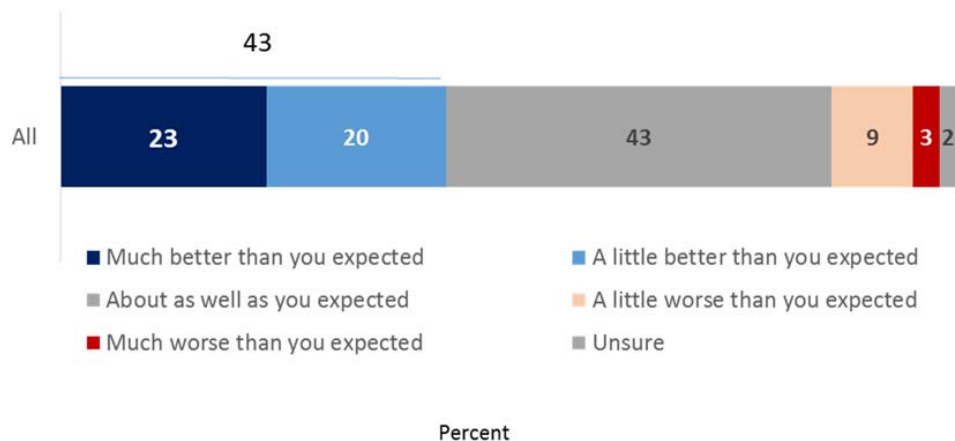
## 8.1 System performance

### 8.1.1 Most customers are satisfied with system performance

The majority of customers surveyed by UMR thought their system performed about as well as they had expected or better. However, twelve per cent felt their system performed a little worse or much worse than they expected.

**Figure 12: System performance**

*How would you rate your system's performance?*



Source: UMR Report.

These results are consistent with the CHOICE survey,<sup>76</sup> which found that 69% of owners thought the amount of energy generated by their system was more than, or about what, they were told to expect by their installer. Thirteen per cent said they felt let down by the amount of energy produced by their system.

While the majority of customers were satisfied with their system's performance, analysis from MEFL's site visits suggests that there is no obvious correlation between actual performance (expressed as a percentage of predicted output) and a customer's perception of the level of performance (better or worse than expected). Of six systems they examined that were performing at less than 70% output, only two customers rated the system performance as worse than they expected.<sup>77</sup>

This finding is supported by other results from the UMR survey:

- Just under half of customers surveyed by UMR reported that they checked that their systems were working properly, using a variety of indicators (discussed further below). To the extent that customers are only checking the amount they pay for their retail bill, this will not necessarily provide a good indication of system performance, particularly where the FiT is low and so payment for exports is relatively small compared to the bill.
- A third of customers surveyed by UMR did not know what the rated output of their system was. This suggests that even if they check their inverter history or energy exports, they are not necessarily interpreting the performance of their system correctly.
- For those customers that did not check that their system was working properly, it is not clear on what basis they measured their system's performance.

These results suggest that although customers may be satisfied with their system, they may not have a good understanding of its capabilities and how it should be operating. Consequently, in some circumstances the system itself may not be operating optimally, without the customer being aware.

<sup>76</sup> Sheftalovich, Zoya, Which solar power system should you get?, 14 January 2015, available at [www.choice.com.au](http://www.choice.com.au)

<sup>77</sup> MEFL, Energy Consumers Australia – Experience of Solar Consumers, 10 October 2016, p26.

MEFL also found that a customer's source of advice was important in shaping a customer's expectations about the performance of their system. The highly engaged customers that undertook independent research generally had a more realistic expectation about the performance of, and financial return on, their system. In contrast, customers that relied on friends and neighbours for advice were more likely to have an unreasonable expectation of performance and financial return.

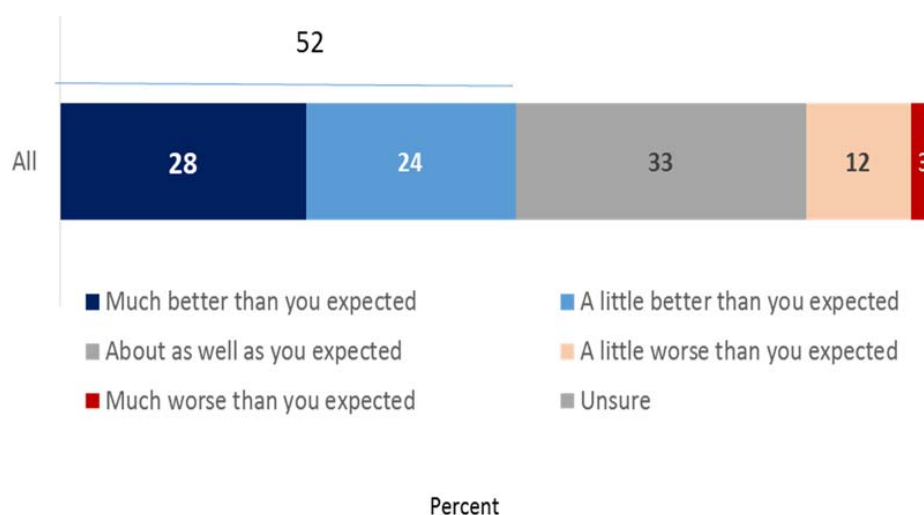
Some of the confusion may have arisen where advice was taken from customers who were on a premium or transitional FiT and were not aware that those FiTs were no longer available when they installed their system.

### 8.1.2 Impact on retail bills

Most customers that responded to the UMR survey thought their retail bills had changed by the amount they had expected or better. Fifteen per cent thought the change in their retail bills was a little or much worse than expected.

**Figure 13: Rating retail bill changes**

*How would you rate the amount your bills changed as a result of installing your solar electricity system?*



Source: UMR Report.

These results are consistent with a survey recently conducted by Solar Citizens, which found that 89% of Solar Citizens members that have solar panels are satisfied their system is saving them money by reducing their electricity bills.<sup>78</sup> Fifty-six per cent claimed to have more than halved their annual electricity bills.

Research conducted by Newgate for the AEMC found that customers with solar panels felt some frustration at the reducing rebates especially more recent entrants, since it extends the payback period for the panels. However, they were still satisfied with their decision to install solar PV due to the environmental benefits.<sup>79</sup>

<sup>78</sup> [http://www.solarcitizens.org.au/solar\\_census\\_results\\_2016](http://www.solarcitizens.org.au/solar_census_results_2016)

<sup>79</sup> Newgate Research, AEMC 2016 Retail Competition Review: New and Emerging Energy Technologies and Services, Consumer Research Report, June 2016, p30.

The view that the environmental benefits remain even as financial benefits reduce was echoed in the MEFL research. Many customers in Victoria and NSW were aware that their FiT would reduce at the end of 2016 but had not thought through the impact on their bills. One customer noted:

*"I'm aware that we'll lose the transitional tariff at the end of the year, but given we have had the system for nearly five years we are satisfied that we've made a good dent in the initial investment by now – and the environmental benefit is unchanged"*

Consequently, negativity around the reduction in FiTs appears to be a reflection of the external policy environment rather than any issue with the performance of the systems themselves.

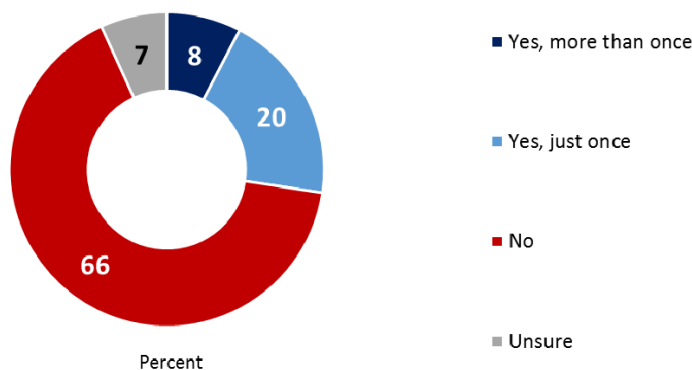
### 8.1.3 Issues with faults and warranties

A number of customers have had issues with their solar PV systems not working. The most common problem has been with the inverter, although issues with the panels appear to be becoming increasingly prevalent. Most customers have been able to have their systems repaired under warranty at no, or limited, cost. However, most customers do not have a good sense of how long the various warranties on their systems are for.

The UMR survey found that 28% of customers had experienced one or more problems or faults with their system. Of those that experienced a fault, 50% of these were attributed to the inverter not working. These results are consistent with the Choice survey, which found that 25% of owners reported having had problems with their solar PV system. Again, the most common issue was that the inverter stopped working. Choice found that 10% of survey respondents had to replace their inverter since installation.

**Figure 14: Occurrence and cause of faults**

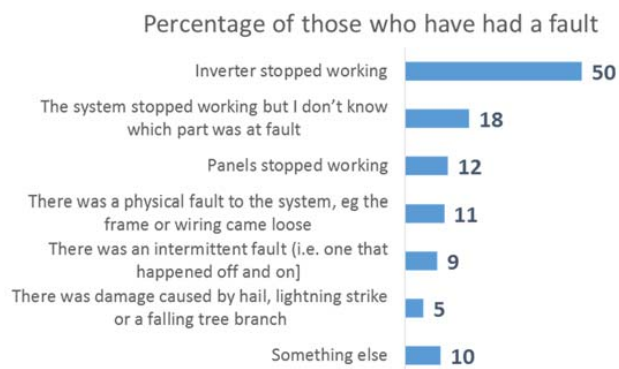
*Have you ever had a problem or fault with your solar electricity system, where you needed professional assistance?*



Source: UMR Report.



### What was the most recent fault?



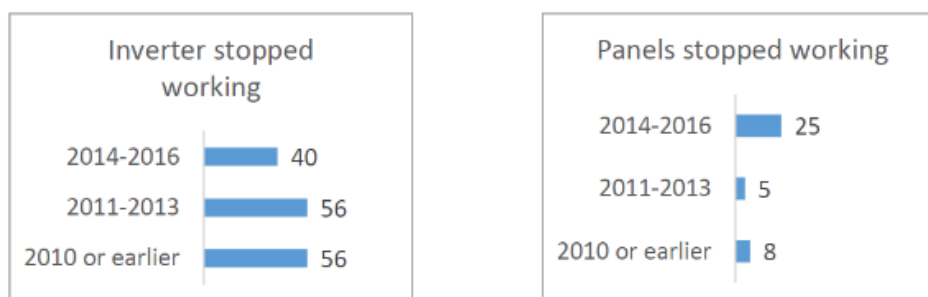
Source: UMR Report.

MEFL's research also backs up the finding that the inverter is most likely to be at fault when systems are not working properly.

While problems with the inverter remain the most common source of faults, systems installed more recently are proportionally more likely to have a problem with the panels themselves.

**Figure 15: Cause of faults**

### What was the most recent fault (by year of installation)?



Source: UMR Report.

Close to 80% of customers that reported a fault were still covered by a warranty. Most of these customers did not have to pay any costs associated with fixing the fault. However, some customers had to pay a fee for the technician's visit. This suggests that the majority of customers that have known problems with their systems are able to address these issues under existing customer protection frameworks.

Many customers are not aware of, or incorrectly report, the length of the warranties on their panels and inverters. This contributes to concerns that customers have a limited understanding of the details of their systems. A quarter to a third of respondents to the UMR survey were not sure how long the warranty on their panels or inverter were. Forty-one per cent of respondents thought their panel warranty was for ten years or less, even though all panels have a minimum of a 15 year warranty. Forty-five per cent of respondents thought their inverter warranty was 5 years or less. This could result in customers paying for the system to be fixed themselves, even where it should be remedied under warranty.

### 8.1.4 Maintenance

Customers have different approaches to maintaining their solar PV systems. While some actively service or clean their systems, others are satisfied to “set and forget” and only have their system checked if there is a known problem. Generally systems do not need to be serviced or cleaned more than once every two to three years. Therefore professionally servicing or cleaning the system and panels every year is unlikely to be of value. On the other hand, customers who do not regularly check that their system is working and who are on low FiTs may not be aware when their system has not been working properly for some time, resulting in a loss of payment for export, or paying for more energy from the grid.

The UMR research found that 43% of respondents maintain their systems by either checking their system is working properly, cleaning the panels themselves, having the system professionally serviced or having the panels professionally cleaned.

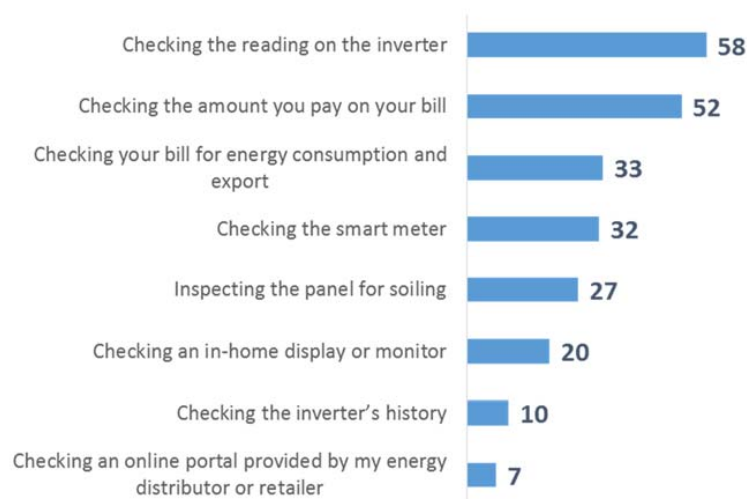
Those that check their system’s performance do so in a variety of ways, but the majority check the reading on the inverter, check the amount they pay on their bill, or check their bill for energy consumption.

Those that rely on checking the amount they pay on the retail bill may not always pick up if their system is not performing optimally, particularly if they are on a low FiT. Variations in the total retail bill may be viewed as simply variations in power consumption. Consequently it could take customers some time to identify a problem with their system, particularly where it is performing sub-optimally rather than not functioning at all.

One of the customers interviewed by MEFL had had his inverter break three weeks beyond the five year warranty period. He did not realise that there was a fault for some time, so generation was lost in the meantime.

**Figure 16: Method for checking system performance**

*How do you check your system’s performance?*



Source: UMR Report.

Of the respondents that have their systems professionally serviced, 34% do so once a year. This is unlikely to represent good value for money for these customers, as typically panels simply need to be cleaned when there is a build-up of dust or dirt. Guidance from the CEC states that a maintenance

schedule should be provided by the installer of a solar PV system. However, there does not appear to be much independent guidance available on how best to maintain a system.

### 8.1.5 Panel shading by new buildings

While systems can be designed to avoid expected panel shading, situations have arisen where, following installation, a customer's panels have subsequently been shaded due to new building construction.

This issue relates to local planning laws and requirements and therefore a detailed analysis of this issue is beyond the scope of this report. However, it is important that potential customers are aware that this situation could occur when evaluating the benefits of solar PV for them, and the potential effects of shading as a result of new construction or building modifications.

## 8.2 Impact on customer behaviour

As discussed in chapter 3, customers have a financial incentive to adjust the way in which they use electricity to maximise the value of their solar PV system. The time at which they should consume the most energy will depend on the relative values of their FiT and their retail tariff. The structure of these tariffs, for example whether they change with the time energy is used, will also influence the optimum time to maximise energy consumption and creates an additional layer of complexity for customers.

For those customers with a relatively low FiT, maximising value requires consuming energy during the day so as to minimise the amount of energy that is exported. Forty-two per cent of customers surveyed by UMR said they have taken steps to use more energy when the sun is shining and/or less when it is not. UMR analysis found that those customers who are more likely to change their behaviour:

- installed their systems later, which is consistent with having a lower FiT;
- considered that solar generation was an important factor for moving into their house; and
- had experienced more than one fault.

For the 49% that had not taken such steps, this could be because they:

- were on a premium FiT and therefore it would not make financial sense to do so;
- did not think that the financial benefits outweighed the inconvenience; or
- were not aware of how they could change their energy consumption behaviour to maximise the value of the solar PV system.

The remaining 9% were unsure of whether they'd taken steps to use more energy when the sun is shining and/or less when it is not.

Of the customers that MEFL interviewed, approximately 60% had changed their energy behaviour in some way to maximise their financial return.<sup>80</sup> Some customers, while aware of the financial benefits, considered these benefits too marginal to warrant changing their lifestyles.

As discussed in section 8.1.1, those customers that were advised by friends or family on premium FiTs to install a solar PV system were more likely to have unrealistic expectations about the

<sup>80</sup> MEFL, Energy Consumers Australia – Experience of Solar Consumers, 10 October 2016, p28.

performance of their systems, where their systems were installed following the reduction in FiTs. These customers are also at risk from not understanding how to adjust their consumption behaviour to maximise the value of their system.

For example, two neighbours could have exactly the same solar PV system but have very different consumption incentives where they are on different FiTs rates. One could be incentivised to shift their consumption towards the evenings (i.e. on premium FiT) and the other customer faces a completely different incentive to shift consumption towards the day time (i.e., on market FiT). Ultimately, for customers that do not know what retail and FiTs they are on, or that do not understand how the systems work, they could be increasing the payback time for their systems as they do not know how to make change their consumption pattern to maximise the value of their installation.

There is some evidence to suggest this may be the case for a number of customers. The UMR survey results suggest there is some confusion about both retail and feed-in tariffs, which makes it difficult for customers to respond appropriately. A third of customers did not know if the tariff they paid for mains electricity changed after they installed a solar PV system.

Another third of survey respondents were unsure which FiT they were on. One fifth of customers did not know either whether their retail tariff had changed, or their FiT. This suggests that there is a substantial proportion of customers that do not have the information required to maximise the value of their solar PV system value.

# 9 Market outcomes

Historically, potential network benefits have not been signalled to solar PV customers when they make decisions that influence network costs, such as the orientation of the panels and the time at which a customer is incentivised to export versus consume electricity. Rather, investment in solar PV and incentives on customers to shift their consumption to different times of day has been driven by factors other than alleviating network congestion, including the level and structure of feed-in tariffs relative to retail tariffs. Specifically, under premium net feed-in tariffs, customers have had an incentive to maximise their export throughout the day, rather than in the evening when the network is most under stress.

This disconnect between the solar PV market and the electricity market means that the wider benefits of solar PV have only partially been captured. To date, on the whole, there has not seem to be a material reduction in peak demand across the distribution networks, except in specific locations. While solar PV has resulted in a lower level of demand on some parts of some networks, this has not always resulted in lower infrastructure costs. In addition, DNSPs state that there are costs associated with managing the network impacts of high penetration of solar PV and the level of energy being exported.

Going forward, we expect incentives will become better aligned. Changes to feed-in tariffs through the cessation of the premium schemes are providing customers with incentives to consume, rather than export, their generation. Complementing this, DNSPs are required to better signal the costs of using their networks, including at different times of day. Together, these signals could provide solar PV customers with a more consistent set of incentives to shift their grid consumption away from times when there is the most stress on the distribution network. This may allow DNSPs to defer expenditure that would otherwise need to occur, reducing costs to all electricity customers.

This chapter sets out our findings relating to overall outcomes for the wider energy market, particularly on distribution network costs. It identifies the benefits and costs that have accrued, or are likely to accrue, to the wider market as a result of solar PV, noting that the network benefits and costs of solar PV are socialised across all electricity customers.

## 9.1 Distribution network benefits and costs

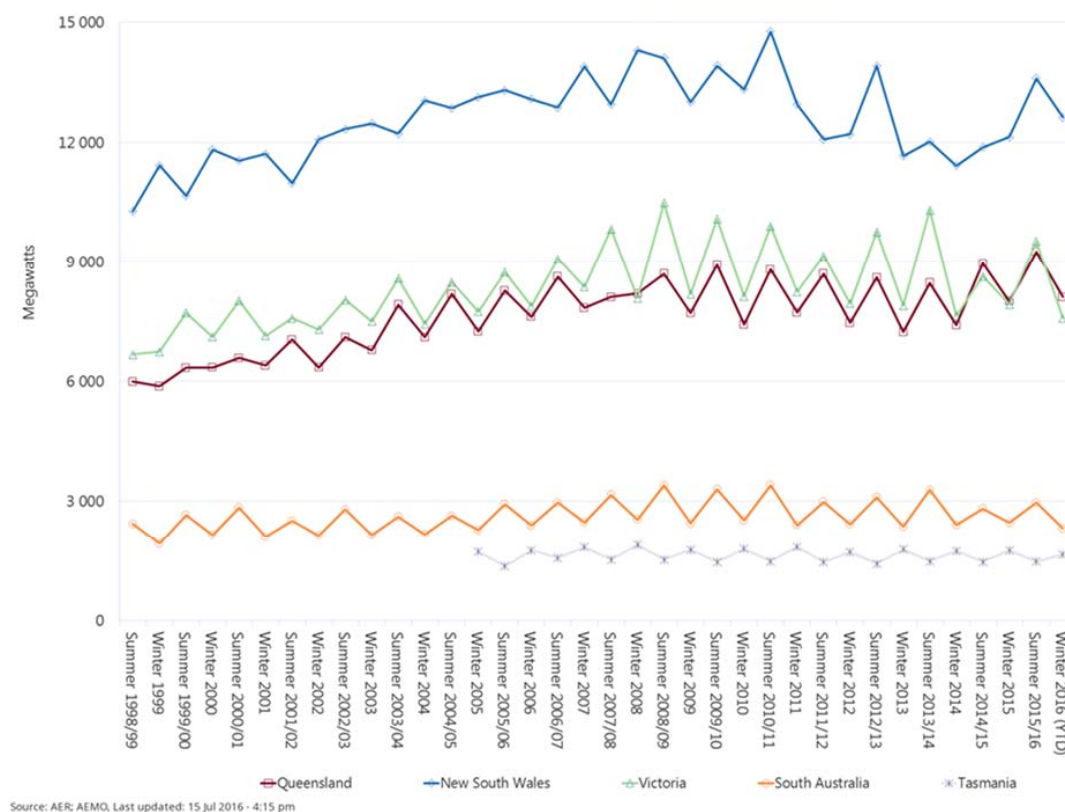
### 9.1.1 Potential benefits of solar PV to DNSPs

Rooftop solar PV has the potential to provide benefits to the distribution network. These benefits primarily relate to avoided network expenditure where generation is able to alleviate network congestion at times of peak demand or through avoided line losses. This, in turn could reduce the tariffs charged by the DNSP, providing benefits to all electricity customers connected to the network.

The nature of the benefits provided by rooftop solar PV depends crucially on time, location and the local network conditions. For example, where there is existing excess network capacity, solar PV is unlikely to add significant value to the network. On the other hand, where solar PV generation coincides with peak demand in areas where the network would otherwise be stressed, network

benefits could arise by deferring the need to invest in additional network capacity. Similarly, greater reliance on solar PV could avoid the need to replace existing infrastructure on a like-for-like basis.

**Figure 17 – Trend in Seasonal Peak Demand by region**



Consequently the ability of rooftop solar PV to defer distribution network investment will depend on a number of circumstances and the impact of solar PV installation on peak demand will vary significantly by zone substation and network feeder. This makes the ability to forecast the uptake of solar PV at a granular level important and we note that AEMO continues to grow its expertise in this area through its annual National Electricity Forecasting Report.<sup>81</sup>

Additional benefits could also arise through grid support services (e.g. managing voltage, maintaining power quality) and maintaining network reliability and resilience through reducing expected unserved energy.<sup>82</sup> Also solar PV systems, in aggregate, could increase cyclic ratings on substation transformers. By reducing the amount of zone substation load earlier in the day, solar PV will lower the operating temperature of transformers prior to facing peak loads later in the day. While technology exists that could help solar PV generation provide these benefits, it is not currently widespread. Further, the benefits are likely to be greater when combined with battery storage. This is discussed further in chapter 10.

<sup>81</sup> The National Electricity Forecasting Report (NEFR) provides AEMO's independent electricity consumption and maximum and minimum demand forecasts over a 20-year outlook period for the National Electricity Market (NEM) and each of the five NEM regions: New South Wales (including Australian Capital Territory), Queensland, South Australia, Tasmania, and Victoria.

<sup>82</sup> In its network value of distributed generation review the Essential Service Commission in Victoria has also noted that distributed generation may provide a further benefit in related to bushfire mitigation, for example in circumstances where deploying distributed generation in a remote area, and thereby enabling the linking network to be de-energised during high fire risk days.

### 9.1.2 Any distribution network benefits have only been partially realised

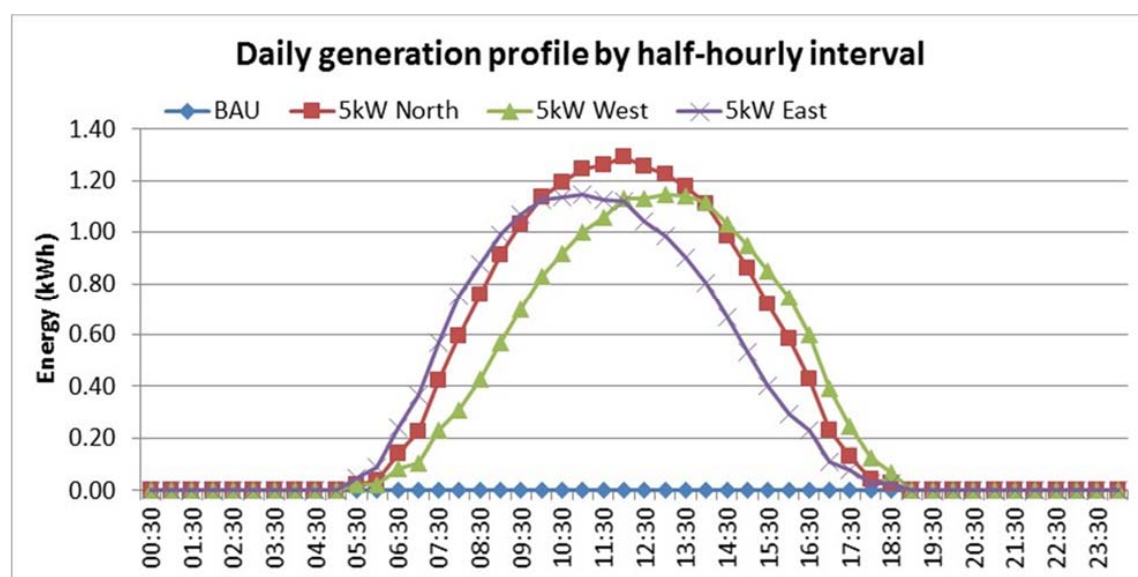
There are two decisions by customers that will influence the extent to which their solar PV can contribute to the broader network benefits discussed above:

- the orientation of their panels; and
- the time at which solar customers consume, versus export, their solar generation.

Historically, potential network benefits have not been signalled to solar PV customers when making these decisions. Investment in solar PV has been driven by factors other than alleviating network congestion. Specifically, customers on gross and premium FiTs have had an incentive to maximise their export throughout the day and in particular times when the network is under greatest stress. The reasons for this behaviour are explained in chapter 3.

As a consequence, customers have typically faced their panels north to maximise the amount of time that their system is generating and exporting. However, if panels faced west, generation from rooftop solar PV is more likely to coincide with the distribution network's maximum peak demand, which in most jurisdictions occurs on summer evenings.<sup>83</sup> This would help alleviate stress on the network. This is shown in the figure below.

**Figure 18 – Generation profile by panel orientation**



Source: modelling provided by ATA

Some DNSPs are actively trying to encourage their customers to face their panels west. In their regulatory proposal for 2016-2020, AusNet Services proposed exploring options to encourage customers to re-orient their panels west using financial incentives. AusNet Services noted "facing panels west offers a tangible benefit in both reducing the evening peak and reducing the energy under the peak".<sup>84</sup> The program aims to target a 1,000kVA demand reduction which they estimate could be achieved through incentivising 1,700 customers to orient their solar panels westwards. AusNet estimated that this level of demand reduction would translate to a total cost reduction of \$0.7m between 2019 and 2030.

<sup>83</sup> Note that peak demand can occur at different times in different networks and so the optimum time for solar PV to be generating may differ in different parts of the network.

<sup>84</sup> AusNet Services, p229.



Despite the historical misalignment of incentives, solar PV may have provided at least some benefits to distribution networks, however it is difficult to conclude on the magnitude of any benefits due to limited available quantitative evidence. Solar PV is treated as negative load for the purposes of forecasting demand. Consequently, where reduced forecast demand is identified as deferring network expenditure, it is difficult to distinguish how much of the value of the deferral is attributable to an increase in energy efficiency or other forms of energy reduction, fewer connections than forecast, or an increase in solar PV penetration.

However, in its 2015 Distribution Annual Planning Report, Energex highlights a number of factors that have contributed to declining demand growth. They note "Solar PV has also had a small but increasing influence in summer day peak system demand. Importantly, in comparison with prior years, decline in peak demand has resulted in network limitations being deferred...It has also resulted in reduced capital expenditure".<sup>85</sup>

SAPN noted in its most recent regulatory proposal that solar PV does reduce network demand to some degree, but emphasised that this is only up until late afternoon and not reliably when there is cloud cover.<sup>86</sup> It did not specifically link the reduced network demand to a deferral in capital expenditure.

Other DNSPs argue that increasing solar PV penetration has not contributed to a reduction in peak demand. For example, AusNet Services states that the timing of its network's peak means that solar energy reduces the overall energy delivered, but does not reduce the demand peak.<sup>87</sup> This may be predominantly due to solar panels facing northward. As discussed above, AusNet Services has proposed providing customers with a financial incentive to re-orient their panels to the west. Consequently, it must attribute some network value in solar PV, where the timing of the output better aligns with its network peak.

Some DNSPs have suggested that, to date, increases in solar PV penetration may have shifted the peak to later in the day, potentially without reducing it.<sup>88</sup> To this extent this is the case, this may be an effect of current incentives on customers to export as much as possible during the day and so shift their consumption to later in the day. Further, as the peak occurs later in the evening, it becomes more difficult for solar PV to contribute to its reduction.

This was a finding in analysis prepared for the AEMC as part of the local Generation Network Credit Rule Change.<sup>89</sup> AECOM stated that while solar PV is reducing peak demand during daylight hours, future uptake of solar PV will further shift most peak demand periods from daylight hours to the evenings. AECOM commented that once the peak period has been shifted outside of sunlight hours, solar PV is unable to provide further peak demand reduction. As discussed further below, this issue may be addressed to some extent by changing the consumption incentives faced by customers going forward.

While DNSPs generally acknowledge the potential benefits of solar PV in terms of reducing the severity of peak demand spikes, some are of the view that it does not do this sufficiently reliably due to the intermittent nature of solar PV. For example, Energex has noted that while it does factor in the

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<sup>85</sup> Energex, DAPRT 2015, p59.

<sup>86</sup> SAPN, Regulatory Proposal 2015-20, 5 December 2013, p116.

<sup>87</sup> AusNet Services, regulatory proposal, p16.

<sup>88</sup> Analysis commissioned by the Energy Networks Association suggested that in some instances as more customers take up solar PV, the overall level of peak demand occurring in the evening can remain broadly the same. The analysis suggests that peak shifting has occurred in South Australia and Queensland, which are the regions with the highest solar PV penetration. See Frontier Economics, *Valuing the impact of local generation on electricity networks, A report prepared for the Energy Networks Association (ENA)*, February 2015, p13-16.

<sup>89</sup> AECOM – report to the Australian Energy Market Commission, *Modelling the impact of embedded generation on network planning*, 29 August 2016.

impact of solar PV into its demand forecasts and therefore the planning and development of its network, “due to the intermittent nature of solar PV, it cannot necessarily be relied upon for network planning purposes”.<sup>90</sup>

We note that while there is currently limited quantitative evidence of the benefits (or costs) of solar PV, a number of projects are underway or have recently been completed to develop frameworks to measure these benefits. Modelling conducted for Essential Services Commission (ESCV) as part of its review into the network value of distributed generation estimated that in 2017 the network benefits of solar PV systems provide a total of approximately \$3m of network value in Victoria.<sup>91</sup> The ESCV noted that this value is very dependent on location, asset life-cycle, the capacity of distribution generation and coincident timing of local generation to network peaks. This modelling was conducted at the zone sub-station level, and ESC found that out of a total 224 zone sub-stations in Victoria, only 6 had an estimated network value of more than \$10 per solar kW, while the majority (164) having an estimated value of \$0 or less than \$1 per kW.

Further analysis on this matter is provided in:

- analysis conducted as part of the AEMC’s rule change on Local Generation Network Credits (LGNC);
- a report by Frontier Economics on behalf of the Energy Networks Association in support of the ENA’s submission to the AEMC’s LGNC consultation paper; and
- a paper by Ernst & Young on behalf of the CEC as part of its Future Proofing in Australia’s Electricity Distribution Industry project.

### 9.1.3 Distribution network benefits may increase in future

Frameworks have changed, or are in the process of changing, which will better align individual incentives with efficient market outcomes. Technology advances can improve the ability of solar PV installation to be optimised to provide network value. Also changes to government incentive schemes, combined with changes in network tariff structures, are now providing incentives for panels to be oriented west. Innovation in the design of FiTs could help this further.

Since 9 October 2016, accredited inverter systems must now meet an updated standard, AS/NZS 4777.2:20.<sup>92</sup> The main updates to inverter standards allow distributed generation system to have the capability to provide services to the network. This includes further new voltage and frequency set-points and limits to be compatible with requirements of network businesses. The updated standards also require inverters to have Demand Response Mode (DRM) capabilities. DRM capabilities allow a remote operator to alter the inverter system to operate in a certain way, such as disconnecting from the grid, preventing generation of power, or increasing power generation.

These functionalities for new inverters make them distinct from older generation inverters, and have been referred to as “smart” inverters. They have the ability to make distributed generation more controllable and responsive to peak network demand – in other words, optimised for network value. Hence the potential network benefits could increase if such technology leads to greater controllability and responsiveness for networks from solar PV installations.

<sup>90</sup> Energex, Letter to the Queensland Productivity Commission’s Solar Feed-in Pricing in Queensland: Draft Report, 15 April 2016, p2.

<sup>91</sup> Essential Service Commission of Victoria, The Network Value of Distributed Generation – Distributed Generation Inquiry Stage 2 Draft Report, 15 November 2016, section 4.

<sup>92</sup> Standards Australia 2015, Grid connection of energy systems via inverters - Inverter requirements, AS/NZS 4777.2:2015, October.

In relation to government incentive schemes, after 31 December 2016 only the ACT will have a legacy gross FiT, which no new customers can obtain. Further, in Victoria, NSW and South Australia, some of the premium FiT schemes will come to an end.<sup>93</sup> For reasons discussed in chapter 3, this will provide solar customers with an incentive to align their consumption with their generation. For the majority of customers with consumption profiles that peak in the evening, this implies generating as much as possible in the evening.

Complementing this, once cost reflective tariffs come into place, networks will be able to better signal the times and areas where network costs are highest. This will provide solar customers with additional incentives to draw on their own generation at times when the network is under stress and, at least for new customers, face their panels west. We note that in their 2016 National Electricity Forecast, AEMO assumes that newly installed PV systems will begin to face west. This is in response to projected consumer incentives from peak prices during the evening.<sup>94</sup>

However, the extent of such improvements in incentives will be dependent on having meters capable of interval reading at the solar PV household. For those customers outside of Victoria, this may require additional costs. It may also depend on whether customers opt in to cost reflective tariffs, subject to the tariff arrangements in their jurisdiction. The extent of the potential savings in total bills from opting to move to cost reflective tariffs will depend on the customer's consumption pattern and the design of the tariff options.<sup>95</sup>

#### **Box 4: Sensitivity analysis on impact of non-performing installations**

The typical asset life of an inverter component to a solar PV installation is 10 years. If a failed inverter is not replaced, then the installation will no longer be operational. There may be other reasons why a solar installation becomes non-operational, e.g., faults not addressed.

This creates a potential risk that over time a proportion of installation may become no longer operational and the customer does not have the financial ability or desire to fix the issue. This especially may be the case if feed in tariffs are low. It may also be possible that some customers will "set and forget" and not realise that their system is not fully functioning

We conducted some sensitivity analysis to assess the materiality of this potential risk on long term forecasts of solar PV generation. We modelled two scenarios: A. 1% of units become non-operational after 10 years; and B. 5% of units become non-operational after 10 years since installation. We found that the impact to be low with forecast energy output decreasing by 2% in 2025 under the 5% failure rate scenario. This is mainly due to the relatively small size of installation installed in the early years of the PV market.

### **9.1.4 Impact on costs**

There are a number of costs identified by DNSPs associated with high penetration of solar PV. While low uptake may not have a significant impact on the network, as the uptake of PV increases the impact on the network increases and can result in power quality and security issues. In particular, high penetration of solar PV can cause voltage deviations from the required standard, which has an

<sup>93</sup> Payments under the NSW Solar Bonus Scheme ends on 31 December 2016. In South Australia, customers on a 16c/kWh FiT ceased receiving payments on 30 September 2016, but those on the 44c/kWh tariff will continue to receive payments until 30 June 2028. In Victoria, the transitional and standard FiT schemes end on 31 December 2016, but the premium scheme continues until 2024. See Appendix C for further details.

<sup>94</sup> AEMO, National Electricity Forecasting Report, June 2016, p16 and 28. Based on advice from Jacobs, AEMO assumed a westerly shift in rooftop panel orientation, commencing from zero at the start of 2016–17 and resulting in 10% of capacity projections having a westerly panel orientation by 2035–36.

<sup>95</sup> Any savings will also be net of the investment in metering costs plus any costs incurred in changing behaviour

impact on all customers. Managing these variations can require the installation of additional monitoring equipment, or equipment to manage the voltage changes.

For customers with solar PV, higher voltages can cause a customer's system to disconnect automatically from the network, preventing the customer from exporting energy until the network voltage returns to normal levels. Low voltages can impact power quality for all customers, for example flickering lights. Voltages outside the required range can also cause damage to appliances and equipment.

High penetration of solar PV can also cause flows to reverse on a network feeder, when rooftop generation exceeds demand. This creates similar quality of supply challenges. Energex states that during daylight hours up to 13% of its distribution feeders operate in reverse due to PV installations.<sup>96</sup>

As discussed in chapter 7, consultants for SAPN found that in areas of SAPN's low voltage network, the acceptable level of solar PV penetration is limited to around 25% of customers. Providing additional capacity for new solar customers would require augmentation to existing network infrastructure and changes to their voltage regulation approaches.

Some networks are trying to get consumers to change their behaviour to reduce pressure on the network by shifting their load to daytime. However, where a DNSP needs to augment its network, the costs of doing so falls on all electricity customers connected to that network.

For example, Energex estimates that \$10million in operating expenditure will be incurred during 2015-20 relating to voltage investigations and re-balancing LV transformer circuits.<sup>97</sup> In the same period Energex expects to incur approximately \$24 million in capital expenditure for monitoring and remediation works relating to power quality issues caused by solar PV.

The costs of this expenditure is treated as a "standard control service" for the purpose of revenue recovery, meaning that is, all electricity customers face the costs incurred by the DNSP, irrespective of whether or not they have a solar PV system. To the extent that the costs incurred by DNSPs in managing increased solar PV currently outweigh the benefits, then this also contributes to the equity issues faced by potential customers that have not yet installed solar PV discussed in chapter 7.

Generally increased solar PV is leading to lower load factors<sup>98</sup> through having a greater proportional impact on consumption volumes than on maximum peak demand levels. This is especially the case in Queensland, South Australia and Victoria. Lower load factors may create issues relating to the operation and utilisation of network assets.

## 9.2 Transmission network benefits and costs

The addition of rooftop solar PV to the energy mix may also provide benefits further upstream, where reduced demand could reduce stress on transmission networks for similar reasons as discussed above. While the location of solar PV still has some importance for reducing stress on the transmission network, the effect is less strong since there is a greater level of aggregation on the transmission network. Further, the transmission network peak tends to occur earlier in the day when commercial businesses are operating.

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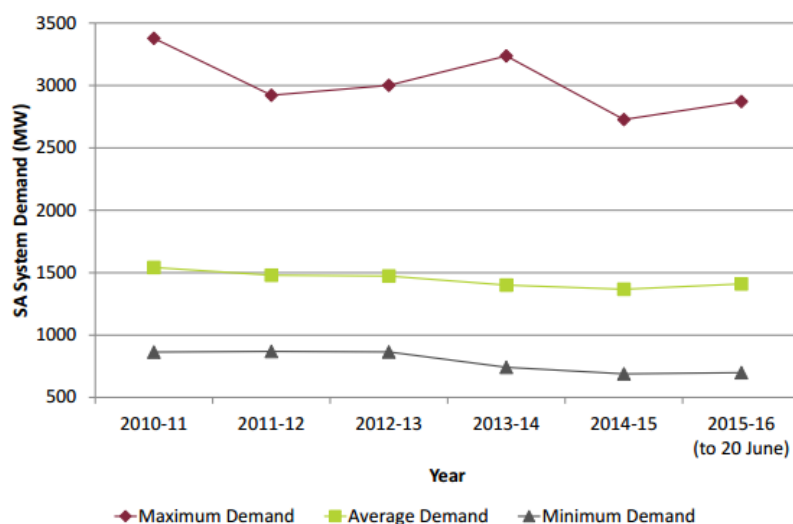
<sup>96</sup> Energex DAPR 2015-16 – 2019-20 volume 1 p.ii.

<sup>97</sup> Energex, Response to Consultation Paper: National Electricity Amendment (Local Generation Network Credits) Rule 2015, 4 February 2016, p4.

<sup>98</sup> "Load factor" refers to the extent to which the network is utilised.

ElectraNet has found that the high penetration of solar PV in South Australia has had some effect on maximum demand on the transmission network. In its most recent Annual Planning Report, ElectraNet noted that “Maximum demand has fluctuated due to the wide variation in heatwave conditions across different summers, but may indicate an overall declining trend.”<sup>99</sup> This was based on analysis presented in the chart below.

**Figure 19: Maximum, average and minimum demand on ElectraNet’s network**



Source: ElectraNet, South Australian Transmission Annual Planning Report, June 2016.

However, ElectraNet does not specify whether the reduction in maximum demand has resulted in any tangible cost reductions to date, or whether it is likely to do so in the future.

ElectraNet also notes that the declining minimum demand increases the challenges of managing the high voltage transmission system, and that additional reactive plant<sup>100</sup> is expected to be required.<sup>101</sup>

With incentives on customers now encouraging a shift away from exporting as much as possible during the day, transmission networks may lose some of the benefits that they have experienced to date from rooftop solar PV. Exports from residential solar customers have been contributing to meeting commercial load. Upstream, this may have been contributing to a reduction in transmission peak demand. By encouraging increased self-consumption, this reduces the amount of commercial load being met by rooftop solar, placing relatively more strain on the upstream transmission network.

However, any reduction in benefits for the transmission network associated with the change in use of residential rooftop PV may be counterbalanced by the anticipated increase in commercial rooftop solar PV.

<sup>99</sup> ElectraNet, South Australian Transmission Annual Planning Report, June 2016, p17.

<sup>100</sup> Reactive plant is required to provide voltage control in the event of voltage collapse.

<sup>101</sup> ElectraNet, South Australian Transmission Annual Planning Report, June 2016, p8.

## 9.3 Wholesale Market and system security

The penetration of solar PV installation will also have an impact on the wholesale market and generators' revenue through the impacts on both maximum demand and minimum demand. Increasing growth in solar PV capacity could have a material impact on generator profitability and investment signals which in turn could impact system reliability and security.

In its 2016 National Electricity Forecasting Report (NEFR), AEMO reported that maximum demand over the next 20 years is expected to remain flat in NSW and Tasmania, increase in Queensland and decrease in Victoria and South Australia. It noted that the key drivers for these forecast changes in maximum demand is the balance between continuing improvements in energy efficiency and uptake of rooftop PV, offsetting demand growth in grid-supplied electricity from the increased use and capacity of cooling appliances plus potentially the increasing use of electric devices.<sup>102</sup>

In the 2016 NEFR, AEMO also discussed the impact on minimum demand caused by the expected increase in installed solar PV capacity. Minimum demand refers to the lowest electricity demand that is expected in any measured time period.

AEMO commented that while minimum demand for electricity is forecast to remain flat for five years across the NEM region, there is the potential for a rapid reduction in the last half of the forecast period driven by forecast increases in rooftop PV. By the mid-2020s, when the effective installed capacity (after allowing for the lower efficiency of aged panels) of rooftop PV across the NEM is forecast to reach 11 GW, AEMO expects that minimum demands will start to shift to midday when the sun is strongest and directly overhead, which is already the case in South Australia. AEMO notes that this may create challenges for the operation of large thermal generators, which must be constantly running, and for the provision of frequency control services.

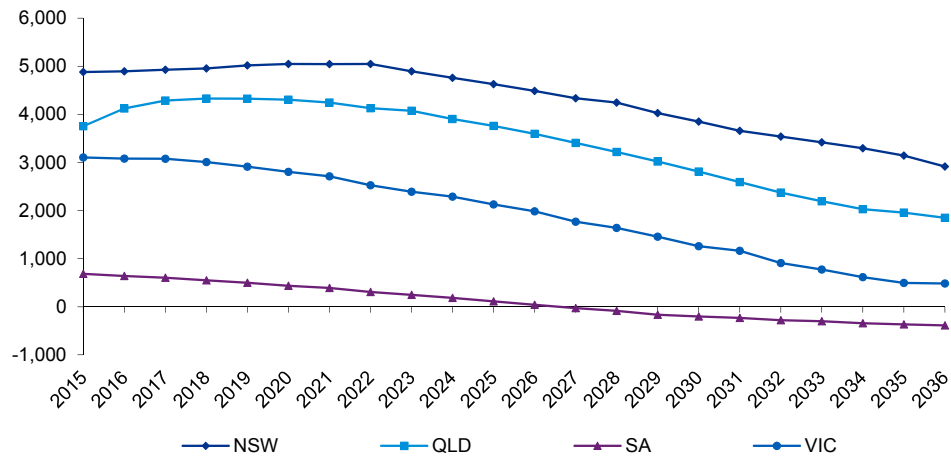
This impact is likely to be strongest in South Australia. In 2014–15, South Australia recorded an operational minimum demand of 790 MW at 13:30 on 26 December 2014, South Australia's lowest operational demand since NEM commencement and lower than any evening demand in South Australia. At this time, rooftop PV output was 445 MW. Based on the continued uptake of rooftop PV and its contribution to supply, by 2023–24, rooftop PV is expected to offset 100% of demand generated from the grid in South Australia. AEMO is investigating this impacts and the possible consequences of such an event on system security and reliability.

Figure 20 shows the extent of the decreases expected in minimum demand for NSW, South Australia, Queensland and Victoria.<sup>103</sup>

<sup>102</sup> AEMO, National Electricity Forecasting Report, June 2016, p.5 and 6

<sup>103</sup> AEMO National Electricity Forecasting Data – Operational neutral min demand for summer. Data available from AEMO website.

Figure 20 - Forecast trends in minimum demand 2015 to 2036 (MW)





# 10 Future developments

The combination of battery storage and solar installation at the residential level will lead to greater flexibility for customers and also increased complexity in the decisions that they face. Energy storage systems are both more technically and economically complex than solar PV systems, and customers face more decisions on how to operate battery storage.

Providing reliable and accurate information that is easy to access and understand will be important to help solar customers consider their options with respect to battery storage. This includes whether to purchase batteries, and also to help them evaluate how best to use and integrate battery storage into their decisions relating to energy. This will need to be coupled with appropriate consumer protections.

Modelling conducted by the Alternative Technology Association (ATA) found that for many solar PV customers, investing in batteries will not become cost effective until after 2020 when payback periods will be less than the assumed 10 years asset life for the battery and inverter. This applies for customers either retro-fitting battery systems or investing in new solar-battery combination systems. ATA also found that the financial viability of solar-battery combinations varies greatly across different jurisdictions and customer consumption profiles, and is sensitive to how the customer intends to charge and discharge the battery.

The value proposition of installing batteries will be unique to each customer as it will depend greatly on a customer's total consumption, the battery capability and the way they use electricity over a day. Even if the price of batteries falls as anticipated over the next decade, the additional investment in batteries may never make financial sense for some consumers.

Battery storage has the potential to contribute to market efficiency. The value of solar PV installations with battery storage as a measure to reduce system peak is less reliant on individual consumers' abilities and preferences to actively shift consumption to align with solar PV output. An integrated solar PV and battery system will automatically help to dampen the contribution of residential consumption towards system peaks.

Battery integration therefore has the potential to improve the market efficiency impacts of existing residential solar PV. To achieve this, better alignment of individual decisions with market efficiency is essential. As the network tariff structure will influence the financial value of combining batteries with solar PV, current reforms to network tariffs may go some way to assisting with the efficient integration of battery storage. The effectiveness of these reforms at promoting the efficient integration of batteries will depend on a range of different factors, including the design of the network tariff structures, how well those tariff structures align with the battery management technology and preferences of customers, how retailers pass through the network tariff signal into the retail offer, as well as government policy.

A solar customer with a battery will have the incentive to opt for tariff structures where they can avoid the most charges that relate to the energy they use. The relative proportion of tariffs recovered through the fixed component is key as this component cannot be influenced by the operation of the solar-battery installation.

The current trends toward increasing fixed component to retail prices and having a higher fixed component to time of use/demand tariffs compared to flat consumption tariffs may impact on the

viability of investing in batteries. In addition, existing customers on premium feed in tariffs will lose payments if they combine batteries with their existing solar PV installation.

Current reforms to network tariffs may not necessarily promote increased uptake of battery storage. Network businesses, retailers and policy makers may need to consider whether additional incentives are required to promote efficient uptake of battery from the market perspective.

The battery storage market is in its infancy and further policy work is needed on a range of matters including regulation, standards and safety matters. It is important that this policy work draws on the lessons learned from addressing similar issues during the emergence and development of the solar PV market. For example, difficulties that have arisen at the interface between individual customers and the grid, as observed in the solar industry, are also likely to occur in the battery storage market. There does not appear, at this stage, to be a consistent framework to guide DNSPs in developing policies for grid-connected residential battery storage nor an accreditation framework for businesses installing batteries.

Providing customers with the tools and protections they need, as well as ensuring individual decision making is aligned efficient market outcomes, relies on multiple entities working together. Policy makers and industry should draw on the experience of, and lessons learned in, the solar PV industry to ensure that benefits from battery storage are realised by both customers and the broader market.

This chapter looks towards potential further developments in the solar PV markets, notably how the availability of battery storage at the residential level will impact on the use of solar PV. The chapter covers how this development will affect customers as well as impacting on the broader market, particularly DNSPs. This chapter summarises ATA's research into battery storage and combination with solar PV installations. It also draws on evidence from surveys and interviews conducted by UMR and MEFL, as well as from other published research where available.

## 10.1 Integrating battery technology with solar installations

Technological advances, particularly in battery storage, are making storage devices cheaper and more accessible to a wider range of electricity consumers. Products are emerging which would enable residential customers to install and use storage "behind the meter"<sup>104</sup> to manage their energy use. Major retailers, such as Origin and AGL, are now offering battery products which can be retro-fitted to existing solar PV installations.

The availability of batteries will change the economics of solar for residential customers. While these developments bring new choices for customers, they also bring new challenges. Financial trade-offs will become more complex to assess as customers consider the interactions between energy sourced from solar, the role of batteries and interaction with the grid. Customers will need tools and information to be able to make the right decisions for them about their energy use and how they combine solar generation with battery storage. This will need to be coupled with appropriate consumer protections.

<sup>104</sup> That is, on the customer's premises.

This section explores how battery storage creates new choices for solar PV customers and its impact on consumption behaviour. This analysis draws mostly on the ATA research and more detail is provided in its report. The section sets out the following decisions that the customer must make:

- whether the battery is charged only from the solar PV system, or whether it can also be charged via the grid;
- whether the economics of a solar PV system combined with battery storage makes sense for them and, if so:
  - the appropriate size for the solar PV system; and
  - the appropriate size for the battery.

The key choice regarding the integration of battery and solar is how the customer intends to charge the battery and whether charging will only be through electricity generated from the solar PV installation or if the customer wants the ability to also charge the battery from the grid. The flexibility to charge from the grid will create additional costs as it will require:

- smart communications systems to achieve alignment between solar production, battery charging and discharging, and importing from the grid. The design of this system may depend on the design of the retail tariff and the ability of the software and hardware to do charging/discharging optimisation; and
- either an “AC coupled” system – meaning that an additional battery-dedicated inverter-charger is required to control the system and communicate with the existing solar inverter – or an inbuilt AC to DC charger which can allowed a DC coupled arrangement to be charged from the grid.<sup>105</sup>

This choice applies equally to customers with existing PV installations and those customers considering purchasing a battery and solar combined installation.

It is expected that initially the majority of battery and solar combinations at the residential level will be “DC coupled”, which means that the battery can only be charged through the solar installation.<sup>106</sup>

As explained in chapter 3, financial returns from the solar PV system are maximised when the solar customer is able to consume as much of its solar output as possible (assuming that the customer is not on a premium feed in tariff). This may be difficult given that for north-facing panels, maximum output will during the middle of the day and a customer residential peak tends to be around evening time. In addition, for a majority of customers there will only be a proportion of consumption which a customer can easily shift between periods.

The value of battery storage is therefore that it removes the need for customers to have to actively align their consumption behaviour with their solar PV output in order to maximise financial returns. The battery will enable the customer to consume its solar PV output whenever they want during the day.<sup>107</sup> The savings achieved through investment in battery storage are therefore related to the difference between the variable component of the retail tariff and the lost revenue due to less export qualifying for the feed in tariff.<sup>108</sup>

The value of combining batteries with solar PV installations will depend on how the customer uses the storage capability, refer to as the battery management system. Battery utilisation will be a

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<sup>105</sup> AC coupling involves the battery being connected on the AC side (or the grid or household side) of the solar inverter – meaning the wires connecting the battery to the solar system are 240V AC. Given all batteries operate in DC, AC coupling requires a second battery-dedicated inverter (and battery charge controller) – which further adds to the cost of the overall system.

<sup>106</sup> DC coupling involves siting the battery on the DC side of (or indeed plugging it directly into) the solar inverter.

<sup>107</sup> Subject to the technical capability of the battery for charging and discharging.

<sup>108</sup> This assumes that the feed in tariff is a net mechanism not a gross mechanism (see section 3). A gross scheme does not make any policy sense for a battery installation as there unlikely to be any exports.

function of the ability of a certain sized solar system (or the grid in AC coupling) to fully charge the battery to its rated capacity, as well as the consumption profile of the individual customer. Both of these involve significant variability as weather patterns change and the behaviour of households change over days, weeks and seasons.

In summary, the financial incentive on solar customer remains the same for solar and battery combined as for solar PV alone. That is, to maximise the volume of solar PV output which they are able to self-consume and to minimise net export to the grid (ignoring the possible different incentives if there is a time of use feed in tariff). The effect of installing certain battery storage systems is to allow customers to “set and forget” and not have to adapt their lifestyle in order to maximise the value of their solar PV system.

Hence for residential customers, their daytime load profile influences the value to them of investing in battery storage. A solar PV without storage offers the greatest potential benefit where significant electricity consumption occurs during the daytime (i.e. during solar generation hours). A consistently high daytime load leads to solar generation being used directly on-site, leaving insufficient excess solar left to charge a battery for use in the evening and overnight. For such a customer, battery storage may offer little financial value.

By contrast, a load shape with lower daytime and higher evening and/or night-time consumption will realise greater benefits from a solar-battery combined system. As this is likely to be the typical consumption pattern for residential customers, integration of battery with solar installation could, in principle, improve the returns from solar for many customers.

In addition, the size of existing solar PV installation will impact on the value of battery storage as this determines the volume of electricity generated that can be stored. Early adopters of solar PV who have on average smaller installations, will have lower returns from batteries compared to customers who have installed solar more recently.

From a market efficiency perspective, battery storage integrated into existing solar PV will automatically help to dampen the contribution of residential consumption towards system peaks. This is because demand from these customers at the peak period can be served by discharging their battery instead of importing electricity from the grid. The value of solar PV installations as a measure to reduce system peak is less reliant on individual consumers’ abilities and preferences to actively shift consumption to align with solar PV output.

One other issue to consider with respect to consumer choice and battery solar integration is the sizing of the solar PV installation. However it is not straightforward to assume that with a battery a customer should maximise the size of its solar PV system. The optimal size of solar PV from a financial perspective relates to:

- the average daily consumption at the premises; and
- whether the incremental cost of a system size that is larger than the average daily consumption is less than the value earned through exporting surplus electricity (either through the feed in tariff or potentially in the future, selling to neighbours through a peer to peer transaction).

Likewise in regard to the size of the battery, a bigger capacity does not necessarily mean higher returns. Ideally, the customer should be installing a battery which has a reasonably high utilisation rate over the course of the year.<sup>109</sup> Therefore the size should be related to the net volume of solar PV output which is not consumed at the time of being generated and which will be used by the consumer later in the day.

The tariff structure for the customer will also affect the financial viability of investing in battery storage. On the one hand, a customer should, in principle, have greater rewards from investing in

<sup>109</sup> Average daily discharge of the battery (on an annual basis) as a percentage of its useable capacity.

battery storage under a demand tariff or a time varying tariff as compared to being under a flat tariff. This is because a battery should, for most customers, enable them to reduce net consumption at peak times and reduce maximum demand.

However, on the other hand, this will also depend on the fixed component (i.e. standing charge) to the various tariff structures. A higher proportion charged through the fixed component will decrease the viability of battery storage, as the battery cannot be used to reduce this cost. Evidence in Australia points towards DNSPs increasing their fixed charges and higher fixed charges for time of use and demand based tariffs compared to flat tariffs. This trend may limit the financial viability of solar-battery installations.

Further, the fixed component to retail tariffs vary depending on retailers and the state or territory in which they are operating. Fixed component charges as a percentage of total retail prices are the highest in Victoria, comprising on average 26 per cent of the representative consumer's bill, compared to 15 to 20 per cent in other jurisdictions.<sup>110</sup> Hence the financial viability will differ across jurisdictions. This is discussed further in section 10.2.

The economics for a customer investing in a solar-battery system will depend on a wide range of different factors, including:

- the level and structure of retail tariffs;
- the size of the battery compared to both the solar PV output and the consumption of the household;
- the battery management strategy employed by the customer;
- the weather pattern prior to and during peak periods (as this will determined the stored energy in the battery);
- the household's daily consumption profile;
- the relative difference between the feed in tariff rate and the retail consumption rate;
- whether the customer is on a premium feed in tariff; and
- whether the battery can be charged also from the grid.

For customers who decide to opt for a battery configuration which also allows charging from the grid, they also need to factor in the difference in the variable component of the retail tariffs at the time of charging from grid imports as compared to time when the battery is being discharged in assessing how to maximise returns from their investment.

Such choice helps to demonstrate the additional level of complexity facing customers considering investing in battery storage to integrate with their current solar PV installations. As discussed above, a solar-battery combination may not make financial sense for all customers.

It will very difficult for customers to evaluate such choices. We consider that solar-battery integration products for residential customers are likely to be developed in ways which can easily be marketed to customers, such as the size of installation and battery which would allow the customer to be self-sufficient and not rely on importing electricity.

### 10.1.2 Desire to take up battery storage

While some customers are aware of the complexities associated with battery storage, the UMR customer survey suggests that a majority of customers that already have solar PV are open to the idea of installing batteries.

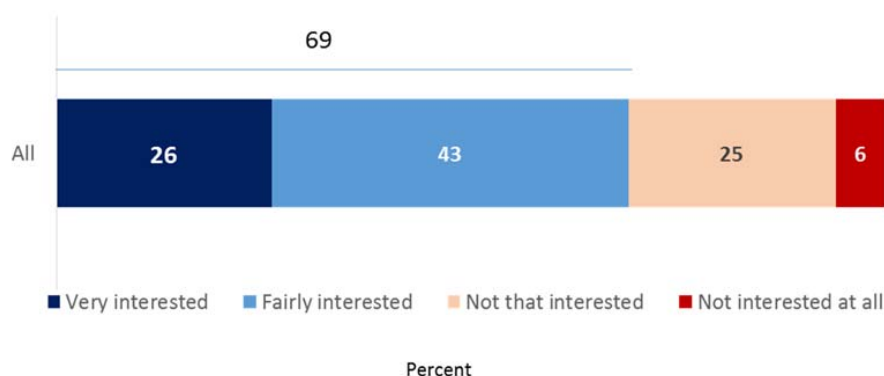
<sup>110</sup> AEMC, 2014 Residential Electricity Price Trends, Final Report p.74

Interviews conducted by MEFL found that there was a high degree of awareness that there was not currently a positive return on investment for battery storage, but consumers expected that in time there would be. There was some interest by customers in further managing energy loads at different times of day to optimise output. This could more easily be achieved through the use of battery storage than by changing their lifestyle.

One customer interviewed by MEFL had batteries installed, and 8% of customers surveyed by UMR that said they were aware of batteries or claimed to have installed them. In research for the AEMC, Newgate found of 2,333 residential electricity customers surveyed, 2 per cent had battery storage.<sup>111</sup> These customers are “early adopters” that are likely to be motivated by reasons other than cost.

**Figure 21: Interest in installing solar**

*Based on [description] and anything else you may have heard, how interested are you now in adding batteries to your solar electricity system?*



Source: UMR Report.

Of those customers that were considering installing battery storage to complement an existing solar PV system, the desire for independence was the strongest motivating factor, followed by reducing household energy costs. Interestingly, this is the reverse of the main motivations cited by customers who had installed solar PV. This may reflect the current high cost of batteries, and that customers that do wish to install batteries in the short term are doing so for non-financial reasons.

Similar opinions were found through the 2015 Queensland Household Energy Survey.<sup>112</sup> That survey found that while awareness of, and intended uptake of battery storage has increased significantly across Queensland in recent years, few customers have spoken with a battery salesperson and generally underestimate the cost of a system. At this stage, the price of batteries remains the greatest barrier to uptake followed by a lack of understanding and the absence of government incentives or rebates being made available.

## 10.2 Financial viability of battery storage and solar

ECA commissioned the Alternative Technology Association (ATA) to provide analysis and advice regarding the current and future economics and technical aspects of solar and energy storage for

<sup>111</sup> Newgate Research, AEMC 2016 Retail Competition Review: New and Emerging Energy Technologies and Services, Consumer Research Report, June 2016, p14.

<sup>112</sup> [https://www.ergon.com.au/\\_\\_data/assets/pdf\\_file/0003/205608/2015-Queensland-Household-Energy-Survey-summary-report.pdf](https://www.ergon.com.au/__data/assets/pdf_file/0003/205608/2015-Queensland-Household-Energy-Survey-summary-report.pdf)

residential consumers in the National Electricity Market (NEM). As part of its research, ATA modelled the economic value to residential consumers of installing different sized batteries either as a retro-fit to homes with existing solar PV; or as part of new solar-battery installations. This included modelling the economic value for typical residential customers across the NEM over the period to 2025 under a range of different tariff structures.

This section provides a brief summary of their methodology and findings.

#### *Overview of ATA's methodology*

To understand the economic value to a residential consumer of installing different sized batteries, either as a retro-fit to homes with existing solar PV or as part of a new solar-battery installation, ATA conducted modelling across five separate locations within the NEM and considered the value for customers making the investment (i.e. system purchase and install) in either 2016, 2020 and 2025.<sup>113</sup>

Various scenarios were modelled based on the following assumptions:

- solar PV size was either 2kW or 5 kW,
- Battery capacity size was either 3kWh or 10 kWh.

Regarding the input prices for these investments, ATA assumed the following:

- \$0.60-\$0.80 per watt for solar PV installations based on current retail prices available in the market. ATA assumed a 1% p.a. reduction in the future price of installation for the modelling.<sup>114</sup>
- \$1,200/kWh for the 3kWh battery and \$1,000/kWh for the 10kWh battery. The model assumes a total capital battery price reduction compared to today's prices of approximately 20% for new solar-battery systems, and 35-40% for retro-fit battery systems, by 2020. ATA noted that a further 20% reduction by 2020 is potentially achievable for retro-fit batteries should the global market for storage grow at the rate experienced by solar in 2009-2013.

Results were modelled for the following three different types of consumers:

Consumer type	Average Daily Load	Consumption Pattern
Working Couple	8kWh	Relatively low day time load
Average Home	15kWh	Similar to Working Couple plus one child
Large Family	30kWh	Relatively high day time load

The modelling was based solely on batteries which were only able to be charged from the solar installation and not from the grid. Batteries and inverters were assumed to be operational for 10 years, after which time the customer had to make a further investment to replace these assets.

Tariffs for the modelling were set separately for each location and year, based on an assessment of available retail tariff offers in 2016, and projected offers in 2020 and 2025 (taking into account industry price forecasts). The following tariff types were used as an input into the baseline scenarios:

<sup>113</sup> Capital cities were selected: Sydney, Melbourne, Adelaide, Brisbane and Hobart. The modelling results were as defined 10 year Net Present Values (NPVs) and cash flows were discounted by 2.5%. The modelling was undertaken using ATA's 'Sunulator' solar-battery simulation model.

<sup>114</sup> Small Technology Certificates (STCs) were also accounted for in the model for those scenarios where a new solar-battery system was being installed. With the scheme closure due in 2030, ATA modelled a reduced number of STCs awarded for investment in new solar-battery systems in 2020 and 2025.



- a) a flat tariff;
- b) a 3-part Time of Use tariff for Victoria, NSW and QLD;
- c) a 2-part Time of Use tariff for SA; and
- d) a demand (i.e. kW-based) tariff for each location.

Tariffs used in the modelling were informed by existing offers available in the market. For future tariffs, such as demand tariffs, ATA reviewed DNSPs' Tariff Structure Statements.

As explained earlier, the economic value from battery storage will depend greatly on the strategy employed by the customer for charging and discharging the battery. The majority of the modelling undertaken by ATA involved the battery management strategy of buffering the solar PV output.

This strategy relies on a sensor to instantaneously detect the level of export or import from the grid. Solar generation is first used to supply on-site loads. Any excess is used to charge the batteries (within the limits of battery capacity and maximum charge rate), eliminating export to the grid (unless the battery is fully charged and there remains excess solar generation above on-site consumption). When on-site consumption is greater than solar generation, energy is discharged from the batteries (within battery limits) to avoid import from the grid where possible.

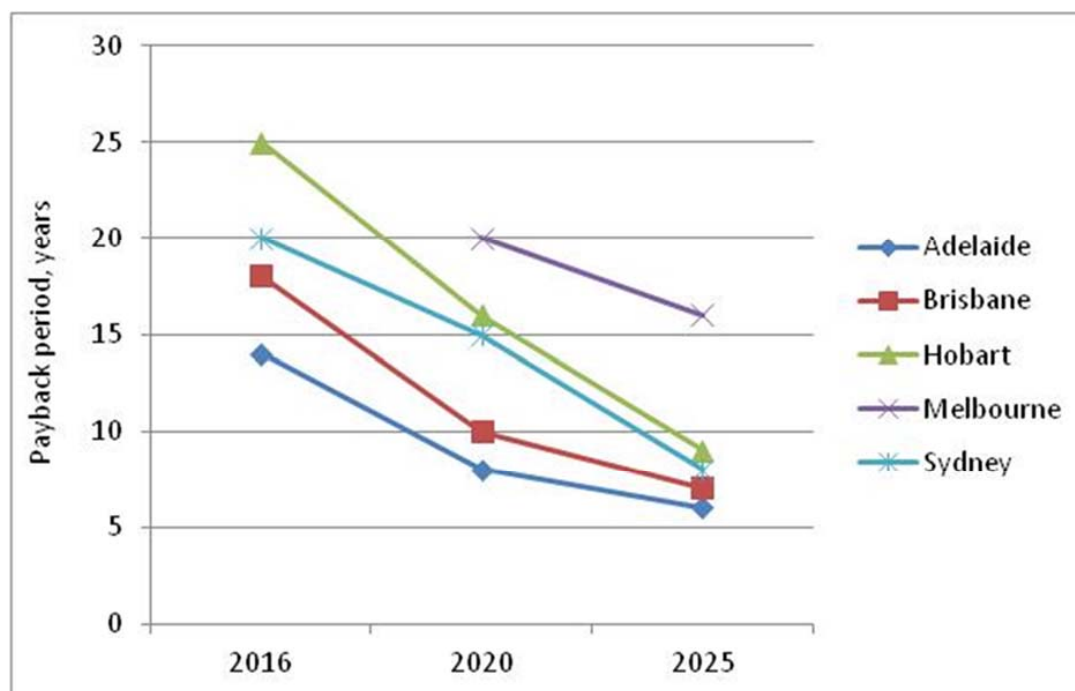
This is probably the most simplistic battery management strategy employed on the basis that the majority of the battery products in the Australian market are set up with the battery unable to be charged directly from the grid. Other strategies would probably be of more value to different customers – for example, reserving battery capacity for peaks – especially if the battery can be charged from grid.

The main finding from ATA's modelling is that, given their high capital cost and relatively small additional benefits beyond that offered by solar PV, batteries do not currently offer economic value to residential energy consumers (in 2016). Payback periods are substantially longer than the ATA's assumed 10 years asset life for the battery and inverter. This applies for both customers either retrofitting battery systems or investing in new solar-battery combination systems.

After 2020, some locations and household types are able to install storage, as part of either new solar-battery systems, or retro-fit battery systems, and obtain a payback on their capital within the asset life of that battery and inverter. This can be seen in Figure 22, which models the payback period for an investment in a new 5kW solar PV system with a new 10kWh battery by an Average Home on a flat tariff.

Given their abundant sunshine and higher electricity tariffs, Adelaide and Brisbane achieve the fastest payback times, reducing to ten years or less by 2020 as component prices fall. Sydney and Hobart attain that mark by 2025; however Melbourne does not due to a combination of low electricity tariffs and relatively low levels of sunshine.

**Figure 22: Simple<sup>115</sup> Payback by Location for Average Home, New 5kW Solar + 10kWh Battery**



Source: ATA report

The estimated value is greater for consumers with a 5 kW PV system combined with a 10 KWh battery compared to consumers with a 2kW system combined with a 3 KWh battery. This is largely due to the smaller solar system (2kW) not generating enough excess electricity to fully charge the battery on a regular basis. In turn, the battery can't support as much of the household load – providing smaller benefits relative to upfront cost. In addition, smaller solar/battery systems are more expensive per unit of capacity.

Regarding consumer consumption patterns, ATA found that households with larger daily loads and peaky consumption profiles stand to benefit more from the installation of storage than those with smaller daily loads and flatter consumption profiles. Therefore of the different consumer types modelled, ATA found that the Large Family obtains the most value, followed by the Average Home. ATA did not find any scenarios where investment in battery storage became financially viable for the Working Couple.

The Average Home makes better use of the large solar system and battery, resulting in a large bill saving. The Large Family consumes much of their solar generation immediately, resulting in an even bigger bill saving, but a slightly lower battery utilisation. The Working Couple does not consume enough electricity frequently at night to fully discharge the large 10 kWh battery. At the same time, the large solar system is often exporting to the grid for a low value.

Interestingly ATA found that the Working Couple are not materially better off with a smaller solar PV and battery system (2kW + 3kWh). While the Working Couple makes better use of the battery, there are many sunny days on which the battery cannot absorb all of the excess solar and significant amounts of solar generation are exported to the grid. Due to economies of scale, this small system is more expensive per unit of capacity than the large system, prolonging payback.

<sup>115</sup> ATA modelled payback periods on both a simple number of years payback and a discounted payback. ATA considered that whilst discounted payback is the more accurate economic measure, consumers are more likely to use the simple method.

Throughout the modelling period, a key finding is that the solar component provides by far the greatest proportion of the financial returns compared to the battery component where the value is achieved through flattening the net import consumption of the household. For this reason, ATA considers that a solar installation without battery is likely to deliver faster payback times as the lower upfront cost will typically outweigh the smaller bill savings.

For the battery retro-fit cases, the economics are once again worse than for the new solar-battery system. A key factor is whether the cost of the replacement hybrid inverter is accounted for. However we understand that there now exists an opportunity for new or retro-fit solar-battery projects to utilise a separate DC to DC converter, as an alternative to a more expensive hybrid inverter with battery control functionality. This approach can save in the order of \$5,000 on the cost of a new, replacement hybrid inverter as part of a retro-fit project. As such, this approach could become the most economic way to undertake a retro-fit project for existing solar homes. ATA modelling did not take this potential saving into account.

Regarding different tariff structures, ATA found that for many residential customers installing batteries that only charge from the solar PV system, they will be slightly better off on flat tariffs than a Time of Use (ToU) or a demand tariff. We believe this finding is a reflection of the fact that ATA based their analysis on a selection of observed prices, which happen to have the following characteristics:

- the fixed component of the flat tariff is lower than the fixed component of the TOU or Demand tariff structures; and
- there is a relatively small difference in the c/kWh charge for the flat tariff compared to the c/kWh charge for the time of use peak and non-peak rates.

ATA's finding that customers are better off on a flat tariff than a TOU or a demand tariff may seem to be counterintuitive and is likely due to the sample of tariffs used for the analysis. In practice, the relative tariff impacts for solar PV customers installing batteries will depend on the relative strength of the network cost signal contained in each tariff structure offered.

ATA also found that the economics of demand tariffs are relatively sensitive to individual consumption profiles. Smaller energy users with lower maximum demand will likely benefit from a demand tariff with a higher kW component. In contrast, larger energy users would benefit from a demand tariff with a lower kW component. In Brisbane and Sydney, the demand tariff generally resulted in longer payback times as ATA maximum demand tended to occur at times when the batteries were depleted under their assumed simple battery management strategy. A strategy that is optimised to account for demand tariffs would be expected to provide a shorter payback period than one that is not optimised.

These results regarding tariffs are very sensitive to the assumed battery management strategy, the estimate retail tariff levels and the size of the solar PV battery units. Any modelling results on financial viability under different tariff structures needs to be undertaken with care. Such results are very sensitive to the individual circumstances of the customer and the functionality of the battery. Therefore general observations on the value to customers under different tariff types may not apply to a given customer.

In addition, the battery management strategies will be key, including whether the battery discharges consistent with a time of use tariff and/or peak periods. Strategies such as tariff optimisation or peak clipping where the battery is designed to be smart and discharge when there is greatest value will impact on the value under different tariff structures.

As explained in chapter 2, the solar PV market saw a marked increase in the average size of installation over time as the capital costs declined. ATA is expecting that the economics of battery integration will see a similar trend in battery sizes. They noted that a small battery size of 3kWh is the

most economic system under current cost estimates but that by 2025, 10kWh batteries appear to be competitive.

ATA also noted that electric storage hot water systems and heat pump systems may offer the potential for existing (and new) solar customers to maximise the use of their solar-generated electricity, without the need to invest in as yet expensive chemical energy storage in batteries.

## 10.3 Barriers to battery/solar integration

This section explores potential barriers to existing residential customers integrating battery storage with their solar PV installations.

### 10.3.1 Technical capability to combine battery storage with existing solar

While there are multiple ways that battery storage can be added to an existing solar PV installation, it cannot be assumed that it would be straightforward to install a battery and have it operate with the existing installation. ATA advises that the majority of solar PV systems installed in Australia are not completely battery ready – i.e. an existing solar customer cannot simply purchase a lithium ion, flow or sodium battery and have it retro-fitted to their existing system.

The main reason for this is the technical capability of the existing inverter is not compatible with the charging and discharging of the battery. This means that for most existing solar customers, they will need to either replace their existing, string inverter, or add a second inverter to their existing system. For some customers it may instead be possible to install a DC to DC convertor which can alleviate the need for a new hybrid inverter. This option depends on the system functionality required by the customer.

For this reason, all new battery products are sold with a new inverter or require a separate inverter to be purchased for installation. Existing solar customers may not be aware of this additional cost associated with battery storage, which could be in the region of \$1000+. Also it is not clear if new solar PV installations contain an inverter which is battery compatible.

In addition, the operation of the battery and solar PV systems may require new IT management systems to align the operation of the battery and the solar PV installation so as to maximise the financial returns to the customer. Battery storage systems are far more complex than solar PV systems. For example, the useable lifetime of the battery can be shortened if the batteries are over-charged, over-discharged (especially fully discharged), charged when the temperature is too high, charged too quickly, discharged too quickly, etc. For these reasons, lithium batteries require a Battery Management System (BMS) responsible for monitoring the safe operation of the battery, and other battery chemistries require other types of battery controllers.

### 10.3.2 Premium feed in tariffs

Premium FiT rates will also impact on the incentives for such customers to install batteries and could actually act as a barrier to installing such new technologies. This disincentive applies equally to customers on either a net or gross premium rate. There are two issues here:

1. The rules regarding a solar customer's ability to modify their system and retain the premium FiT may influence their decision to install battery storage. In some jurisdictions, a customer on a premium rate would become ineligible for that rate if it installs batteries. This is the case in ACT, SA and Queensland. The rationale for this prohibition is that it may be impossible with the metering technology at the premises to tell if the exported energy has solely been produced by the solar PV installation.
2. More importantly, there is a financial disincentive under current retail tariffs. If the premium FiT is more than the variable component of the retail tariff then the customer would lose revenue if it uses the battery to store solar generation for later use at the premises.

As explained in chapter 3, the behavioural incentive on customers with premium rates is to maximise their solar exports and hence there is very little value from installing a battery to support the solar PV installation. This disincentive may change if the retail rate becomes time varying and there is value for the consumer to store solar generated electricity for consumption at times when the time varying retail rate is highest.<sup>116</sup>

Consequently customers in affected jurisdictions may delay their decision to install batteries until the premium FiT schemes close. While we have not been able to find the actual number of solar PV customers who are currently on highest premium FiT schemes for their region, we estimate that percentage of customers on premium FiT compared to total installations ranges from 20% in NSW to over 50% in Queensland.

**Table 3: Estimates of percentage of residential installations on premium feed in tariff rates**

	NSW	VIC	SA	QLD
<b>Total installations (as at 1 July 2016)</b>	337,949	289,053	197,549	337,949
<b>Estimated %</b>	20%	34%	40%	55%

Source: KPMG analysis of Clean Energy Regulator data for total installation numbers

## 10.4 Customer Issues

### 10.4.1 Customer Understanding and information

The UMR survey results found that two thirds of respondents thought there was enough information available for them to feel confident about whether installing batteries was right for them.

In contrast, research conducted by Newgate for the AEMC found that many customers wanted more information about new technology, including battery storage. Newgate found that "the dearth of knowledge and understanding is currently the greatest barrier to overcome before there is a

<sup>116</sup> Subject to the timing of the peak rate and the net consumption profile of the household.

substantial shift in the momentum around new technology uptake”.<sup>117</sup> Similarly the 2015 Queensland Household Energy Survey found that while 68% of solar PV owners surveyed are aware of battery storage, only 14% intend to purchase it. Respondents to that survey expected battery storage costs to be around \$7,000 which is considerably less than actual costs. It should be noted that the contrasting views could be influenced by selection bias. The majority of respondents to the UMR survey were selected specifically because they were solar customers, who may be more informed on the available technologies that could complement their existing investment. Respondents to the research undertaken by Newgate for the AEMC and the Queensland Household Energy Survey included a higher proportion of customers that did not have solar.

Providing reliable and accurate information that is easy to access and understand will be important to help solar customers consider their options with respect to battery storage. This includes whether to purchase batteries, and also to help them evaluate how best to use and integrate battery storage into their decisions relating to electricity. This will need to be coupled with appropriate consumer protections.

It is likely that sophisticated IT management systems will become part of the battery products. This could develop to help “set and forget” type approaches, whereby alignment of the charging and discharging of the battery with a particular tariff structure (e.g. ToU or demand charge) may offer increased consumer benefits. However there may be issues (and additional costs) with retro-fitting such IT systems for those customers with existing solar PV installations.

#### 10.4.2 Safety of battery – solar installations

As explained above, battery storage systems are both more technically and economically complex than solar PV systems. They also create additional safety issues to be addressed in order to protect customers. The 2015 Queensland Household Energy survey found that 14% of respondents stated that safety concerns were a barrier to purchasing battery storage.

The installation of grid-connected energy systems with battery storage is a relatively new and emerging field, which is growing rapidly. However as recognised by the Clean Energy Council existing standards do not address recent product innovations and developments, such as packaged ‘battery energy storage systems’, also known as ‘all-in-one’ systems, which combine battery storage, inverters and other control equipment into a single assembly, with pre-engineered connections.

Given a lack of standards specific to emerging battery technologies and configurations, in April 2016, both the CEC and the Australian Energy Storage Council released (separate) sets of interim guidelines for battery installation and safety. The CEC guidelines - Installation Guidelines for Grid Connected Energy Systems with Battery Storage will become mandatory for its members from 1 October 2016. This guideline will list five main hazards associated with battery systems.<sup>118</sup>

Further work is required to have a complete and robust set of safety standards which is consistent with the available battery technology. Standards Australia is working with the COAG Energy Council to develop new standards and support the safe and efficient uptake of new storage technology in Australia. Standards Australia commenced public consultation on the development of Australia’s first comprehensive set of industry standards for battery storage in May 2016.

A related issue is that while the CEC accreditation framework applies to businesses installing solar PV and other renewable energy systems, there is no similar system in place for businesses installing

<sup>117</sup> Newgate Research, AEMC 2016 Retail Competition Review: New and Emerging Energy Technologies and Services, Consumer Research Report, June 2016, p7.

<sup>118</sup> These five safety hazards include electric shock, energy, chemical, fire and gravitational.  
<http://www.solaraccreditation.com.au/installers/compliance-and-standards/accreditation-guidelines.html>

battery systems. While all electrical work is still required by law to be undertaken by suitably qualified tradespeople and follow all manufacturer recommendations, and CEC members are subject to its battery installation guidelines, consideration of an appropriate accreditation framework for battery installation, similar to solar PV installation, is required.

## 10.5 Market issues

### 10.5.1 Incentives through tariff design

As explained in chapter 3, reforms have recently been introduced to achieve greater cost reflectivity in network tariffs design and structures. The objective is to require network prices to reflect the efficient cost of providing network services to individual consumers so that they can make more informed decisions about their electricity usage. Distribution businesses are required to have approved efficient tariff structures in place from 2017.

This section explores this matter of tariff reform from the perspective of a customer who has (or is considering having) both solar and battery storage at their premises.

As explained above, the combination of battery and solar could dampen the incentives on a consumer to shift their consumption as they could instead use the battery to meet their electricity needs during peak times.

The financial value of a ToU tariffs will depend on the customer's consumption pattern and the capacities of both the solar PV unit and battery. For example, a consumer may benefit from a time of use tariff structure to charge from the grid in the off-peak and consume the energy from the battery during the peak if the solar PV output is insufficient to meet its peak demand.

The situation regarding demand tariffs is slightly more complicated. The incentive is for the consumer to store electricity in advance of any days when solar PV output is impacted (e.g. due to weather) in order to minimise the value peak demand occurring during the charging period applicable to the demand charge. This would require a high level of engagement by the customer to consider and implement, or a high level of sophisticated automation.

ATA modelling confirms this. The ATA found that households installing DC coupled batteries would generally be no worse off from being on a flat tariff as compared with a ToU or demand tariff, noting that these results likely arise from using observed prices. For many homes and locations, customers would indeed be better off on a flat tariff. Peak tariffs have less of an impact if a customer has solar and battery storage, as the battery will enable the customer to consume its solar PV output whether it wants during the day and hence the proportion of consumption exposed to peak pricing is less compared to customer without battery.

In principle, a solar customer with a battery will have the incentive to opt for tariff structures where the fixed charge component is lowest. This is because this component cannot be influenced by the operation of the solar-battery installation. Any trends toward higher fixed charges under the tariff reform is likely to negatively impact on the financial returns available for batteries.

This is in contrast to those customers who only have battery storage without any solar installation. For these customers, the financial return is from selecting a time of use tariff and the battery controller is then programmed to supply electricity to the household during peak times and charge the battery using cheap off-peak electricity.

One objective of tariff reform is to provide better incentives on consumers to help influence consumption patterns in a way which dampens system peaks. However for the reasons outlined above, tariff reforms that result in a relatively high fixed price are likely to be ineffective towards customers who have solar and battery integration.



Tariffs choice may not be the only policy mechanism to promote efficient uptake of battery storage for solar PV customers. The effectiveness of current network reforms at promoting the efficient integration of batteries will depend on a range of different factors, including how retailers pass through the network tariff signal into the retail offer, government policy, the design of the network tariff structures plus how well those tariff structures align with the battery management technology and preferences of customers.

As explained above, battery integration will help to improve the market efficiency impacts of existing solar PV customers through dampening net demand at peak periods. The question for network businesses and policy makers is if and how, in the absence of being able to use tariffs to reward behaviour which helps to manage system peaks, solar PV customers should be rewarded for such behaviour to promote efficient uptake of battery from the market perspective. As found by ATA, solar installations without batteries will be financially better for consumers as they lead to faster payback compared to combined solar and battery. While this is a better outcome for consumers it is potentially worse for market efficiency.

### 10.5.2 Implications of increased penetration of battery storage

Like solar, individual decisions regarding the design and installation of battery storage, as well as the subsequent changes in a customer's load profile, will have wider implications. These will be felt most noticeably by DNSPs, for whom battery storage could either impose or reduce costs:

- Battery storage can absorb more PV generation, reducing the volume of export and its impacts and potentially contributing to the reduction in local peak demand (on the assumption that stored power will be used in the evening). This outcome is consistent with current incentives on customers that are on low feed-in tariffs and have an incentive to match generation with consumption.
- Battery storage could result in more generation being exported onto the network in some instances, if the battery is being discharged at the same time as energy is being generated. Currently the financial incentive is for customers to self-consume electricity which is stored in the battery. However this could be an issue if customers are instead incentivised to generate more energy than they consume.

DNSPs seeking to encourage or reduce these impacts could result in individual DNSP policies driving different outcomes across the NEM, as has been the case with solar PV. Already, many DNSPs have put regulations around battery inverters and the CEC is working with the industry to develop arrangements regarding export.

It is also reported that battery storage could lead to customers becoming self-sufficient and opting to disconnect from the electricity network. At this stage, the substantial costs of going completely off-grid are likely to limit the likelihood of this occurring. ATA estimates the total costs of going off-grid in the region of \$40,000 per residential premises.<sup>119</sup>

While off grid solutions could become more common once battery storage becomes financially feasible, it is unlikely that many customers will disconnect from the electricity network in the short to medium term. However the policy implications including the appropriate charges for such disconnection have not been properly settled.

<sup>119</sup> ATA Report to ECA, Storage Advice p.33

### 10.5.3 Network connection and performance arrangements

Local DNSPs detail requirements for the installation of embedded generators, which includes solar systems and battery storage systems. These requirements must be consistent with the connection arrangements specified in the National Electricity Rules and jurisdictional regulations.

Such requirements are intended to ensure the safety of embedded generation systems and ensure that the operation of the embedded generator does not adversely affect other electricity consumers connected to the local electricity network. We understand that most local connection requirements are currently being revised to ensure they adequately cater for the safe operation of battery storage systems.

The AEMC has recently conducted a review into regulatory issues associated with the development of battery storage.<sup>120</sup> In its final report, the AEMC identified a number of issues regarding the processes for the connection of storage capability to the electricity network, both behind the meter and on the grid itself, plus the ability of parties to use their storage capability to participate in the wholesale market.<sup>121</sup>

To address such barriers and to also simplify and streamline the connection process for battery storage, the AEMC recommended that:

1. AEMO conduct a review of the existing registration category of small generator aggregator to determine whether the ensuing rights and obligations are suited to parties seeking to utilise the combined capability of disaggregated storage behind the meter for participation in the NEM.
2. AEMO conduct an assessment of whether there are any technical limitations to small generation aggregators offering frequency control ancillary services, for example by aggregating the combined capability of a number of storage devices behind the meter.
3. The AER, as part of its ongoing compliance work in this area, review existing DNSP basic connection service offerings for micro-embedded generation to ensure they clearly articulate their applicability to the connection of a storage system intending to export electricity to the grid.
4. The AEMC conduct a review of the technical standards contained in the NER to assess their applicability for connection of storage assets, as either a generating system or a load, by registered participants
5. The AEMC conduct a review of the technical requirements that apply to the connection of micro-embedded generation

The progress of these issues are critical to ensure that the regulatory frameworks are not inhibiting the efficient deployment of battery storage, including battery solar integration.

<sup>120</sup> <http://www.aemc.gov.au/Major-Pages/Technology-impacts>

<sup>121</sup> <http://www.aemc.gov.au/Major-Pages/Technology-impacts/Documents/AEMC-Integration-of-energy-storage,-final-report.aspx>

# Appendix A: Glossary of terms

AC – Alternating current	NERL – National Energy Retail Law
AEMC – Australian Energy Market Commission	NERO – National Energy Retail Objective
AEMO – Australian Energy Market Operator	NERR – National Energy Retail Rules
AER – Australian Energy Regulator	Newgate – Newgate Research
ATA – Alternative Technology Association	NGO – National Gas Objective
BMS – Battery Management System	PV – Photovoltaic
CEC – Clean Energy Council	SAPN – South Australia Power Networks
CER – Clean Energy Regulator	STC – Small Scale Technology Certificates
COAG – Council of Australian Governments	SWER – Single Wire Earth Return
CSIRO – Commonwealth Scientific and Industrial Research Organisation	ToU – Terms of use
DC – Direct current	UMR – UMR Research
DNSP – Distribution Network Service Provider	
ECA – Energy Consumers Australia	
ESV – Essential Service Commission of Victoria	
FiT – Feed-in Tariff	
GWh – Gigawatts per hour	
kWh – Kilowatts per hour	
LGNC – Local Generation Network Credits	
MEFL – Moreland Energy Foundation	
MWh – Megawatts per hour	
NECF – National Energy Customer Framework	
NEM – National Electricity Market	
NEO – National Electricity Objective	

# Appendix B: Code of Conduct

## CEC Accreditation Code of Conduct

All Clean Energy Council-accredited installers are bound by the CEC's code of conduct. The code of conduct is intended to "guide the behaviour of accredited installers and designers, and the standards of conduct and professionalism expected from them".<sup>122</sup> It therefore deals with matters relating to the design and installation of solar PV systems.

The code of conduct requires that anyone that holds any form of CEC accreditation:

- shall act so as to uphold and enhance the honour, integrity and dignity of the sustainable energy industry and the Clean Energy Council by associating, in their business activities, exclusively with individuals and enterprises of good character
- shall solicit work, advertise and promote their services and products with dignity and truth, avoiding any potentially misleading statements or omissions
- shall apply their skill and knowledge in the interest of their clients or employers for whom they act as faithful agents or trustees
- shall regard as confidential any information concerning the business and technical affairs of their clients or employers
- shall inform their clients or employers if circumstances arise, in which their judgment or the independence of their service may be compromised by reason of business connections, personal relationships, interests or affiliations
- shall deal honestly and truthfully with clients, employers and government agencies in all matters pertaining to payments, discounts, rebates and grants and the conditions applying to them
- shall continue their professional development throughout their careers (including by taking all reasonable steps on an ongoing basis to maintain familiarity with all current relevant laws, ordinances, regulations, standards, codes of practice and guidelines) and shall assist and encourage other accredited persons to similarly advance their knowledge and experience
- shall observe and conform to all relevant Australian Standards and all relevant Clean Energy Council accreditation guidelines, and all applicable laws, ordinances, regulations and codes of practice
- shall promptly report any apparent breach of any of these rules by a fellow accredited person or applicant for accreditation to the Clean Energy Council, Accreditation Management
- shall promptly report to a member of the Clean Energy Council Accreditation Management any activity or behaviour by a non-accredited person operating in, or making statements about, the sustainable energy industry, which activity or behaviour by that person would be a breach of these rules if that person held any Clean Energy Council accreditation, so that an appropriate response to be made by the Clean Energy Council, and
- shall not bring the industry into disrepute.

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<sup>122</sup> See [www.solaraccreditation.com.au](http://www.solaraccreditation.com.au).

### Box 5: Accreditation Code of Conduct

Under the terms of the Clean Energy Council's design accreditation, system designers are expected to adhere to the Clean Energy Council System Design Guidelines. Under these guidelines, the designer's responsibilities are to:

- provide full specifications of the system including quantity, make and model number of the solar modules and inverter
- provide a site-specific full system design including all shading issues, orientation and tilt, along with the system's site-specific energy yield, including average daily performance estimate in kWh for each month of solar generation
- ensure array design will fit on available roof space
- ensure array mounting frame installation will comply with AS1170.2
- ensure array configuration is compatible with the inverter specification
- ensure all equipment is fit for purpose and correctly rated
- obtain warranty information on all equipment.

The guidelines also specify the documentation that the designer is required to provide to the installer, which includes:

- A list of equipment supplied
- A list of actions to be taken in the event of an earth fault alarm
- The shutdown and isolation procedure for emergency and maintenance
- A basic connection diagram that includes the electrical ratings of the PV array and the ratings of all overcurrent devices and switches as installed
- Site-specific system performance estimate
- Recommended maintenance for the system
- Maintenance procedure and timetables
- If the designer runs a sales company and engages accredited installers, someone in the company must be an accredited designer who takes responsibility for the system design and performance estimate for each job. If the designer does not take this responsibility, the designer is required to inform the installer of this.

# Appendix C: Feed-in Tariffs

This appendix outlines government guaranteed, regulated retailer and competitive retailer feed-in tariffs (FiTs) for each jurisdiction. Tariff payments are net unless otherwise stated.

As set out below, jurisdictional governments have taken different approaches to FiTs and there have been policy changes to these schemes over time. Consequently there may be some confusion for solar customers about what they are entitled to.

## A.1: Queensland

Queensland FiTs began with the introduction of the Solar Bonus Scheme (SBS) under the Clean Energy Act, 2008 and is administered by the Department of Energy and Water Supply.

The SBS was available from July 2008 until 30 June 2014 to small customers. Customers on the SBS received a guaranteed government rate and had the ability to switch retailers during the Scheme. The SBS had two periods with which customers fell into:

- Customers that applied to the Scheme before July 2012 were eligible for a net 44 cents per kWh government FiT and will continue to receive this rate until July 2028; or
- Customers that applied to the Scheme between July 2012 and June 2014 and received 8 cents per kWh government FiT until 30 June 2014.

The SBS operates as a net payment mechanism and is funded through higher network charges for all electricity consumers.

In 2012, the Queensland Government launched an inquiry into FiTs led by the Queensland Competition Authority (QCA) – an independent body that ensures monopoly businesses do not abuse their market power. The results of the inquiry found that:

- Future feed-in tariff schemes should be funded by electricity retailers, rather than regulated network businesses, to avoid cross-subsidies and the inequitable recovery of costs from those customers least able to afford them.
- There is no compelling evidence to support a regulated, mandatory minimum feed-in tariff for customers in the south east Queensland retail electricity market.
- Regulated minimum retailer funded feed-in tariffs should be established for regional customers depending on customer location.
- Government could move PV customers to a time-of-use tariff to expose them to a more cost reflective fixed charge than they face under flat residential tariffs. This would reduce the problem of PV customers avoiding some of the true cost of their network access due to their net consumption profile, which leads to higher average variable network charges.

Following this review, Queensland transitioned to a geography and population based tariff structure, divided up between regional Queensland and south-east Queensland (SEQ). The setting of the FiT rates also changed.

In regional Queensland, a flat tariff structure was adopted post review. The flat tariff structure was and is determined by the QCA on an annual basis. The most recent tariff structure fares were 6.534 cents per kWh (2014-15), 6.348 cents per kWh (2015-16) and 7.448 cents per kWh (2016-17). An important change to note with the recent tariff rates is the 2016-17 jump from 6.348 to 7.448 cents per kWh. This jump was driven by a higher wholesale prices given by both an increase in demand from the Queensland-based Liquefied Natural Gas (LNG) project(s) and general higher fuel costs for gas-fired generation plants.

From 1 July 2014, customers in South East Queensland who were previously on the 8 cents per kWh rates, as well as new solar customers, will receive a FiT that is set by their retailer. As of July 2016, these Market FiTs ranged from 4 to 10 cents per kWh.

## A.2 New South Wales

In 2009, under the Electricity Supply Act 1995, the NSW Government introduced the Solar Bonus Scheme (SBS). The SBS commenced 1 January 2010 and was legislated to run for seven years to 31 December 2016.

Customers who applied for the Scheme between January 2010 and April 2011 will receive a gross 20 cents per kWh or 60 cents per kWh depending on the dates of purchase (or lease) until 31 December 2016.

There are no government FiTs currently open for new applications in NSW. New solar customers receive competitive retailer FiTs which ranged from 5 to 10 cents per kWh as at 18 February 2015. For 2016/17, the Independent Pricing and Regulatory Tribunal (IPART) publish a recommended benchmark range of between 5.5 to 7.2 cents per kWh. This benchmark range is a guide to the unsubsidised value of solar feed-in tariffs that some electricity retailers voluntarily offer to customers who are not part of the SBS.

In setting this range, IPART takes into account the wholesale electricity costs, avoided losses and NEM fees. Under its methodology, IPART treats solar PV customers similar to other generators in the market.

The objective of the SBS was to encourage the uptake of renewable energy in NSW. Since its inception, over 146,000 households and small businesses have installed small-scale renewable energy generators. Additionally, since the Scheme's closure to new applicants in April 2011, a further 174,000 households and small businesses have installed systems without a subsidised FiT.<sup>123</sup>

## A.3 Australian Capital Territory

The ACT has two premium FiT Schemes (Small and Medium Scale Fit Scheme and Large Scale FiT Scheme). The Small and Medium Scale FiT Scheme is directly applicable to rooftop solar panels for households, the latter is more suitable for larger scale, industrial size solar electricity generation.

The ACT's Scheme provided for a 'gross' FiT, whereby each kilowatt hour produced was paid the incentive. This is in contrast to the alternative, 'net' tariff arrangement, which pays only for electricity surplus to household consumption.

The ACT's Micro Generator scheme was open for applications between March 2009 and July 2011. The Medium Generator Scheme was open between February 2011 and July 2011. Government mandated rates range from 30.1 to 50.05 cents per kWh gross, depending on the date of connection and capacity. These rates will be paid for 20 years from connection. Over the lifetime of the Scheme, there were five different rates that were applied to customers, these include:

- 50.05 cents/kWh (installation capacity up to 10 kW) for applications approved 1 March 2009 to 30 June 2010;
- 40.04 cents /kWh (installation capacity between 10 to 30 kW) for applications approved 1 March 2009 to 30 June 2010;
- 45.7 cents /kWh (installation capacity up to 30 kW) for applications approved 1 July 2010 to 31 May 2011;
- 34.27 cents /kWh (installation capacity between 30 to 200 kW) for applications approved 7 March 2011 to 11 July 2011; and

<sup>123</sup> NSW Government – Department of Industry: Resources and Energy, <http://www.resourcesandenergy.nsw.gov.au/energy-consumers/solar/solar-bonus-scheme/faqs-about-the-solar-bonus-scheme-closure>, site accessed 27 June 2016.

- 30.16 cents /kWh (generator capacity up to 200 kW) for applications approved 12 July 2011 to 13 July 2011 Gross 2011.

Following the closure of these schemes to new applications, customers receive a FiT set by their retailer. These currently range from 5.1 to 7.5 cents per kWh.

#### A.4 Victoria

Victoria has three government FiT schemes which are now closed to new applications however existing customers still receive a guaranteed rate. New solar customers and those who lose eligibility for their FiT scheme receive competitive retailer FiT subject to a minimum tariff.

The Standard Feed-in Tariff (SFIT) Scheme was open to applications from January 2008 to December 2012 and offers a 'fair and reasonable tariff' which is the same 'one-for-one' rate as that paid by the customer for their electricity. Customers on the SFIT cannot switch retailers without losing their 'fair and reasonable tariff' since the rate is contracted with and funded by each customer's electricity retailer. The SFIT will be paid until December 2016.

The Premium (PFIT) Scheme was open to applications from November 2009 to December 2011. The PFIT of 60 cents per kWh will be paid until November 2024. As of 19 February 2015, some retailers offer a 'top-up' of 8 to 10 cents per kWh.

The Transitional (TFIT) Scheme replaced the Premium Feed-in Tariff in 2011 was open to application from January to December 2012. The TFIT of 25 cents per kWh will be paid until December 2016. As of 2014, some retailers offer a 'top-up' of 8 to 10 cents per kWh.

Customers on the PFIT and TFIT schemes can switch retailers without losing their FiT, however the retailer 'top-up' could change and exit fees may apply.

From January 2013, there has been a minimum retailer FiT for new solar customers. The Essential Services Commission (Commission) is responsible for determining the minimum rate that a relevant retailer must pay to its customers, who are small renewable energy generators, for electricity they produce and export into the electricity distribution system.

The rate of the minimum FiT reflects a forecasted wholesale market value of PV electricity for the coming year. The FiT rate for 2016 (1 January to 31 December 2016) is 5.0 cents per kWh. This rate will hold until the ESC revises it again for the following year. This rate is a reduction from the 6.2 cents per kWh rate set for 2015. The minimum rate must be offered by retailers with more than 5,000 customers.

#### A.5 South Australia

The South Australian Solar Feed-in Tariff scheme commenced in July 2008 and closed to new applications in September 2013. Customers on this scheme that receive a government guaranteed rate fall into two categories depending on when they applied:

- Eligible customers who applied for the scheme between July 2008 and September 2011 will receive a 44 cents per kWh FiT until June 2028.
- Eligible customers that applied for the scheme between October 2011 and September 2013 will receive a 16 cents per kWh FiT until September 2016.

Retailers in South Australia also offer a 'top-up' of 8 cents per kWh in addition to the government-guaranteed rate. Customers on this scheme can switch retailers without losing their FiT, while it still applies, however the retailer 'top-up' could change.

Since January 2012, there has been a regulated minimum retailer FiT in South Australia set by the Essential Services Commission of South Australia (ESCoSA). This regulated FiT is based on the minimum electricity forecasted spot price. This differs markedly from the retail price of electricity as it does not take into account transmission and distribution costs, retailer margins or operating costs.



ESCoSA set the regulated minimum retailer FiT at 6 cents per kWh from 1 July 2014 and 5.3 cents per kWh from 1 January 2015. The 2016 FiT rate is 6.8 cents per kWh, which is 1.5 cents per kWh up from the previous year. This uplift reflects the forecast increase in the wholesale cost of electricity and also takes into account important exogenous factors such as the expected shutdown of the Northern Power Station at Port Augusta in March 2016.

In 2015, ESCoSA stated it is favourably disposed to a deregulation of the regulated tariff at the conclusion of calendar year 2016, unless it observes a marked deterioration in the effectiveness of the overall energy retail market or it becomes aware of evidence conclusively demonstrating that the PV market is not competitive in South Australia. The Commission is currently consulting on whether a minimum R-FiT value should continue to be set from 2017.

## A.6 Tasmania

Customers in Tasmania could apply for the Transitional Legacy Tariff until August 2013. This scheme pays 28.283 cents per kWh until December 2018. Customers on the Transitional Legacy Tariff can switch retailers without losing their FiT.

For new solar customers, the Office of the Tasmanian Economic Regulator sets a regulated FiT. This rate was 8.282 cents per kWh from January 2014 to June 2014 and 5.551 cents per kWh from 1 July 2014 to 30 June 2015.

## A.7 Western Australia

The Western Australian residential net feed-in tariff scheme was open to applicants between 1 July 2010 and 1 August 2011. Consumers eligible for the Residential Feed-in Tariff, receive a payment of 40 c/kWh for exported electricity if they applied before 1 July 2011. Applications after 1 July 2011 received a rate of 20 cents/kilowatt for applications up to a combined capacity cap of 150 MW. Once the capacity cap was reached, the scheme closed to new applicants. Under the scheme, eligible customers receive the payment for 10 years since installation.

For new installations government-owned retailers must offer eligible customers a buyback scheme. This ensures residents, schools and non-profit organisations with renewable energy systems can sell their excess energy to Synergy and Horizon Power. Under this scheme, retailers offer a buy-back rate for electricity exported by eligible consumers from renewable energy systems. The rates must be "fair and reasonable" and are reviewed by the Public Utilities Office.<sup>124</sup> From 1 July 2016, Synergy offers a buyback rate of 7.135 cents per kWh

## A.8 Northern Territory

Jacana Energy offers a voluntary feed-in tariff for residential customers with an eligible solar photovoltaic system. As of January 2016, an energy flat buy-back rate of 25.54 c/kWh is payable to residential consumers and 29.72 c/kWh is payable to commercial customers. This scheme is not legislated by the Northern Territory Government.

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<sup>124</sup> In assessing rates, the PUO take into account: the wholesale cost of electricity; line loss reductions provided by distributed renewable energy; peak reductions provided by distributed renewable energy, capacity benefits provided by renewable energy and the costs to retailers of running the scheme.



## Contact us

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29 April 2019

General Manager  
 Adjudication Branch  
 Australian Competition and Consumer Commission  
 GPO Box 3131  
 Canberra ACT 2601

Sent by email to: [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)

Dear Madam / Sir

**RE: Application for authorisation made under sections 88(1) of the Competition and Consumer Act 2010**

Please find attached an application for authorisation in relation to the proposed New Energy Tech Consumer Code, which has been prepared by the following applicants:

- (i) Australian Energy Council (AEC)
- (ii) Clean Energy Council (CEC)
- (iii) Smart Energy Council (SEC)
- (iv) Energy Consumers Australia (ECA)

The applicants have developed the proposed voluntary industry code of conduct for sellers of new energy technology products and services in response to a request from the Council of Australian Governments Energy Council (COAG EC) for a consistent approach from industry to improving the consumer experience in this industry.

The following documents are enclosed:

- (i) Application for Authorisation (Non-merger) New Energy Tech Consumer Code, including Details of the Applicants as Attachment A
- (ii) Attachment B: Proposed draft New Energy Tech Consumer Code
- (iii) Attachment C: The Consumer Code Journey – an explanatory memorandum that sets out the steps taken to develop the Consumer Code, the stakeholder consultation steps including those consulted, the matters raised and how they were resolved through the drafting process. Annexed to this is the letter from the COAG Energy Council requesting the development of a code (originally called the Behind-the-Meter Code) and the Memorandum of Understanding for Governance, Accountability and Administration reached by the Behind the Meter Stakeholder Panel
- (iv) Attachment D: Relevant market participants
- (v) Attachment E: The currently authorised Solar Retailer Code of Conduct

The lodgement fee related to this application has been paid.

For any queries regarding this application, please do not hesitate to contact

Mindy Lim (CEC) on 0403 196 570 and [mlim@cleanenergycouncil.org.au](mailto:mlim@cleanenergycouncil.org.au) (*unavailable from 26 April to 8 May 2019 inclusive*)

Anna Sexton (CEC) on 0438 150 973 and [asexton@cleanenergycouncil.org.au](mailto:asexton@cleanenergycouncil.org.au)

Jacqueline Crawshaw (ECA) on 0436 033 045 and  
[Jacqueline.crawshaw@energyconsumersaustralia.com.au](mailto:Jacqueline.crawshaw@energyconsumersaustralia.com.au)

Ben Barnes (AEC) on 0421 497 491 and [ben.barnes@energycouncil.com.au](mailto:ben.barnes@energycouncil.com.au)  
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Nick Leys (AEC) on 0413 621 484 and [nick.leys@energycouncil.com.au](mailto:nick.leys@energycouncil.com.au)

John Grimes (SEC) on 0400 102 396 and [ceo@smartenergy.org.au](mailto:ceo@smartenergy.org.au)

Sincerely,



Anna Sexton

**Compliance and Risk Manager  
Clean Energy Council**

## **Application for ACCC Authorisation for Proposed Conduct (non-merger)**

### **New Energy Tech Consumer Code**

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## Overview Information

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This Application seeks authorisation for the New Energy Tech Consumer Code (Consumer Code), a single industry-wide code of conduct that has been developed by a number of new energy market industry associations in conjunction with consumer organisations in response to a request by the Council of Australian Governments' Energy Council in August 2017.

### Parties to the proposed conduct

#### 1. Applicant details

The Applicants are the following organisations:

- a) **Australian Energy Council (AEC)** - The AEC is the industry body representing 23 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.
- b) **Clean Energy Council (CEC)** - is a not-for-profit, membership-based organisation and peak body for the clean energy industry in Australia. The CEC represents and works with over 600 businesses operating in or supporting the development of renewable energy (such as solar, wind, hydro, bioenergy, geothermal and marine) and energy storage, along with more than 6000 solar installers. It is committed to accelerating the transformation of Australia's energy system to one that is smarter and cleaner.
- c) **Smart Energy Council (SEC)** – is a peak body for the solar, storage and smart energy in Australia. Since 1954, the SEC has been advancing the cause of solar energy as the Australian Solar Energy Society and the Australian Solar Council. In 2014, it added energy storage with the creation of the Energy Storage Council. In 2017, it became the Smart Energy Council. The SEC is a not-for-profit membership organisation committed to clean, efficient, cheap and smart energy solutions for all Australians. Its membership comprises individual, small and medium businesses as well as many Australian and international companies or organisations as corporate members. It encompasses installers, sales people, engineers, scientists, recruiters, managers and financiers, and some individual consumers; all of whom are in some way involved in the smart energy industry.
- d) **Energy Consumers Australia (ECA)** - The ECA is a national voice for residential and small business energy consumers. Established by the Council of Australian Governments (COAG) Energy Council in 2015, its objective is to promote the long-term interests of consumers with respect to price, quality, reliability, safety and security of supply.

Contact details for all organisations are provided at Attachment A.

This Application is being submitted on behalf of the applicant organisations by:

Mindy Lim  
Code of Conduct Manager (Solar Retailer Code)  
Clean Energy Council  
Level 15, 222 Exhibition St  
Melbourne VIC, 3000

Tel: 03 9929 4153

Email: MLim@cleanenergycouncil.org.au

A second contact if required is:

Anna Sexton  
Compliance and Risk Manager  
Clean Energy Council  
Level 15, 222 Exhibition St  
Melbourne VIC, 3000

Tel: 03 9929 4109

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2. Authorisation is also sought on behalf of those providers of New Energy Tech (as defined in the Consumer Code) who will become signatories to the Consumer Code and engage in the proposed conduct. Those expected to become signatories range in scale from micro businesses to large energy companies with New Energy Tech lines of business.

Signatories are expected to number in the many hundreds. There are currently 280 signatories to the CEC Solar Retailers Code<sup>1</sup> and they are likely to transfer to the new technology-neutral Code. It is projected that there will be at least another 300 additional future members of the Consumer Code (conservatively based on current growth trends arising from government incentive programs, interest registered by members of the Smart Energy Council and the application of a Code to a broader range of New Energy Tech and services).

## The proposed conduct

3. The proposed Consumer Code will set standards of consumer protection that will be provided by signatories covering all aspects of the customer experience, ranging from initial marketing and promotion through, as appropriate to the offering, quoting, contracts, finance and payments, installation, operation, customer service, warranties, complaints and etc.

Details of the proposed conduct are set below and in a series of Attachments:

Attachment A - Details of the Applicants

Attachment B - The proposed New Energy Tech Consumer Code

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<sup>1</sup> <https://www.solaraccreditation.com.au/retailers.html>.

Attachment C - The Consumer Code Journey – an explanatory memorandum that sets out the steps taken to develop the Consumer Code, the stakeholder consultation steps including those consulted, the matters raised and how they were resolved through the drafting process. Annexed to this is the letter from the COAG Energy Council requesting the development of a code (originally called the Behind-the-Meter Code) and the Memorandum of Understanding for Governance, Accountability and Administration reached by the Behind the Meter Stakeholder Panel

Attachment D – Relevant market participants

Attachment E - The currently authorised CEC Solar Retailers Code

4. Aspects of the provisions of the Competition and Consumer Act 2010 (Cth) may be relevant to the proposed conduct, in particular:
  - a) Cartel conduct (s45AD) – see paragraph 24 below
  - b) contracts, arrangements or understandings that restrict dealings or affect competition (s. 45) – see paragraph 9 below
  - c) concerted practices (s.45) – see paragraph 9 below
  - d) misuse of market power (s. 46) – see paragraph 9 below
  - e) exclusive dealing (s. 47) – see paragraph 20 below

The proposed conduct is set out in the Consumer Code which requires voluntary signatories to meet certain minimum standards of good practice and consumer protection. The impact of the Consumer Code could be magnified if, as expected, government funded or approved New Energy Tech incentive schemes or rebates are only available for products or services provided by signatories to the Consumer Code or if governments mandate Consumer Code subscription for classes of government purchasing/supply. The result could be that signatories' position in the market is enhanced to the detriment of those that are not prepared to meet those good practice and consumer protection standards.

5. The aim of the Consumer Code is not, however, to diminish competition. Rather the Consumer Code aims to raise standards of consumer protection in the sector and to strengthen consumer confidence in New Energy Tech so that the market continues to grow and innovate, while providing choice for consumers. The Consumer Code aids consumer choice by allowing easier comparisons of offers from signatories by providing an assurance of like-for-like standards. The Consumer Code makes a series of undertakings that cover the key aspects of the customer journey including marketing and sales, quoting, contracts, provision of consumer information, installation, safety and activation, effective operation, customer service and warranties and complaints-handling.
6. This application is seeking authorisation for the proposed conduct for the default period of five years. The Consumer Code itself provides for three-yearly independent reviews (The Annexure, Paragraph 27. g.)). These independent reviews are intended to cover a wide range of stakeholder and internal issues that go beyond the scope of the competition issues that relate to the proposed authorisation. Stakeholders considered this shorter interval of three years to be necessary in light of rapid evolution of the New Energy Tech sector and for testing the effectiveness of the administration arrangements, resourcing and powers.



## Market information and concentration

7. New Energy Tech, as defined for the Consumer Code involves products, systems and services that 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 and
- d) permitting future flexibility and innovation, any other product, system and service that the Consumer Code Administrator is satisfied sits appropriately within this Code.

The definition is not intended to include simple, low cost or off-the-shelf New Energy Tech, such as might be purchased from a whitegoods or hardware store for self-installation. The intention is that a class exemption be made by the Administrator to provide clarity, in accordance with paragraph 17 of the Consumer Code Annexure – Code Administration.

Examples of New Energy Tech include:

- 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 Consumer Code protections are appropriate. This is a rapidly evolving sector with many innovations. The definition and scope of New Energy Tech is intended to evolve and expand over time.

8. The Consumer Code is intended to apply in all Australian States and Territories
9. The New Energy Tech sector is likely to be quite diverse. Some New Energy Tech markets, such as solar photovoltaics (PV), are highly competitive with large numbers of suppliers. In these markets, any number of potential signatories to the Consumer Code may have business relationships with each other or may be direct or indirect competitors (and for this reason exemption is sought from both aspects of section 45). For nascent New Energy Tech products and services such as Virtual Power Plant services, it is however possible that at least initially, there may be one or a small number of dominant suppliers (and for this reason exemption is sought from section 46).
10. The sector is currently dominated by solar PV, which is now being followed by a rapidly expanding market for energy storage (mostly battery). Electricity self-production and self-consumption is becoming a prime motive for purchasers, along with price certainty. The scale and impact of the New Energy Tech in the marketplace for consumers, which underscores the need for the Consumer Code, can be seen in the following:
  - a) Solar PV – By the end of 2018, more than 2 million residential PV rooftop systems had been installed. Last year saw particularly rapid growth in the small-scale sector of the solar PV market, with the number of solar installations on homes and small businesses increasing by 43% on the previous year.<sup>2</sup> The Clean Energy Regulator expects that growth is likely to continue for at least 10 years. Installations to date represent 22%<sup>3</sup> of dwellings that are suitable for solar PV so the majority of consumer spend is to come. Additionally, after 10 years of implementation of systems and with major cost reductions, the sector is seeing a fast-developing upgrade market.
  - b) Battery Energy Storage Systems (BESS) – the current installed number is around 70,000 and growing rapidly with State and probable Federal Government support programs expanding. There is a rapidly increasing uptake for BESS attached to new PV systems and a booming retrofit market as premium feed-in-tariffs are ended and power export prices have fallen below retail prices, making self-consumption the preferred option.
  - c) Virtual Power Plants (VPP) – a number of these are in pilot stages with around 100,000 households expected to be involved by 2020. These are expected to transition to commercial operation as the early results are already positive.
  - d) Demand Response (DR) Services – this is a nascent market which will burgeon when new market rules allow monetisation of household resource capacity to deliver benefits to the network. The potential is for millions of households to choose these services as they increase the potential revenue from the householders' assets.
  - e) Battery and hybrid electric vehicles and electric vehicle infrastructure – this market is also at an early stage of development, uptake of electric vehicles having been slow in Australia. Just less than 2,300 battery and hybrid electric vehicles were sold in Australia in 2017 (albeit a 67 per cent increase from the previous year). For the vast majority of Australians, the significant cost of electric vehicles has been a barrier to entering the market. A lack of government

<sup>2</sup> Clean Energy Council, *Clean Energy Australia Report 2019*  
<https://assets.cleanenergycouncil.org.au/documents/resources/reports/clean-energy-australia/clean-energy-australia-report-2019.pdf>

<sup>3</sup> <http://www.cleanenergyregulator.gov.au/Infocentre/Media-Centre/Pages/Media%20updates/NewsItem.aspx?ListId=19b4efbb-6f5d-4637-94c4-121c1f96fcfe&ItemId=589>

incentives relating to electric vehicles has led to a reluctance by manufacturers to bring their vehicles to Australia. Without strong consumer demand for electrical vehicles, the market for products and services associated with electric vehicles also remains small. However, EV manufacturers are starting to bring electric vehicles at more accessible price points into Australia. And with recent announcements from political parties at Federal<sup>4</sup> and State<sup>5</sup> levels, the market is likely to experience significant growth.

- f) Other smart energy systems and services are appearing in the market which would see consumers benefit by purchasing from signatories to the Consumer Code. This is an emerging part of the sector with innovation at its core. The Consumer Code establishes a basis for consumer-centric approaches by signatories who will be obliged to provide detailed and transparent information in their customer interactions.
11. The vast majority of New Energy Tech hardware is imported. Currently local manufacture is limited to a single solar PV panel assembler with a tiny percentage of the market, but a reputation for high quality, a couple of inverter manufacturers and a few BESS assembly plants.
- Hardware is mostly sold under distributorship models, but some manufacturers have local operations and direct sell. Australian software and services companies are world leaders and hold high market shares, and there are international providers too. Global competition in this space means that other players are expected to enter the market.
- It is important to note that energy systems in Australia and globally are already in a transition to decarbonise – the only question is timing. Regardless of the timing, the heavily decreasing cost curves for renewable energy technologies means that the economics are dictating a faster transition with consumers leading the way based on financial and personal benefit considerations alone. Current trends project New Energy Tech purchases over the coming decade by more than 6 million households.
12. Current experience is that this dynamic growth is both encouraging new entrants to the market and the development of new products and services across the price and quality spectrum. While there are leading participants in each segment of the industry, for example, well-known manufacturers of batteries and electric vehicles, and pioneering product suppliers who remain at the forefront of the photovoltaic industry, the industry is developing at a pace that doesn't allow for leaders or other groups of participants to co-ordinate pricing or other market behaviours. New market entrants support high levels of competition.
13. The Consumer Code is not aimed (and should not be) at pricing decisions. Its aim is to ensure the quality of Consumer Code signatories' product and service offerings and customer service. By acting to maintain quality, the Consumer Code should limit the possibility of the two actions of raising prices and reducing quality or choice being done in conjunction with each other. In particular:
- a) The Consumer Code will help to maintain high levels of quality in the products and services offered to consumers, and the quality of the customer service around the sale and marketing of those products and services.
  - b) Product quality will be maintained by requiring signatories to provide a minimum warranty, in many cases beyond the requirement of the Australian Consumer Law. It is proposed that the Consumer Code Administrator will operate an audit program designed to encourage high levels of customer service and satisfaction.

<sup>4</sup> <https://www.afr.com/news/politics/national/labor-sets-50pc-target-for-electric-cars-20190331-p519do>

<sup>5</sup> <https://roadmaptorenewables.nt.gov.au/>

- c) Signatories to the Consumer Code will be required to resubmit their documentation and information about their complaints handling procedures for assessment by the Code Administrator on an annual basis and as requested if a complaint is raised against them. Currently, the Clean Energy Council reports to the Applicants that, in its administration of the Solar Retailer Code of Conduct, it has been able to maintain high levels of customer satisfaction through its investigations of consumer complaints and its ability to assume a conciliatory role in the dispute process. It is intended that this approach will also be adopted by the Consumer Code Administrator.
- d) Market forces are likely to keep prices low or stable in the new energy technology industry. The audit and complaints handling processes of the Consumer Code administrator and technological advances in product development are likely to maintain a high level of quality. Together these factors limit the ability for industry participants to raise prices while reducing quality and/or choice for consumers.
- e) By definition, the New Energy Tech sector is innovative. Global research, development and innovation in this industry are prolific and drive the consumer appetite. As the industry matures, external participants in the market develop new ways to engage with new energy technology consumers.

#### 14. Existing competitors in the New Energy Tech sector

There is no register or other record that establishes the precise number of solar PV retailers operating in the Australian market. Credible estimates range from 4,000 to 5,000 retailers<sup>6</sup>, with approximately 70% being sole proprietors or employing fewer than four people<sup>7</sup>. Consumers are benefiting from the competitive nature of the market, with the cost of a 3 kilowatt system now typically between \$5,000 and \$6,000 before any government rebate or financial incentive is applied, compared with approximately \$10,000 for a 1 kilowatt system ten years ago<sup>8</sup>.

The battery energy storage device market is also accelerating. Incentives introduced by the South Australia, Queensland and Australian Capital Territory governments are contributing to the increased consumer demand<sup>9</sup>. Given the persistently high cost of electricity, demand for home batteries is likely to continue increasing.

For electric vehicles, there are currently approximately ten different brands available in the Australian retail market<sup>10</sup>. A small number of suppliers operate in the electric vehicle infrastructure market, including suppliers of home-based electric vehicle chargers.

For less mature segments of the New Energy Tech market, a smaller number of market participants/competitors exist. New Energy Tech products and services still in development or very new to the market are not well known to many consumers, so supply and demand in these segments are proportionate.

#### 15. Likely entry by new competitors

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<sup>6</sup> As is apparent from information provided by solar installers in connection with their accreditation under the *Renewable Energy (Electricity) Regulations 2001*, many of the 6,000 accredited installers are also solar PV retailers.

<sup>7</sup> See for example, *Industry Report: Solar Businesses in Australia* prepared by Solar Business Services for REC Agents Association in 2014 <http://www.recagents.asn.au/wp-content/uploads/2014/09/Solar-Businesses-in-Australia-Final-2014.pdf>

<sup>8</sup> <https://www.solarquotes.com.au/panels/cost/>

<sup>9</sup> <https://assets.cleanenergycouncil.org.au/documents/resources/reports/clean-energy-australia/clean-energy-australia-report-2019.pdf>

<sup>10</sup> <https://electricvehiclecouncil.com.au/about-ev/evs-available/>

The New Energy Tech sector is a small but growing part of Australia's economy. With increasing government and commercial interest in the sector, the market and the number of competitors is expected to expand exponentially.<sup>11</sup> In particular, the trend for governments to require suppliers under their incentivised/subsidised programs to be code signatories is likely to continue to bring new competitors into the industry.

## Public benefit

16. The Consumer Code aims to protect consumers by setting good practice standards for providers of New Energy Tech products, systems and services and providing additional consumer protections to those applying under the Australian Consumer Law (ACL).
17. Signatories to the Consumer Code agree to deliver the following Key Commitments to customers:
  - 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 Consumer Code
  - c) Ensure that our sales practices are responsible
  - d) Ensure that products, systems, services and documentation provided under the Consumer Code are suitable and fit for purpose
  - e) Support staff training and work processes that ensure that we comply with the law and the Consumer Code
  - f) Ensure that we will be responsive to your needs and take prompt, appropriate action if you make a complaint.
18. Importantly, the Consumer Code is principles-based and focuses on good customer outcomes through the customer journey. The Consumer Code will also be a mechanism to deliver important Consumer Information Products to better educate customers and allow them to make informed decisions.
19. The solar industry has been active for long enough to reveal areas where consumer detriment can occur with novel energy products and services. Areas of particular concern have included<sup>12</sup>:
  - a) High-pressure or misleading sales tactics leading to consumers buying systems that don't meet their needs

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<sup>11</sup> [https://www.energy.vic.gov.au/\\_data/assets/pdf\\_file/0033/73779/New\\_Energy\\_Technology\\_Strategy\\_-\\_web\\_version\\_-\\_20160308.PDF](https://www.energy.vic.gov.au/_data/assets/pdf_file/0033/73779/New_Energy_Technology_Strategy_-_web_version_-_20160308.PDF)

<sup>12</sup> These issues are documented in a number of reports by the Consumer Action Law Centre that are informed by analysis of case studies of detriment experienced by consumers who have sought legal assistance, including *Knock It Off: Door-to-door sales and consumer harm in Victoria* (2017, available at <https://consumeraction.org.au/wp-content/uploads/2017/11/Knock-it-off-Consumer-Action-Law-Centre-November-2017.pdf>), and *Sunny Side Up: Strengthening the consumer protection regime for solar panels in Victoria* (2019, available at [https://consumeraction.org.au/wp-content/uploads/2019/04/1904\\_Sunny-Side-Up-Report\\_FINAL\\_WEB.pdf](https://consumeraction.org.au/wp-content/uploads/2019/04/1904_Sunny-Side-Up-Report_FINAL_WEB.pdf)). More general studies of consumer protection gaps in emerging energy markets include *Power Transformed: Unlocking effective competition and trust in the transforming energy market* (Consumer Action Law Centre, 2016, <https://consumeraction.org.au/wp-content/uploads/2016/07/Power-Transformed-Consumer-Action-Law-Centre-July-2016.pdf>) and *Empowering the future: Appropriate regulation and consumer protections in emerging energy markets* (Alternative technology Association, 2016, [https://energyconsumersaustralia.worldsecuresystems.com/grants/729/ap729-empowering-the-future-appropriate-regulation-and-consumer-protections-in-emerging-energy-markets\\_ATA.pdf](https://energyconsumersaustralia.worldsecuresystems.com/grants/729/ap729-empowering-the-future-appropriate-regulation-and-consumer-protections-in-emerging-energy-markets_ATA.pdf))

- b) Unaffordable unregulated finance leading to financial hardship and debt for vulnerable consumers
  - c) Grid connection not being properly completed, preventing consumers from being paid for their solar feed-in (a key part of the value proposition)
  - d) Poor quality components with high failure rates and unreasonably short warranty periods
  - e) Inability to claim warranties due to companies going out of business
  - f) Poorly-structured residential Power Purchase Agreements (PPAs) that lead to significant financial losses when solar systems are oversized and most generation is not used
  - g) No access to dispute resolution beyond state small claims tribunals, which are expensive to access
20. The Consumer Code addresses these issues by requiring signatories to:
- a) Avoid high-pressure sales tactics, give clear information on products and prices, base performance estimates on reasonable assumptions and determine the customer's intent in order to verify whether the product or service is suitable for their need
  - b) Use only licenced credit providers and regulated finance products when offering third-party finance (and for that reason exemption is sought from section 47)
  - c) Take stewardship of the grid connection process (where a grid connection is required), following up with other relevant parties to ensure they have actioned the request
  - d) Only use products meeting minimum warranty period requirements
  - e) Provide information about product manufacturers to customers so they can more readily pursue warranty claims if the signatory can not
  - f) Give Power Purchase Agreement customers a billing estimate based on their individual circumstances, and clear information about pricing
  - g) Have an internal complaints process, and refer customers to relevant external dispute resolution bodies (Ombudsmen, State Fair Trading bodies, or the Consumer Code Administrator as appropriate)
21. Some provisions of the Consumer Code are additional requirements over and above the ACL. Others are to clarify the application of ACL to the New Energy Tech markets. For example:
- a) Clause 1 goes beyond ACL's requirement to not mislead in advertising and marketing by requiring signatories to provide explicit information about pricing, performance metrics, and other factors of a product or service in order to inform the customer as fully as possible about the realisable value of the product or service.
  - b) Clause 4 requires signatories to take extra care when marketing to vulnerable customers and clause 50 requires signatories providing ongoing services to respond promptly to customers in vulnerable circumstances, for example, needing energy for medical or life-support equipment.

- c) Clause 15 requires signatories to provide a site-specific design of products that require professional installation in order to fully inform the customer of the functional and aesthetic impact of the product on their living space and property.
  - d) The ACL entitles consumers to redress if a product is not fit for purpose. This entitlement is difficult to enact if the customer's purpose is not clear. The Consumer Code requires vendors of complex and costly products or services to ask about the customer's intent, advise whether or not the product or service can fulfil that purpose, and document this in the contract or agreement.
22. Significantly, the requirement for signatories to use only licenced credit providers and regulated credit products when offering third-party finance is an important clear public benefit. These requirements are likely to result in consumers making more informed and effective decisions about finance arrangements to purchase New Energy Tech because they will be provided with regulated information about the credit product, be in a better position to be able to compare credit products effectively, and benefit from licensing protections. In particular:
- a) Consumers will have regulated information about the credit offer, including repayment terms, percentage rates, fees and charges etc pursuant to the National Credit Code, allowing for clear comparison across different products (this is not required for Buy Now Pay Later (BNPL) providers where the cost of credit is bundled into the cost of the goods);
  - b) Consumers will benefit from the obligation on credit providers to make a responsible lending assessment under the National Consumer Credit Protection Act (this is not a requirement for BNPL and other unregulated credit providers<sup>13</sup>);
  - c) Consumers will be assured of the ability to take any complaint or dispute about the credit product to an external dispute resolution scheme (also not a requirement for BNPL and other unregulated credit providers).
- Furthermore, the Consumer Code Administrator will be able to rely on the licensing decisions of the Australian Securities and Investments Commission (ASIC) to ensure a level of consumer protection when assessing signatories, noting that it itself will not be specialist in consumer finance. At the time of submission, there is no other benchmark or specific consumer protection requirements for unregulated credit providers.
23. To achieve these aims, it was agreed that there was a need for clear and robust governance, accountability and administration arrangements for the Consumer Code in line with the ACCC's Guidelines for developing effective voluntary, industry-based codes. The Memorandum of Understanding - New Energy Tech Consumer Code - Governance, Accountability and Administration of January 2019 sets out these arrangements, with one of its key guiding principles being consumer outcomes (clause 2(a)). Its consumer orientation is additionally illustrated by:
- a) The Chair of the Council having expertise in consumer affairs and the confidence of consumers, consumer organisations, industry and other key stakeholders (clause 7)
  - b) Representatives of consumer bodies on the Council (clause 7)
  - c) A consumer representative on the Code Monitoring and Compliance Panel (clause 15).

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<sup>13</sup> Leading consumer advocates have extensively documented the considerable harm caused to vulnerable consumers by unlicensed lenders that provide unregulated finance products: <https://policy.consumeraction.org.au/wp-content/uploads/sites/13/2018/11/181109-Final-submission-Senate-Inquiry.pdf>

24. The Memorandum of Understanding gives the Council the power to appoint the Consumer Code Administrator. Its responsibilities include:

- a) Assessing applications by those wishing to become a signatory to the Consumer Code.

Paragraph 4 of the Consumer Code Annexure – Code Administration specifies two matters that the Code Administrator must take into account when considering whether to admit an applicant as a signatory: first, whether the applicant’s processes and documents are sufficient to support compliance with the standards set out in the Consumer Code and secondly, whether the key personnel have had significant involvement in another business that became insolvent. Subject to these requirements and payment of the application fee, admission as a signatory will be open to any business that applies and indeed the hope is that the Consumer Code will have broad uptake within the New Energy Tech sector.

- b) Assessing application by signatories to renew their status as a signatory

Paragraph 5 of the Consumer Code Annexure – Code Administration requires the Code Administrator to take into account any complaints that have been made about the signatory and whether the signatory has co-operated with the Code Administrator and the Code Monitoring and Compliance Panel in carrying out their responsibilities. Other than these consumer protection standards, constraints will not be imposed.

- c) Powers to enforce the Consumer Code

The Code Administrator’s powers include requiring a signatory to rectify issues giving rise to a breach of the Code. Where there is serious non-compliance, the Administrator may propose to the Code Monitoring and Compliance Panel that the signatory should be suspended or expelled (for this reason exemption from the cartel provisions in section 45AD is sought). Procedural fairness will be accorded to the signatory before this occurs.

These responsibilities are exercised free of influence by existing signatories and subject only to oversight by the Code Monitoring and Compliance Panel.

25. The Consumer Code Annexure – Code Administration also sets out a process that involves multi-party responsibility for fixing fees to be charged to Consumer Code signatories and applicants. This process is designed to ensure that fees are fair and as low as possible, consistent with ensuring that there are adequate resources to administer the Consumer Code properly. The aim is to ensure that fees pose as minimal a barrier to participation in the sector as practicable.

### **Public detriment (including likely competitive effects)**

26. While the introduction of the Consumer Code into the New Energy Tech sector is expected to bring significant consumer benefit through raised standards, the proposed conduct may also have some potentially negative impacts. These include:

- a) Raised standards of protection and a professionally administered code that meets ACCC standards will increase direct process and compliance costs for industry which may eventually be reflected in higher prices being passed on to consumers



In this sector, a significant proportion of the products, systems and services are being considered or purchased for economic reasons (as well as sustainability and concern for the environment) – ie. to reduce energy costs. This makes the sector highly price competitive with many purchase decisions hinging on estimated savings (return on investment) calculations. Providers are particularly sensitive to costs and anything that might limit consumer take up of New Energy Tech.

Some submissions in response to drafts of the Consumer Code and input from stakeholder forums put the view that the Consumer Code could add direct costs to their operations (eg. through training, requirement for documentation, the obligation for fit-for-purpose design, some inflexibility in product or design substitution and stronger consumer protection provisions such as refunds, recalls and financial hardship). These stakeholders were concerned that adding costs for the industry providers who were most committed to good customer outcomes might make them less price competitive with providers who avoided the higher standards or who took shortcuts.

Significantly, other industry representatives expressed confidence that the Consumer Code requirements were not too onerous and, in many cases, were already being delivered by providers committed to good customer outcomes.

The Applicants took the view that the value to the community and to industry of higher standards and improved reputation and trust were worth any potential additional costs.

- b) Proposed raised standards of protection for financing New Energy Tech products, systems and services (eg. requiring an Australian Credit License and the use of regulated consumer credit products) may exclude some third-party financiers from providing finance to customers of Code Signatories.

A number of providers and potential Consumer Code signatories partner either with unlicensed credit providers or with licensed credit providers who provide unregulated credit products – in particular the BNPL providers of finance.

BNPL providers and some New Energy Tech providers expressed a concern that setting a standard that excluded this source of financing would diminish options available for consumers and diminish competition.

They argued that the Consumer Code was attempting to set a standard that was beyond common practice in other retail settings and would exclude a legal financing option commonly available to consumers outside the New Energy Tech sector. They quoted from recent reviews by both ASIC and ACCC that did not recommend any change to the regulation of BNPL.

Some provided examples of higher than required standards of consumer protection being voluntarily undertaken by individual providers, eg. membership of external disputes resolution schemes. There was also reference made to moves to establish a BNPL Code of Conduct, albeit we understand that this has not yet begun.

The Applicants took the view that on balance, the consumer benefit of the Consumer Code provisions outweighed any potential impact on competition (see Paragraph 22). In particular, by requiring providers to use licensed credit providers and regulated credit products, the Consumer Code can rely on existing regulation to manage financial hardship, capacity to pay assessments, and dispute resolution between customers and lenders. The alternative would have been to address these issues through the Consumer Code which would have been

resource intensive and less effective. The Applicants are also keen to follow the progress of the potential BNPL Code of Conduct and how it may interact with the Consumer Code to achieve better consumer outcomes in the New Energy Tech market.

- c) A number of stakeholders raised concerns that the codification of good practice through the Consumer Code would introduce inflexibility to a highly dynamic and evolving sector.

One example of these concerns was that a requirement for detailed specification of what will be supplied in a contract might restrict a large provider's ability to substitute newly available components during the implementation stages. The Applicants took the view that this issue could be handled through drafting of contract specifications that are performance-based.

Another example raised was the desire to run pilot programs of new offerings that may not meet the Consumer Code standards – so-called 'sandboxing'. The Applicants took the view that this could be achieved through an application to the Administrator for a temporary exemption, where it could be shown that there would be no customer detriment.

### Contact details of relevant market participants

- 27. The Consumer Code is expected to have interest for a wide range of stakeholders including consumer representatives, potential signatories, industry associations, suppliers and a range of government regulators and policy-makers. See Attachment D for a representative sampling of contact details.

**Declaration by Applicant(s)**

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).

This Application made on behalf of the four applicant organisations:

- i. Australian Energy Council
- ii. Clean Energy Council
- iii. Smart Energy Council
- iv. Energy Consumers Australia



Signature of authorised person

Office held: Compliance and Risk Manager, Clean Energy Council

Name of authorised person: Anna Sexton

This 29th day of April, 2019

## Attachment A – Contact details for Applicants

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### **Australian Energy Council (AEC)**

Ben Barnes  
Director, Retail Policy

Tel: 03 9205 3115  
[ben.barnes@energycouncil.com.au](mailto:ben.barnes@energycouncil.com.au)

14/50 Market St  
Melbourne VIC 3000

### **Clean Energy Council (CEC)**

Mindy Lim  
Code of Conduct Manager (Solar Retailer Code)

Tel: 03 9929 4153  
[mlim@cleanenergycouncil.org.au](mailto:mlim@cleanenergycouncil.org.au)

Level 15, 222 Exhibition St  
Melbourne VIC, 3000

### **Smart Energy Council (SEC)**

John Grimes  
CEO

Mob: +61 (0) 400 102 396  
[ceo@smartenergy.org.au](mailto:ceo@smartenergy.org.au)

PO Box 231 MAWSON ACT 2607

### **Energy Consumers Australia (ECA)**

Jacqueline Crawshaw  
**Associate Director Advocacy & Communications**

Tel: 02 9220 5520  
[jacqueline.crawshaw@energyconsumersaustralia.com.au](mailto:jacqueline.crawshaw@energyconsumersaustralia.com.au)

Suite 2, Level 14, 1 Castlereagh Street  
Sydney NSW 2000

## Attachment B – New Energy Tech Consumer Code

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## Part A - Overview

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### 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”).

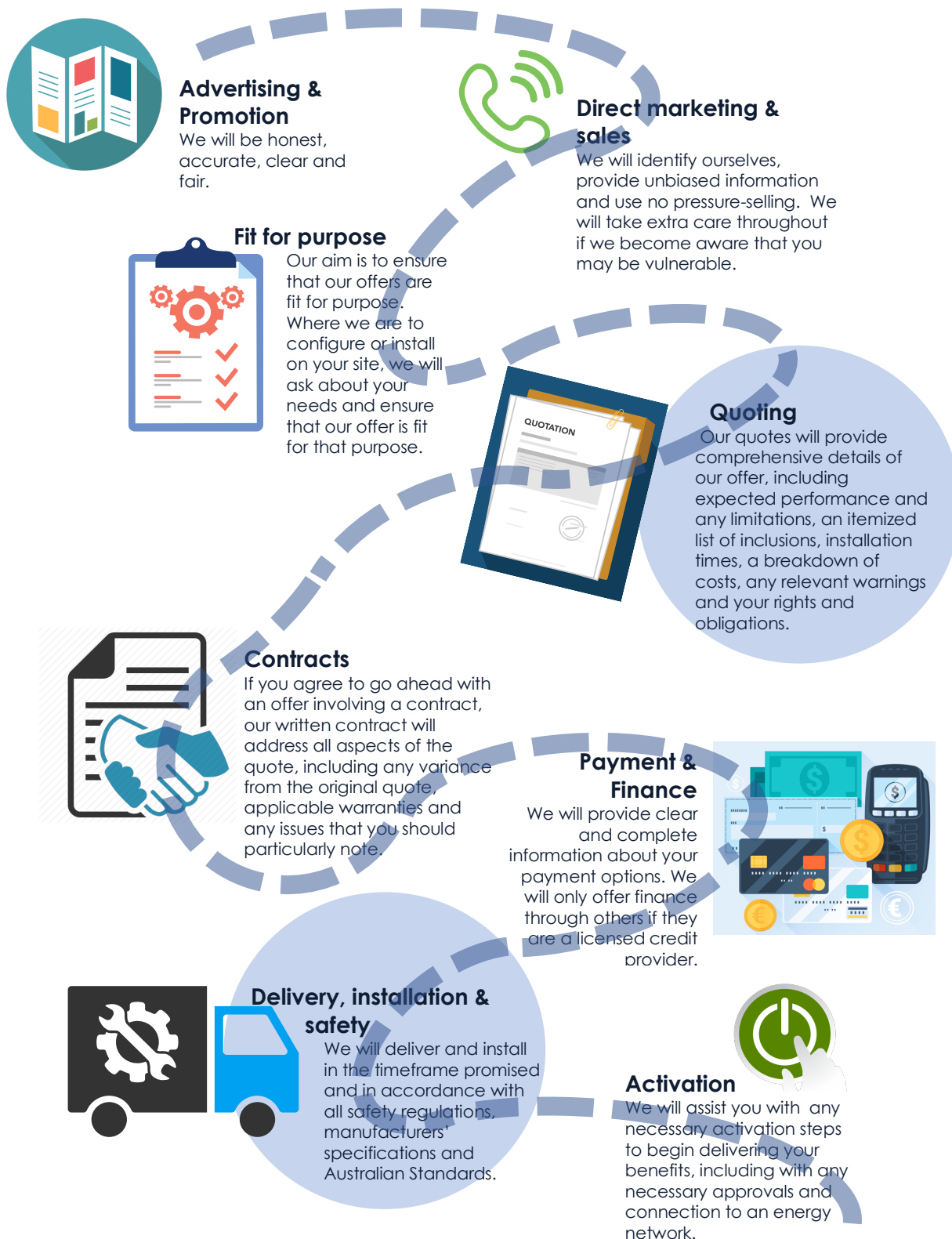
The Code operates alongside a range of existing legal and regulatory protections. Generally, it does not repeat these protections except as needed to provide you with a complete understanding of what to expect from us.

### Key Commitments

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

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### Advertising and promotion

2. 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) use language that is accessible and that avoids industry jargon
  - e) not make any misleading claims about the place of origin (manufacture and assembly) of our products
  - f) not mislead you about the impact our New Energy Tech will have on your energy usage or costs
  - g) 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
  - h) advertise the total price for our New Energy Tech as prominently as we advertise any component of the price
  - i) provide information that is specific to the state or region in which the promotional activity takes place
  - j) ensure that any disclaimers are clearly outlined and not buried in small print
  - k) only include a statement, promise, prediction or opinion if it is reasonably based
  - l) not include information that is no longer current, for example, quote an offer or financial incentive that is no longer available
  - m) 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

3. When marketing directly to you, including through a sales agent (as well as meeting the requirements in paragraph 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.
4. 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.
5. 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

6. 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.
7. 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

8. 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

9. 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).
10. 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.
11. 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).
12. 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.
13. 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.
14. 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.

15. 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

16. 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) 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, complete a site-specific installation design or plan and site-specific performance estimate (both must meet the requirements of paragraph 16a)) 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 16a)) 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

17. 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

18. 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.
19. 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.
20. 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.
21. 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.
22. 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

23. We will issue you with a receipt for any deposit or other payment you make under the contract.
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 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
  - 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
    - 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.
25. Paragraph 24 does not apply if the finance is provided by a government body.
26. Paragraph 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 2.m)).
27. Paragraph 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



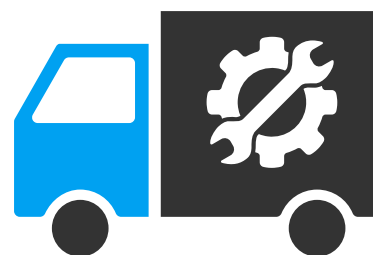


you are experiencing financial hardship, including by advising you of any relevant government assistance schemes and by offering you a payment plan.

28. 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.
29. 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

30. 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.
31. 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

32. 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.
33. 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 47 if your application is rejected.
34. 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.
35. 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

36. 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

37. Our New Energy Tech will meet your reasonable expectations including but not limited to:
- a) meeting your needs as explained to us (see paragraph 6), 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.
38. 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. 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

40. 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

41. 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.
42. 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.~~



43. 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

44. 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 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.
45. 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.
46. 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.
47. 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 34), 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.
48. 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 8.n) and
  - f) we have proceeded with the installation on your incorrect advice that yours is not a strata title property.
49. 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

50. 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.



51. 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

52. 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.



53. 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

54. 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)



LAW



REGULATIONS



STANDARDS

- 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.
55. 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 reasonably expect to receive from us or
  - c) to provide your personal information to a third party if you have given express permission for this.
56. 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

- 57. 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.
- 58. 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.
- 59. 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

60. 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.
61. 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

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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

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### Introduction

1. 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. 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. 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. 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.
- 5. 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.

## Fees

- 6. 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.
- 7. 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. 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. 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. The Council and the Administrator must promote the benefits of the Code to customers, to industry participants and to other stakeholders.
- 11. 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. The Administrator must maintain an easily accessible list of Signatories on the Code website.

## Supplementary materials

- 13. 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.
- 14. 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
- 15. 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.
- 16. 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. 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.
- 18. 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.
- 19. 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. The Administrator must monitor compliance with the Code, for example, undertake regular compliance audits and mystery shopping, assess customer satisfaction, analyse customer complaints and investigate repeat instances.
- 21. 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.
22. 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) 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.
23. If the Administrator requires a Signatory to undertake remedial action in accordance with paragraph 22 a. to c., the Administrator must monitor the Signatory's compliance with that requirement.
24. 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 22 a. to c.
25. 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. 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 16
  - c) reviewing a decision made by the Administrator requiring rectification of a breach (under paragraph 22), if the relevant Signatory requests a review
  - d) deciding matters of suspension or expulsion referred under paragraph 24 to it by the Administrator
  - e) referring serious or systemic breaches of law to relevant regulators under paragraph 25
  - f) 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

- g) 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. 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. A Signatory must promptly pay annual and any other Code-related fees applicable to it.
- 29. A Signatory must comply with the Code and all standards mandated by the Administrator in accordance with the Code.
- 30. A Signatory must co-operate with the Administrator and Panel in their exercise of their powers and responsibilities under the Code.

## Attachment C - The New Energy Tech Consumer Code Journey

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### Introduction

This document summarises the key steps taken by the Behind-The-Meter Working Group (BTM Working Group) in the process of development of the draft New Energy Tech Consumer Code (the Consumer Code). This process included the development of companion elements:

- a) The Consumer Code's governance, stewardship and administration Memorandum of Understanding and
- b) The Consumer Information Products

It is intended to accompany the Draft Consumer Code provided to the Council of Australian Governments (COAG) Energy Council and to be submitted for approval to the Australian Competition and Consumer Commission (ACCC).

### Background

2. In August 2017, COAG Energy Council wrote to industry and Energy Consumers Australia respectively (Attachment A), requesting that:
  - a) Industry (namely, the Australian Energy Council (AEC), the Clean Energy Council (CEC), the Smart Energy Council – previously the Australian Solar Council - and Energy Networks Australia (ENA), collectively referred to as industry) collaborate with Energy Consumers Australia to develop an industry Code for behind-the-meter products and services (BTM). The request referenced the Australian Competition and Consumer Commission (ACCC) guidelines for developing effective voluntary industry-based Codes
  - b) Energy Consumers Australia develop a range of consumer information products on consumer rights and responsibilities for behind-the-meter products and services (the Consumer Information Products).
3. Representatives from other consumer advocacy organisations (the Consumer Action Law Centre (CALC), RENEW (previously the Alternative Technology Association) and the Public Interest Advocacy Centre (PIAC)) – joined with the industry associations and ECA to progress this important work through the formation of the BTM Working Group.
4. Since October 2017, the BTM Working Group has met regularly to progress the development of the draft Consumer Code and the Consumer Information Products, looking specifically at the customer journey and how to achieve better consumer outcomes.

5. In relation to the Consumer Code, it was agreed early in the development that:
  - a) The Consumer Code would apply broadly to BTM products, systems and services
  - b) The Consumer Code would clearly set out commitments to consumers
  - c) The Consumer Code would follow the typical customer journey
  - d) The Consumer Code would be principles-based and focus on good customer outcomes and
  - e) The Consumer Code would be a mechanism to deliver Consumer Information Products to allow customers to make informed decisions.
6. A draft Consumer Code was released for broad stakeholder consultation during the last week of November 2018 with a request for stakeholder feedback by 6 February 2019. The stakeholder consultation targeted a broad range of consumer representatives, industry, government bodies, other stakeholder groups and organisations. Stakeholders were invited to attend workshop style forums in Adelaide, Brisbane, Sydney and Melbourne in the second week of December. Registered interest was very high at almost 300, with 115 attendees. Hundreds of comments and suggestions were received through these forums – which were shared with the BTM Working Group.
7. At end January 2019, some 82 participants attended Technical forums in Brisbane and Melbourne, where attendees responded to structured questions and tested draft Consumer Code provisions for applicability to 6 broad categories of BTM technologies and services. Again, a significant number of gaps and suggested refinements were identified and again tested and workshopped by the Consumer Code drafters.
8. In parallel with this activity, a CEO-led group from the BTM Working Group (the BTM Stakeholder Panel made up of CEOs from the AEC, CALC, CEC, ECA, ENA, RENEW and Ombudsman representatives) worked with the BTM Working Group to develop a Memorandum of Understanding (MOU) about how the governance, stewardship and administration of the proposed Consumer Code could be managed. This was agreed in late January and the key provisions have been reflected in the current Draft of the Consumer Code. A copy of the MOU is at Attachment B. It is anticipated that these arrangements will come into effect in parallel to the Consumer Code, after ACCC approval.
9. Similarly, the Consumer Information Products have been progressed through a sub-set of the BTM Working Group, working closely with the BTM Working Group and other key stakeholders. The Consumer Information Products will be finalised at the time when the Consumer Code comes into effect, after ACCC approval.
10. In early February, 16 written submissions were also received from individuals and organisations regarding the draft Consumer Code. These were also analysed and workshopped by the drafters and members of the BTM Working Group.
11. Some more submissions were received in late February and early March. Although this was after the deadline for submissions, in the interests of producing the best Consumer Code possible, the Working Group has considered material issues raised in these submissions also.
12. As a result of these numerous steps to test successive drafts and to obtain expert feedback, the Draft Consumer Code has been extensively revised in several stages from Version 5.5 that was



circulated in November 2018 - through to this re-titled version 9.7. This document provides a summary of the key substantive changes that have been applied to the Draft Consumer Code as a result of stakeholder and expert contribution and the main categories of suggestions that were not incorporated into the Draft Consumer Code – and the reasons why.

### Diverse views

13. It is acknowledged that no Consumer Code intended to apply to a diverse industry will ever have unanimous agreement by all stakeholders as to its content and style. The Consumer Code has therefore sought to balance a number of objectives such as:
  - a) Consumer-friendly, accessible language and using industry-familiar terms
  - b) Keeping the Consumer Code succinct and approachable, yet providing enough explanation and detail
  - c) The need to explain the interaction with other forms of regulation, yet avoid repeating provisions that belong elsewhere
  - d) The desire to use principles-based obligations to allow for different scenarios, yet make it easy for signatories (often very small businesses) to know how to comply and
  - e) The need to choose terms and language that can apply to a wide range of technologies, yet be descriptive enough to make sense.
14. The focus for the BTM Working Group has been to achieve good customer outcomes while creating a pragmatic Consumer Code that will attract broad signatory support throughout industry.

### Results of feedback

15. A significant number of changes were **accepted** and made to versions 9.0 through 9.7 of the Draft Consumer Code as a result of the feedback and advice received. Some resulted in changes to the structure and presentation, some in a series of key themes that were reflected in multiple places in the document and many were detail changes that have improved the flow and operation of particular sections. These are discussed in sections below.
16. Some suggested changes were **not accepted** – for a range of reasons. A few key issues were judged to be beyond the scope of a voluntary Consumer Code and are to be referred to COAG Energy Council as matters more appropriately dealt with by law or regulation. Inevitably, many were at odds with other feedback and a judgement was made by the BTMWG to go one way or the other. Some were matters of design choices – the drafters trying to strike the right balance amongst many competing pressures.
17. Many suggestions were recognised as important, but for practical purposes, identified as issues that should be taken up in **supplementary material** to be approved by the Consumer Code Administrator – rather than as part of the main Consumer Code – these are discussed below.

## Accepted changes

### Structure and presentation

18. In response to stakeholder reaction, the overview section of the draft Consumer Code, Part A, has been much simplified and presented largely as a consumer-facing infographic representing the key steps in the customer 'journey'.
19. In response to stakeholder reaction, Part B, which is the detail of the practice obligations, has been re-written to:
  - a) more closely follow the customer journey and provide visual links to the infographic in Part A
  - b) make the language more clearly technology-neutral
  - c) be more outcomes-focused and less prescriptive
  - d) better accommodate New Energy Tech services (rather than just products or systems) and
  - e) improve consistency and (hopefully) readability.
20. Definitions are now listed in Part C.
21. Provisions governing the administration of the Consumer Code are now in an Annexure. The intention is to better distinguish the customer-facing language in Part A and B, (expressed as promises from "we" the signatory, to "you" the customer) from the language needed for Consumer Code administration (mostly framed between the Administrator and the signatory) which is in the Annexure.

### Content changes by theme

22. Hundreds of detail changes have been made to the Consumer Code over the past three months in response to stakeholder input, most of which fall into some key themes, set out below.
  - a) The sector is in a state of rapid change and innovation and a number of obligations were redefined to allow for greater flexibility and to recognise that what is **good practice may not yet be clear**.
  - b) The proliferation of different technologies and offerings meant that a number of **definitions required refining** to allow for new and emerging aspects of that environment.
  - c) The sector has a widening range of participants who play different roles in delivering products, systems and services to customers. Some clauses needed to be rewritten to **accommodate the sector's diversity**.
  - d) A number of terms that are familiar to industry were identified as being unhelpful for customers without the same background knowledge and have been replaced with **simpler language** (not least of which are the former draft titles "Behind the Meter" and "Distributed Energy Resources").

- e) In a number of places, **additional consumer protections** have been augmented in order to meet expectations of the COAG Energy Council and of consumer advocates (e.g. finance, complaint-handling and vulnerable customers).
  - f) In other areas, changes have been made to make it **easier for signatories to know when they will be complying** and to avoid setting tests that in practice, are difficult to define.
23. Attachment C provides a tabular summary of the key content changes that have been made as a result of all of the stakeholder and expert inputs.

## Not adopted

### Out of scope

24. A number of significant issues were raised by stakeholders in the course of consultations that could not be accepted and included in the Consumer Code – because the BTM WG believed that were beyond its scope. These issues included aspects of off-grid provision of New Energy Tech, collective purchases of a single New Energy Tech product such as a microgrid, problems raised with the conduct and responsiveness of existing market players particularly around connection to Energy Networks, perceived gaps in the existing legal and regulatory framework, protection for industrial and commercial (larger-scale) New Energy Tech and pricing and safety practices that are regulated by governments.
25. Other issues raised were considered to be valuable but would require coordinating action from governments or other parts of the sector. One example was providing access to energy Ombudsmen services (as applies in the established energy retail markets). This would require enabling legislative amendment in most jurisdictions and resolution of funding issues.
26. The BTM Working Group has maintained a record of these issues and has provided Attachment D to this document referring a number of them for consideration by the COAG Energy Council.

### Consumer Code style

27. A number of submissions and suggestions came from industry, asking for greater definition of what should be required of signatories to demonstrate compliance. In particular, concerns were raised that terms such as ‘reasonable’ or ‘good practice’ are open to different interpretations and could result in inadvertent breaches or create disagreements with customers or the Consumer Code Administrator.

Some of these suggestions were adopted, in part, but many were considered unnecessary in light of the objective of a simple, customer-friendly Consumer Code and the objective of flexible provisions that would apply to all products and services in New Energy Tech.

The outcome for many of these suggestions will be for referral to the Consumer Code Administrator to incorporate, to the extent possible, into supplementary materials such as Standards, Guidelines, non-binding guidance and Administrator-approved Customer Information Products.

28. Similarly, the BTM Working Group received requests for cross-referencing within the Consumer Code to the relevant sections of related government regulations and standards. The BTM Working Group took the view that this would be contrary to the intended spirit of the Consumer

Code and would add a significant continuing workload in maintaining the accuracy of the cross-references. A possible resolution would be for the Consumer Code Administrator to publish a cross-reference guide from time to time as an aid to Signatories.

### **Consumer Code reach and enforcement**

29. Some of the feedback received proposed standards of consumer protection that are currently beyond common standards in other sectors – for example, outright bans on unsolicited selling. The BTM Working Group took the view that a voluntary Consumer Code of conduct in what is a fledgling industry needs to balance the need for encouraging take-up by signatories with the aim of raising standards. This would mean that in some areas, it is not reasonable to expect the Consumer Code to be ‘out in front’ of community standards. It was also felt that consumer information products could be leveraged to ensure that customers were making informed choices in areas of concern.
30. Similarly, the BTM Working Group received a great deal of feedback calling for robust sanctions to be applied to those found breaching the Consumer Code. Some of this reflected frustration at what is seen as weak enforcement by energy and consumer regulators generally and some reflects a misconception of what can be expected of a voluntary industry Consumer Code. The Consumer Code provides the Administrator and Panel with the powers appropriate to a voluntary Consumer Code, but they are much more limited than those available to legal regulation. There is also a governance structure that will allow the Council to keep abreast of these issues in a strategic manner.

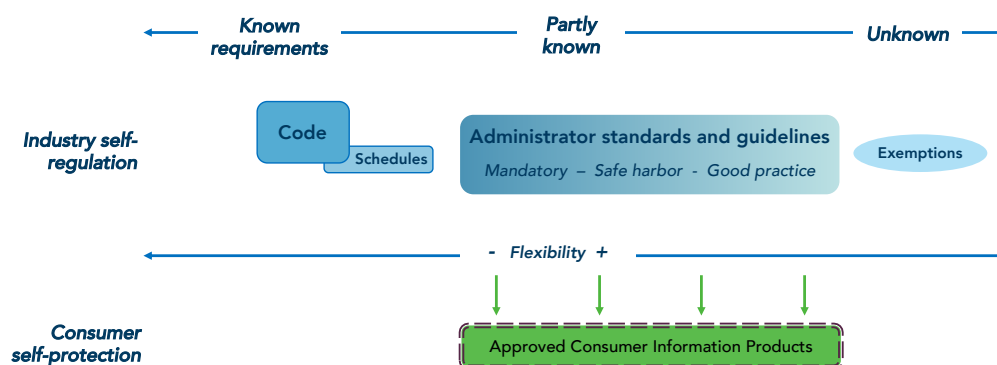
### **Unlicensed credit providers and unregulated credit**

31. A significant issue raised with the BTM WG was a request for the Consumer Code to permit certain types of unlicensed credit providers and unregulated credit – from the so-called buy now, pay later group of providers. The BTM WG has not accommodated this request at this stage, with significant concerns raised by consumer advocates. Discussions with industry are continuing, in particular in light of a proposed code of conduct for the buy now, pay later providers.

### **Supplementary material**

32. Although there was widespread expectation during the early stages of the development of the Consumer Code of a significant need for ‘technical schedules’ which related to individual technologies, this has proved to be significantly less than anticipated. Many technology specific issues raised were able to be accommodated sufficiently in the body of the Consumer Code, often with a minor change or a few additional words.

Furthermore, many issues will be more appropriately dealt with in supplementary materials and the following diagram illustrates the range of types of materials envisaged. The left hand side of the diagram is for obligations that are well-known and need the lowest levels of flexibility and as the you move to the right, the issues being dealt with become progressively less well known and require more flexibility in application.



33. The stakeholder and expert forums illustrated a range of needs for supplementary materials that Administrator standards and guidance could address in a number of ways:

- a) Technology-specific requirements could be drafted by relevant experts and included as Schedules to the Consumer Code.

There are a couple of disadvantages associated with this course of action. First, the Consumer Code could not be finalised and submitted to the ACCC until these Schedules are completed. Second, any change to a Schedule to the Consumer Code would require ACCC approval (a process that may take many months if consultation was deemed necessary). Technical experts consulted thought that this approach was not optimal, given the rapidly-changing nature of this industry.

- b) Mandatory Standards can be made by the Administrator in conjunction with industry.

The Administrator has a power to develop written standards that are binding upon Signatories (para 13 and 26 of Annexure and paragraph 55 of Part B). Where this is done, the Administrator has to publish the Mandatory Standards on its website and give Signatories at least 3 months' notice of the new requirements.

- c) 'Safe harbour' guidelines can be made by the Administrator.

The Administrator also has the power to prepare guidelines (para 13 of the Consumer Code Annexure). These can set out a method of complying with a particular Consumer Code provision (sometimes called 'deemed to satisfy') – on the basis that other methods are potentially available to Signatories, but if followed, the Signatory has certainty that they have complied with the Consumer Code.

- d) Non-binding guidance materials can be prepared by the Administrator to assist Signatories

This would not be binding on Signatories. It would be in the nature of a service provided to assist Signatories. For example, the Administrator could develop standard form contracts that Signatories could use or suggestions for good practice with particular types of services or installations.

- e) Exemptions can be provided by the Administrator

As a safeguard against unintended consequences and to encourage innovation and experimentation, the Administrator can be empowered to issue exemptions – to aspects of the Consumer Code and any subsidiary mandatory requirements. These may be for a limited period of time, for example to permit a pilot project or trial.

f) Customer Information Products

Stakeholder and technical expert forums identified the need for customer information products to ensure that consumers were making informed decisions. Customer Information Products, drafted and/or approved by the Administrator are seen as the vehicle for this. Under the Consumer Code Signatories will provide these directly to their customers.

As now embedded in the Draft Consumer Code, the Administrator may choose to publish supplementary materials in any combination of the above categories. A Guideline for (say) battery storage may incorporate mandatory elements alongside safe-harbour guidelines and non-binding suggestions for good practice.

34. Understandably, much of the technical input received related to the better-established products, systems and services. We expect that with the passage of time, additional categories will need to be added to include such things as biomass generation, wind, hydro and mini-hydro, non-battery energy storage, engine-driven generation such as gas turbines and diesel, fuel cells and other emerging forms of DER.
35. The following table illustrates examples of supplementary materials that stakeholders and technical experts identified a need for:

Technology/offering	Issue for supplementary material
Across all	1. Identify and prohibit particular problematic high-pressure sales tactics – in response to intelligence from the market
	2. Prepare Consumer Information Products explaining disposal of system in an ethical manner at end-of-life
	3. Publish general compliance policy providing assistance for Signatories as to how the Administrator will approach monitoring and investigating complaints
SolarPV	4. Publish guidance list of reputable sources for Solar/PV performance
	5. Guidance for factors to be dealt with in site-specific design/plan
	6. Identify accreditation/qualifications required for installers

	7. Identify training required for installers – eg. working from heights, privacy for customer data
Energy storage	8. Publish Guidelines and Consumer Information Products for battery usable performance information, load profile assessment, standardisation of key definitions
	9. May need guidance/exemptions for pricing uncertainty for some components subject to rapid change
	10. Guidance needed for warranty – usage parameters must include energy throughput, cycles, depth of discharge, etc
	11. Guidance needed for performance monitoring/measurement
VPPs & Microgrids	12. Consumer Information Products needed in due course
	13. Consumer Code requirement for warning as to uncertainty of returns/benefits is OK for now, but may need Administrator guidance depending on what customer issues emerge with experience
	14. Once data capabilities established, may need guidance for obligation on provider to alert customer to any problems suggested by data analysis
	15. Should develop good practice procedures for protecting customer data at end of contract
Electric vehicle charging	16. Consumer Information Products needed in due course
	17. Guidance for factors to be dealt with in site-specific design/plan
Demand management/ response, HEM	18. Standardised contracts may be of benefit
	19. Generally warranty is not an issue for a service, but some offers include hardware and software, may need guidance

20. Guidance re: service downtimes, software upgrades

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21. May need some guidance for Signatory response to any evidence of tampering by customer

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22. Some guidance may be needed for premises changing hands



## Attachment A – Request from COAG Energy Council



Mr Kane Thornton  
 Chief Executive  
 Clean Energy Council  
 Level 15, 222 Exhibition Street  
 Melbourne VIC 3000

Dear Mr <sup>Kane</sup> Thornton

I am writing to request Clean Energy Council, in collaboration with Energy Consumers Australia and other relevant stakeholders, develop an industry-wide Code of Conduct for sellers of behind-the-meter products and services.

Consumers are driving change in the energy market by embracing distributed generation and storage technologies, and in response, the industry is transforming by offering a wider range of energy services and products. While this changing market is offering greater choice to consumers, with commensurate benefits, it can lead to greater complexity and a risk of some consumers getting products that don't meet their needs or offer poor value.

Given this, the Council of Australian Government Energy Council has undertaken a review of consumer protections for energy products and services that fall 'behind the meter' including solar and storage technologies. Ministers wanted to ensure consumer protections continued to balance consumer wellbeing with market efficiency and promotion of innovation. The review was informed by consultation with industry, consumer representative organisations and other stakeholders.

The way energy is regulated depends on how that service is provided. The National Energy Customer Framework (NECF) provides energy-specific consumer protections related to the sale of energy by authorised retailers and exempt sellers. While the NECF has not been adopted in Victoria, similar protections apply under the Victorian Retail Code.

The Australian Consumer Law (ACL) provides universal consumer protections in areas such as unfair contract terms, product safety, misleading information, and product liability. This offers complementary protections in cases where the NECF or Victorian Retail Code does not apply. For example, when consumers are leasing or purchasing technology outright, the ACL serves as the principle form of regulation for these energy products.

[coagenergycouncil.gov.au](http://coagenergycouncil.gov.au)

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In March 2017 the Final Report of the ACL Review made recommendations that will improve regulation including, allowing for greater consumer access to consumer guarantees and greater guidance on contract terms and unsolicited consumer agreements. It will also increase the threshold of purchases from \$40,000 to \$100,000.

Noting the above, the Council has concluded that consumer protections offered under the ACL and the NECF provide sufficient protection in relation to new and emerging products, appropriately balancing consumer protection with an innovative energy market. Ministers did not, at this stage, find a case for NECF regulation to be extended to behind-the-meter energy products that currently fall outside the NECF.

That said, stakeholders raised a range of concerns that suggest a more consistent approach by industry in relation to a range of issues is needed. Consistent with this, the Council is seeking industry agreement to cooperatively develop a single, industry wide Code of Conduct for all behind-the-meter electricity supply services and products. Ministers believe an industry led Code would improve the consistency and quality of information and the management of disputes without the need for heavy handed regulation. The Code should address the following issues with further detail provided in the attachment:

- Information provision;
- Dispute resolution mechanisms;
- Ensuring product is fit-for-purpose; and
- Customers in financial difficulty.

The Australian Competition and Consumer Commission (ACCC) has a guideline for developing effective voluntary industry-based codes that could inform this work. The Clean Energy Council's Solar Retailer Code of Conduct has been established since 2013 and is a good example of an effective voluntary code that benefits industry and consumer alike, and could be potentially be expanded to encompass other products.

The Council has also written to Energy Networks Australia, the Australian Solar Council and the Australian Energy Council. While the Code would need to be collaboratively developed across organisations, there may be a need for one organisation to co-ordinate this effort. While the Council sees clear benefits in industry taking the lead, if agreement cannot be reached on developing a single industry-wide code, or the Code is not universally applied, the Council will consider whether further regulatory intervention is required.

[coagenergycouncil.gov.au](http://coagenergycouncil.gov.au)

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Council would welcome the opportunity to review the draft Code of conduct no later than 31 August 2018, and invite a representative of the industry group developing the Code to address the Council at its November 2017 meeting on progress against its development.

Any inquiries on the Code can be directed to Gayle Leaver (07 3166 0170) or Rebecca Knights (08 8226 5500) Co-Chairs, Energy Market Transformation Project Team.

Yours Sincerely



**The Hon Josh Frydenberg MP**

Chair

COAG Energy Council

16 August 2017

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## Attachment B – Memorandum of Understanding - Governance

*January 2019 – Final agreed by BTM Stakeholder Panel*

### **Memorandum of Understanding - New Energy Tech Consumer 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 New Energy Tech Consumer 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:

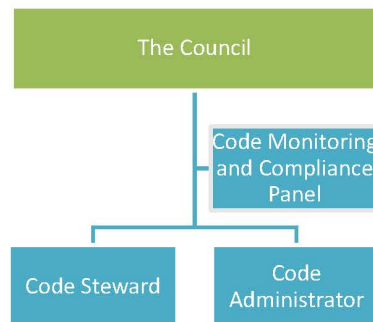
- a) enable the effective operation and coverage of the Code
- b) establish clear and robust governance, funding and administration arrangements for the Code
- c) achieve the Code's authorisation by the ACCC as soon as possible.

Dated

2019

Execution clauses

**Schedule 1: Table**  
**- New Energy Tech Consumer Code -**  
**Governance, Accountability and Administration**



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

Body	Role and responsibilities
	<ul style="list-style-type: none"> <li>○ 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)</li> <li>○ Deciding what, if any, remuneration is paid to Code Monitoring and Compliance Panel members</li> <li>○ 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)</li> <li>○ Overseeing the administration of the Code</li> <li>○ Funding any shortfall in Code revenue</li> <li>○ Providing staff to act as secretariat to the Council</li> <li>○ Providing staff to act as secretariat to the Code Monitoring and Compliance Panel.</li> </ul>
The Administrator	<ul style="list-style-type: none"> <li>• 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"> <li>○ Managing administration process, including applications and renewals to the Code</li> <li>○ Monitoring compliance, both responsive to complaints and proactive inquires</li> <li>○ Determining breaches and sanctions of the Code</li> <li>○ Developing standards and guidelines for the Code</li> <li>○ Referring matters to Code Monitoring and Compliance Panel</li> <li>○ Provide training and consumer information.</li> </ul> </li> <li>• 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)</li> <li>• 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.</li> </ul>
The Code Monitoring and Compliance Panel	<ul style="list-style-type: none"> <li>• Overseeing the monitoring of compliance and enforcement with the Code</li> <li>• Responding to matters referred to it by the Administrator</li> <li>• Hearing and arbitrating appeals from any signatory affected by a decision of the Administrator</li> <li>• Referring systemic breaches to the relevant regulators</li> </ul>

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

## Attachment C - Summary of Changes

The following is a summary of substantive changes made since November 2018 (Version 5.5.).

V 9.7 Location	Impetus for change	Summary
Title change and terms used throughout	Customer research conducted for ECA Technical forums BTMWG	Renamed New Energy Tech based on terms best understood by consumers in market research References to 'electricity' and 'grid' recast as technology neutral – eg. Energy Supply, Energy Network Greater emphasis on safety Reduce emphasis on 'products and systems' – more explicitly allow for services
Part A	BTMWG & submissions	Simpler overview with infographics
Para 1a.	Technical forum	Must not mislead re: non-government incentives (not just government incentives)
Para 1d.	BTMWG	Advertising and promotion to avoid use of industry jargon
Para 4	COAG, submissions	Take extra care with consumers facing vulnerability
Para 5 & 6	COAG, BTMWG	Clear upfront obligation to ask about needs and circumstances and ensure products, systems, services are fit for purpose
Para 6	Technical forum, submissions, BTMWG	Fit for purpose obligation includes ensuring compatibility with other New Energy Tech products, systems or services; and is appropriate for the nature, complexity and cost of the product or service
Para 6.	BTMWG	Provide consumer considering off-grid with approved ENA off-grid principles
Para 7b.	Technical forum, BTMWG workshop	Need better definition to allow for different 'through the meter' scenarios – e.g. demand response control by service providers, feed-in controls
Para 7d.	COAG requirement, Technical forum, submissions	Quote must make it clear what obligations are on the customer to facilitate operation of service
Para 7e.	COAG requirement	Quote must make product/ service limitations clear

V 9.7 Location	Impetus for change	Summary
Para 7f.	Technical forum, submissions	Performance estimate must be reasonably based (given that reputable objective data may not exist for some new products/ services)
Para 7g.	Technical forum, submissions	Disclosure must be made to the customer that their energy retailer and network may impose restrictions on the extent to which the customer can interact with the grid eg. limiting ability to export to the grid
Para 7h.	Technical forum	More certainty to be provided to customers as to timeframe for installation
Para 7m.	Submissions	Clarity for customers about term of agreements and interaction of New Energy Tech with energy retailers or distributors
Para 7p.	Submissions	Transparency about vendors having appropriate licensing, certification, or accreditation
Para 9	Technical forum, submissions	Obligation to specify energy pricing only applies where energy is provided as New Energy Tech, not by network supply.  Also to allow flexibility in estimated cost for PPAs with variable economics
Para 12	Technical forum, BTMWG workshop	Disclosure must be made of costs associated with software upgrades
Para 13	BTMWG	Return on Investment claim must be based on reasonable assumptions and these must be set out in quote
Para 14	Technical forum	Where offer involves payment/ offset to customer, quote must specify how this will be determined, rights to vary price, frequency of payments
Para 15	Submissions	Clarification that site-specific design, plans, or performance estimates only required for expert installation is required (i.e. not for user-installable plug-in devices)
Para 15b.	Written submissions, BTMWG	Allow for provision of a design/planning service as a separate non-refundable, no obligation, initial stage.
Para 16	BTMWG workshop, submissions	Disclosure must be made of fees for connecting to Energy Networks and that energy supplier may impose a fee for

V 9.7 Location	Impetus for change	Summary
		reconfiguring the customer's meter or apply different pricing
Para 19	Submissions	Align to 3 <sup>rd</sup> line forcing reference in legislation
Para 23b.	BTMWG	Fully capturing the original intent of the requirement for licensed credit providers by also requiring regulated credit products
Para 23c.	BTMWG workshop	Credit contract or consumer lease must not be for a longer period than expected life of product or system
Para 24	Technical forum	Exception from licensing obligation for government financier
Para 25	Technical forum	Exemption for vendor provided, interest-free deferred payment arrangements
Para 26	BTMWG, submissions	Exception from licensing obligation for a Power Purchase Agreement provider
Para 27	BTMWG	Provision requiring advance notice of price increases in ongoing contracts
Para 28	Technical forum	If contract requires payment/ offset to the customer, this must be done on time as per contract. If payments are calculated using an undisclosed formula, our payment calculation system must be regularly audited by a registered company auditor to ensure that payments are accurately calculated.
Para 29-30	Technical forum, BTMWG workshop	Installation must be done in accordance with safety standards and any applicable energy network standards by an installer that is competent and if applicable, qualified to undertake the work (recognising that standards and accreditations may not yet be in place for new products, systems or services).
Para 31-33	BTMWG workshop	Refine words to accommodate different meter activities
Para 34	BTMWG	Addresses activation of a product/ service other than by connecting to Energy Network and allocates responsibilities
Para 35a.	Technical forum	Advice prior to the time product/ services ready to commence must include how to optimise the product/ service

V 9.7 Location	Impetus for change	Summary
Para 35b.	Technical forum	Prior to the time product/ services are ready to commence, provider must explain customer's obligations – e.g to maintain an internet connection that provider can access
Para 35c.	Technical forum	Advice about how to utilise product/ service – now encompasses possibilities that better cater for range of products services
Para 35c.	Technical forum	Advice as to how to assess benefit may be a commitment to provide regular reports quantifying benefit in which case these must be provided.
Para 36	BTMWG, BTMWG workshop	Performance obligations – services must be provided with due care and skill, ICT-enabled products and systems must be secure
Para 36	Written submissions, BTMWG	Recognise that some performance reporting is only suitable in digital form, limit obligation to provide in hardcopy
Para 37	Technical forum	Recall obligation where become aware that product is defective or unsafe
Para 38	Technical forum	Provider who uses customer's other equipment must do so in a way that is consistent with the equipment manufacturer's instructions and warranty requirements
Para 39	Technical forum	Sale of premises provision – purchaser of premises can substitute into a contract with lock in provision unless reasonable basis for provider to refuse to this (for services that are not possible or practicable to relocate)
Para 40	Technical forum	Warranty provision better encompasses services by referring to provision of compensation
Para 46	BTMWG	Restate para 33 on refunds less reasonable expenses for cancelled contract due to non-approval to connect when customer handles connection applications
Para 47	BTMWG	Exemption for requirement for refund if install begun without strata title owners corporation consent (if incorrectly advised by owner that property is not a strata title)
Para 49	Technical forum	Consumer Code should begin with positive commitment to good customer service – before dealing with complaints, warranty etc



V 9.7 Location	Impetus for change	Summary
Para 51	BTMWG, submissions	Complaints obligations expressly stated – fair and timely resolution of complaints
Para 52d.	BTMWG, submissions	Aim to respond to complaints within 15 business days; requirement to inform customer within that time if a response will take longer
Para 52e.	BTMWG, submissions	Requirement to respond to complaints within 25 business days, unless an extension is mutually agreed to
Para 54	Technical forum, submissions	Provider obligation to keep customer's data safe and only to use data for permitted purpose  Express consent must be obtained from the customer if the provider wants to supply customer's data to a third party (e.g. inform a product retailer of a customer with an inefficient appliance)
Para 54	BTMWG	All providers (even if not caught by Privacy Act) must keep customer personal info secure and only use customer personal info for intended purpose or with consent
Para 59	BTMWG	Provider is responsible for third party marketers and sales force
Para 60	Technical forum	Provider is responsible for installer if provider engages the installer
Part C definition of New Energy Tech	Technical forum, submissions	The definition now includes a service that manages or monitors a customer's usage of network-supplied energy, and excludes simple, low-cost, off-the-shelf products
Part C definition of customer	BTMWG workshop	Includes the operator of a retirement village
Part C definition of small business	BMTWG	Small business definition – uses Australian Bureau of Statistics' definition - now less than 20 people
Annex paras 1 to 3	BTMWG workshop	Replicates MOU principles and provides a summary of roles of each participant in governance and administration of the Consumer Code
Annex para 5b	BTMWG, technical forums	Application process to act as a limitation re: phoenixing in the sector

V 9.7 Location	Impetus for change	Summary
Annex para 7	BTMWG, submissions	Specify the fee principles for transparency
Annex para 9	BTMWG, submissions	Reasonable notification of fee changes
Annex para 18	Technical forum, submissions	Administrator power to provide an exemption – could be used to allow ‘sandboxing’ for new offerings or trials - ie without full compliance
Annex para 19	Submissions	Administrator power to define class exemptions for simple, low-cost, off-the-shelf products or to allow trials of new products without requiring specific exemption
Annex paras 23 - 26	BTMWG, submissions	More express sanctioning powers for Administrator and Panel

## Attachment D - Out-of-scope issues

During development of the draft New Energy Tech Consumer Code (the Consumer Code), a number of issues were identified by the Behind the Meter Working Group (BTM WG) and by stakeholders in the numerous consultation forums as important for the continued development of the sector to ensure good customer outcomes, but outside the scope of a voluntary industry self-regulatory code. These issues are summarised below and referred to the COAG Energy Council for consideration.

1. **Obligations on Energy Retailers and Distribution Network Service Providers that fall outside the Consumer Code, specifically in relation to:**
  - a. **Customers' ability to choose appropriate tariffs in the retail market.** Retail tariffs are pivotal to value assessments in the New Energy Tech market – providers are often unable to ascertain the impacts of each tariff to households.
  - b. **Smart meters are regulated under the National Electricity Rules.** Timeliness of installation (and sometimes, inclusion of non-standard functionalities, if needed) are beyond control of New Energy Tech vendors but critical to delivery of some New Energy Tech services.
  - c. **Ease of access to energy data** for both customers and their authorised agents. Data adds significant value to New Energy Tech value assessments and service delivery, however it is very often not within the control of the New Energy Tech provider. (We note that the Consumer Data Right for energy may address this in time.)
  - d. **Grid connection and activation of New Energy Tech products.** This is a complex process requiring considerable paperwork and arrangements between different parties. We note that Energy Networks Australia's new Uniform Connections Framework goes some way toward addressing this by providing consistent processes within DNSPs; but this is only part of the picture.
2. **Protections for off-grid (off-energy network) customers.** While the Consumer Code will provide general consumer protections for purchasing off-grid systems (or components for such systems) from Consumer Code signatories, greater levels of protection (and universal reach of such protections) may be needed. Off-grid customers may not desire, require or be able to afford grid equivalency for their stand-alone power systems (SAPS); however there is a growing market that does need additional protection to ensure that an essential service of electricity is offered in an acceptable manner that requires technical and operational rules beyond the capacity of the Code to deliver. (We note that the AEMC's review of the regulatory framework for stand-alone power systems may address this, if it applies to New Energy Tech vendors.)
3. **End of life and recycling/waste management,** particularly with respect to solar panels, household battery storage and electric vehicle batteries. (We note that some jurisdictions are beginning to address some aspects of this.)
4. **Power Purchase Agreements (PPAs)** can have serious impacts on customers. The Consumer Code attempts to address this; but PPAs are currently captured by the National Energy Consumer Framework, though largely exempted from the customer protection obligations in the NERR and without any SPPA-specific protections.
5. **Safety** and installation obligations vary by jurisdiction and do not consistently cover the range of New Energy Tech products and systems. The BTM WG strongly supports an increased focus on safety for New Energy Tech Providers, however imposing additional responsibilities is inappropriate in a voluntary code.

6. The Consumer Code applies when a provider sells a product or service to a single household or small business. It does not attempt to address **sales to multiple consumers or community-based collective purchases**, such as the development of a microgrid or stand-alone power system. Detriment to individual consumers can still occur in these situations and needs further exploration.
7. **Access to external dispute resolution** (energy ombudsman schemes or equivalent, as available to mainstream energy customers) for New Energy Tech customers. Establishing a comprehensive dispute resolution service is beyond the expected resources of the Consumer Code, and existing jurisdictional fair-trading bodies may lack the necessary expertise and systems to resolve complex energy-related issues. In general, these bodies are designed to monitor and pursue non-compliance rather than to find a satisfactory resolution for every dispute.
8. **Customers with life support and medical heating or cooling needs:** in addition to the general consideration for off-grid customers (issue 2), there are other critical considerations for these customers. The Consumer Code addresses them in the relevant sections (clause 5 regarding consideration of vulnerable customers' specific needs, clause 6 regarding assessing fitness for purpose, and clause 49 regarding customer service), but the BTM WG believes that the consequences for these customers are too severe to be managed by a voluntary code.

## Attachment D – Relevant Market Participants

Market participants who may have an interest in the proposed conduct would include those in the table below. These names were drawn from the list of interested parties who registered for public consultation on the draft Code. Registered parties were not directly asked their permission to share details with the ACCC, so this list does not include individuals (including a number of sole traders). It would be possible to contact the registered parties to seek their permission for sharing their contact details, if requested by the ACCC.

Organisation	Phone	Email
ABB Australia	02 9738 2277	<a href="mailto:contact.center@au.abb.com">contact.center@au.abb.com</a>
AG Abbeys Australia	0296 920 820	<a href="mailto:australia@abbey.com.pl">australia@abbey.com.pl</a>
AGL	13 12 45	
Aica Energy	1800 242 228	<a href="mailto:info@aicaenergy.com.au">info@aicaenergy.com.au</a>
All Energy Solutions	0433 164 658	<a href="mailto:askgut@qut.edu.au">askgut@qut.edu.au</a>
Allune Energy	03 9028 2019	<a href="mailto:info@alluneenergy.com.au">info@alluneenergy.com.au</a>
AMS		<a href="mailto:sales@ams-it.com.au">sales@ams-it.com.au</a>
Aone Solar	08 8351 2229	<a href="mailto:info@aonesolar.com.au">info@aonesolar.com.au</a>
ATCO	08 6163 5400	<a href="mailto:enquiries@atco.com.au">enquiries@atco.com.au</a>
CB Energy	07 5552 5222	<a href="mailto:cb@cb.com.au">cb@cb.com.au</a>
<b>Citipower</b> Powercon	13 12 80	
Citipower <b>Powercon</b>	13 24 12	
Colin, Biggers & Paisley	03 8684 2031	<a href="mailto:Reception_Mel@cbp.com.au">Reception_Mel@cbp.com.au</a>
Dept for Energy & Mining Sth Australia	08 8463 3000	<a href="mailto:resources.customerservices@sa.gov.au">resources.customerservices@sa.gov.au</a>
Dept of Natural Resources Mining and Energy	13 74 68 (general) 13 43 87 (energy)	<a href="mailto:customerFeedback@dnrme.qld.gov.au">customerFeedback@dnrme.qld.gov.au</a>
EfficientSee	0437 170 999	<a href="mailto:info@efficientsee.com.au">info@efficientsee.com.au</a>
Embertec	1300 033 367	<a href="mailto:customerservice@embertec.com">customerservice@embertec.com</a>
Energy & Water Ombudsman QLD	1800 662 837	<a href="mailto:complaints@ewoq.com.au">complaints@ewoq.com.au</a>

Organisation	Phone	Email
Energy and Water Ombudsman Victoria	1800 500 509	<a href="mailto:ewovinfo@ewov.com.au">ewovinfo@ewov.com.au</a>
Energy Australia	133 466	<a href="mailto:smecustomercare@energyaustralia.com.au">smecustomercare@energyaustralia.com.au</a>
Energy Safe Vic	1800 800 158	<a href="mailto:info@energysafe.vic.gov.au">info@energysafe.vic.gov.au</a>
Energywise P/L	1300 843 275	<a href="mailto:info@energywise.net.au">info@energywise.net.au</a>
Financial & Consumer Rights	03 9663 2000	<a href="mailto:admin@fcrc.org.au">admin@fcrc.org.au</a>

Attachment E - Solar Retailer Code of Conduct

## Solar Retailer Code of Conduct



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# 1. INTRODUCTION

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The Clean Energy Council (CEC) is the peak body representing Australia's renewable energy and energy efficiency industry.

## 1.1 Purpose and Objectives

This non-prescribed voluntary code of conduct (the Code) aims to promote best practice measures and activities for retail businesses selling **solar photovoltaic (PV) systems**. This Code is for retail businesses that want to demonstrate the commitment they have to promoting responsible activity and development in the renewable energy sector across Australia. This Code is not intended to replace existing consumer, energy or environmental planning legislation, policy or regulations at local, state or federal government levels, but to bring about increased accountability within the PV retail industry.

The primary entities involved in the sale and installation of PV are the installer, designer, and retailer. It is the nature of the PV market that these roles can all be filled by one individual, or conversely, by two or three different entities. The former category is typically found in small retail businesses run by a qualified installer/designer, and the latter typically in medium- to larger-sized companies that subcontract out the designs and/or installations of PV systems, meaning that those running the business or making a sale are less likely to be qualified installers/designers. Many PV retailers in the industry now sell systems direct to consumers and sub-contract the installation of those systems.

### CEC Accreditation for Solar PV Designers/Installers

The CEC Accreditation Team manages a PV accreditation program to accredit the designers and installers of solar systems. CEC Accreditation is not linked to membership with the CEC. This qualification demonstrates competence in design and/or installation of stand-alone and/or grid-connected solar PV systems. Under the PV accreditation scheme, which has a technical focus on safety and the correct design and installation of PV systems, only individuals are able to attain accreditation. A CEC-accredited solar designer/installer:

- has completed the necessary solar specific training courses;
- is bound by the CEC Accreditation Code of Conduct and the CEC Accreditation Terms and Conditions;
- complies with the CEC Design and Install Guidelines, relevant Australian Standards and all other relevant regulations when designing/installing PV systems.

In order to claim federal government financial incentives available under the Small-scale Renewable Energy Scheme (SRES), consumers must use a CEC-accredited installer and designer, in accordance with the *Renewable Energy (Electricity) (Cth) Regulations 2001*. More information on the Solar PV Accreditation Program is available at: [solaraccreditation.com.au](http://solaraccreditation.com.au).

## **Solar Retailer Code of Conduct**

As discussed above, the CEC Accreditation Program deals with matters relating to the installation and design of PV systems. This Code deals with matters relating to the marketing and sale of PV systems to ensure PV retailers also maintain a standard that will benefit consumers and the industry.

The Code has been developed to improve the relationship between consumers and PV retailers and to ensure the industry is suitably regulated. The Code is a self-regulated scheme designed to provide consumers with confidence that solar retailers will act in compliance with (and where appropriate, go beyond) relevant federal and state laws and regulations, and conduct their business in a professional and ethical manner. The Code also deliberately connects the responsibility of the retailer with the obligations of accredited installers/designers, to ensure that retailers are fully accountable for the actions of any subcontracted parties. This Code aims to address identified issues that may impact on the reputation of the solar industry. These issues include:

- Misleading claims given to consumers regarding the performance of their PV system and future electricity bills.
- Misleading advertising regarding the size of PV systems, the value of available government incentives, and the suitability of the PV system.
- The retailer not taking responsibility for the whole of the PV system including product warranties and workmanship.
- Sub-standard installation work.
- The retailer not taking responsibility for subcontracted parties acting on their behalf and any parties who generate sales leads utilised by the retailer.

The Code will be updated to reflect changes in the above, with the aim of proactively addressing issues that adversely affect consumers and the reputation of the PV industry.

To achieve its objectives, this Code addresses four broad subject areas:

### **1. Pre-Sale activities**

- To protect the consumer against dishonest or misleading advertising and sales tactics, and to ensure that sales representatives act ethically at all times during marketing campaigns and when dealing with consumers.
- To ensure that the consumer is provided with the necessary written information to enable full understanding and awareness of their purchase.

### **2. Post-Sale activities**

- To ensure that consumers' legal rights relating to cooling-off periods, deposits and refunds are respected, and that the consumer has the opportunity to cancel a contract where changes are made after point of contract that are not approved in writing.

- To ensure that the consumer receives a system that is installed correctly, in accordance with existing legislation, regulations, standards and guidelines.
- To ensure that the consumer is provided with a standard minimum warranty period covering the operation and performance of the entire system, and that the retailer is responsible for addressing any problems relating to workmanship or product that arise during this period.

### **3. Documentation**

- To ensure that the consumer is provided with the required documentation after the PV system is installed, and that the retailer and the consumer are fully aware of who is responsible for the provision of the relevant documentation.

### **4. General business**

- To ensure that the retailer adheres to all existing legislation and regulations, and maintains consistent business practices including, but not limited to, effective complaint handling procedures and cancellation procedures.

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## **1.2 Scope and Interpretation**

While the Code has been developed primarily to address issues arising during the sale and installation of small-scale PV to residential and small business consumers, the Code applies to any PV retailer that becomes a Signatory, regardless of what size system and to whom they are selling. However, where signatories are selling PV to medium- and large-scale business consumers (who can be assumed to have a genuine and reasonable opportunity to negotiate the terms of a contract), it is acceptable for a commercial contract to supersede specific clauses of the Code.

This Code co-exists with relevant state or federal legislation, including *Australian Consumer Law* (Cth) (ACL) (Schedule 2 of the *Competition and Consumer Act 2010*), which replaced the *Trade Practices Act 1974*. Signatories' obligations under these laws are not replaced or restricted by this Code. This Code applies to the extent that it is consistent with all existing state and federal legislation and regulation. Where the Code is found to be inconsistent with any existing state or federal legislation or regulation, that regulatory obligation will take precedence to the extent of the inconsistency. Compliance with this Code does not guarantee compliance with any legislation.

A summary of relevant laws that protect consumers is provided at Appendix 5.4.

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### 1.3 Signatories to the Code

Solar PV retail businesses that are signatory parties to this Code are compliant with and agree to adhere to the Code. They:

- are PV retailers, including those selling PV to residential and small business consumers and those selling PV to medium and large-scale business consumers;
- are committed to developing and conducting their business in line with best industry practices and interacting with consumers in a professional and ethical manner; and
- include non-CEC members and CEC members who apply and are accepted as signatories to this Code.

A regularly updated list of current signatories to the Code is available online for consumers at [www.solaraccreditation.com.au/retailers/approved-solar-retailers](http://www.solaraccreditation.com.au/retailers/approved-solar-retailers).

## 2. GENERAL RULES AND STANDARDS

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Signatories to the Code comply with the rules and standards in this section as set out below.

### 2.1 Pre-Sale Activities

#### Advertisements and promotions

- 2.1.1 Any advertisements, promotions, quotations and statements produced must be legal, truthful, and comply with all relevant legislation. Signatories must:
- (a) ensure all state and federal government incentive schemes are honestly and accurately represented, including not misrepresenting an association with government, or falsely claiming to be part of a government scheme;
  - (b) not provide any false or misleading claims relating to the company, product or services being offered including system performance, stocks and substitution of products;
  - (c) clearly attribute any claims relating to performance and savings to a reputable source;
  - (d) advertise the total price as prominently as they advertise a component of the price;
  - (e) provide information that is specific to the state or region of advertisement; and
  - (f) not engage in any misleading or deceptive conduct in relation to the price, value or quality of goods or services including:
    - (i) failing to clearly outline disclaimers or relying on disclaimers buried in small print in order to deliberately mislead a consumer;
    - (ii) making statements with promises, predictions or opinions that are known to be untrue or incorrect, or for which there are no reasonable grounds to make them;
    - (iii) quoting tariffs or financial incentives that are no longer available or not available in the region of advertisement;
    - (iv) misleading consumers about the impact that installing solar will have on their electricity bills;
    - (v) misleading consumers in relation to the size of the system or output;
    - (vi) advertising large inverters with small systems, with the intention of making it appear that the system size is the size of the advertised inverter;
    - (vii) the place of origin (manufacture) of a product; and

- (viii) exaggerating or misleading a consumer in regards to their need for the product.
- (ix) making representations regarding the cost of finance or an alternative purchasing arrangement for the product, such as representing that there is no additional cost for the finance or alternative purchasing arrangement when the price of the product has been inflated above the cash price or market value of the product.

### **Sales and quoting practices**

2.1.2 Signatories must adhere to ethical sales and quoting practices during all steps of the process, including but not limited to:

- (a) avoiding high-pressure sales tactics that induce consumers to make hasty or uninformed decisions about the product and technologies they are selecting. High-pressure sales tactics can be defined as (for example):
  - (i) seeking to sell products to individuals who, or organisations that, are clearly unable to understand the information and/or the contract they are being asked to enter into. For example, deliberately targeting consumers who are vulnerable due to mental illness or physical disability, age, learning difficulties, or speaking English as a second language;
  - (ii) offering inflated prices and then discounts for agreeing to sign on the day or for providing testimonials and/or providing referrals;
  - (iii) revisiting the consumer's premises uninvited intending to pressure the consumer;
  - (iv) applying psychological pressure (by appealing to the consumer's fears, greed or vanity), to persuade the consumer to make a quick purchase decision;
  - (v) employing badgering techniques, such as making frequent telephone calls, to pressure individuals or organisations into signing contracts; and
  - (vi) if the consumer reasonably feels they have been subject to high-pressure sales tactics then this may also be considered to constitute such tactics.
    - What constitutes 'reasonable' will be determined by the Code Administrator (see section 3.1 below).
- (b) When engaging the consumer in their home or place of business:
  - (i) identifying all sales agents with company-issued identification for the safety and comfort of consumers;
  - (ii) explaining up-front the purpose of the visit and informing the consumer that they can ask the retailer to leave at any time;
  - (iii) leaving the premises immediately if the consumer asks them to do so; and
  - (iv) explaining to consumers their right to terminate the agreement within ten business days for unsolicited sales.

- 2.1.3 Any reference to Small-scale Technology Certificates (STCs) must be consistent with Clean Energy Regulator wording, whereby an STC is a financial incentive, not a rebate, and consumers will not qualify for any government-based financial recompense at the completion of the STC creation process.
- 2.1.4 Consumers must be given a flyer describing this Code and also including:
- (a) the process for provision of consumer feedback and lodging consumer complaints;
  - (b) a link to the CEC Solar PV Consumer Guide.
- 2.1.5 An electronic link to this flyer is acceptable only if a hard copy can be provided upon request. The Code flyer will be produced and provided to signatories by the Code Administrator (see section 3.1).

#### **Point of contract**

- 2.1.6 A written contract must be provided to the consumer that shows:
- (a) an itemised list of the goods to be supplied;
  - (b) the total price of all goods and services;
  - (c) the total value of any discounts, STCs, Goods and Services Tax (GST) and rebates as applicable;
  - (d) full specifications of the system, including the manufacturer, model, quantity and power rating of the solar modules and the inverter/s;
  - (e) a site-specific full system design including the proposed roof plan (sketch or diagram is acceptable), orientation and tilt, expected efficiency losses due to shading, and the system's site-specific estimated energy yield, i.e. average daily performance estimate in kilowatt hours (kWh) for each month of solar generation.
    - The performance estimate must be based on data obtained from the CEC System Design Guidelines for Accredited Designers or other reputable source.

It is acceptable for this section 2.1.6(e) to be provided as a deliverable of the contract, provided that:

- (i) this information is provided before the expiry of any cooling-off period; and
- (ii) where section 2.1.6(e) is provided as a deliverable of contract:
  1. the initial contract must include a generic outline of the likely system performance estimate (to enable the consumer to make an informed purchase decision); and
  2. the consumer must be entitled to a full refund upon request, if they do not consent to the site-specific full system design and performance estimate upon receipt of this information.



- (f) Any site conditions and special circumstances beyond the control of the Signatory which may result in extra chargeable work not covered by the quote. This includes any additional costs that may arise at or after installation and that will not be borne by the Signatory. For example, fees for meter exchange/reconfiguration, damage on meter panels, and changing dedicated off peak control devices if required;
  - (g) an estimated timetable for supplying and installing the system. Where timeframes are out of control of the retailer, this can be noted with relevant disclaimers;
  - (h) business terms, including the payment method, deposits and timetable, and how long the quote will be valid for;
  - (i) details about any after-sales services, guarantees and express warranties. The warranty must:
    - (i) Include a statement that the consumer's rights under the warranty sit alongside the consumer guarantees which are required under ACL and cannot be excluded.
      - Under ACL, consumers cannot sign away their consumer guarantee rights. Signatories must not put terms into their contracts to avoid their consumer guarantee obligations.
    - (ii) The consumer's cooling-off and termination rights.
  - (j) Full disclosure of all assumptions made in relation to systems and finance offerings including:
    - (i) system design, performance and output assumptions;
    - (ii) financial savings including STC financial incentives, savings relating to return on investment, income and energy prices; and
  - (k) a clause stating that the Signatory must comply with this Code.
- 2.1.7 The contract must be expressed in a clear and transparent way, using plain language that is legible.
- 2.1.8 Signatories must endeavour to draw to the attention of the consumer specific requirements of the contract which, if not brought to the consumer's attention, are likely to result in a dispute. For example, section 2.1.6(g), additional fees that may arise, or if there is any difference between a price verbally quoted, and the final contract price.
- 2.1.9 Both parties must sign the agreement and any amendments. Equivalent methods of legal agreement other than signing a contract in person are also permitted (for example, electronic acceptance).
- 2.1.10 Any requirement to provide a document or information in writing can be met in electronic form, or to provide a signature can be met in electronic or verbal form.
- 2.1.11 Receipts must be issued for all deposits collected.

### **Prior to signing the contract**

- 2.1.12 Before the contract is signed the Signatory must provide the consumer with the address of the local office or showroom, or a telephone number where any queries can be answered.
- 2.1.13 Signatories must ensure that the contract is explained to consumers prior to entering into an agreement.
- 2.1.14 Signatories must clearly explain the process surrounding the payment and trade of STCs, including where relevant, the provision of accurate information about the operation of the STC Clearing House (i.e. that STCs in the Clearing House are only sold when there is a buyer, there is no guarantee on how long they will take to sell, and consumers are not guaranteed \$40).
- 2.1.15 Signatories must advise consumers that their electricity contract/tariff may change following installation of solar and that the consumer should contact their electricity retailer:
  - (a) before signing a contract, to check what new electricity tariff rates may be applied; and
  - (b) after installation of the solar PV system, to confirm that the agreed tariff has been applied.

### **Approval to connect to the electricity grid**

- 2.1.16 Signatories must inform consumers (where relevant in the state of installation), before a contract is signed, that:
  - (a) the consumer requires approval from their distributor to connect a solar PV system to the electricity grid ("grid connection approval"); and
  - (b) the relevant paperwork must be completed and submitted prior to installation.
- 2.1.17 Where Signatories have fulfilled their obligations under 2.1.16 above and the consumer takes responsibility for obtaining grid connection approval and
  - (a) the application is rejected and
  - (b) the contract has already been signed,

the consumer is entitled to the return of all moneys paid minus reasonable expenses incurred by the Signatory to the point of termination of the contract.
- 2.1.18 Where a Signatory has fulfilled its obligations under 2.1.16 above and the consumer authorises the Signatory to obtain grid connection approval on its behalf, the Signatory must ensure the consumer receives approval prior to installation.
- 2.1.19 Where a Signatory has fulfilled its obligations under 2.1.16 above and the consumer authorises the Signatory to prepare and submit the documentation required for grid connection approval and

- (a) the application is rejected and
  - (b) the contract has already been signed,
- the consumer is entitled to a full refund.

### **Finance and alternative purchasing arrangements**

- 2.1.20 When advertising an arrangement that provides an alternative to initial outright purchase (for example, a credit contract or a lease or power purchase agreement), the Signatory must comply with section 2.1 (and all other sections) of this Code.
- 2.1.21 The Code does not provide an exhaustive list of the notification obligations which apply to credit providers. Credit providers are required to meet obligations imposed by section 21C of the *Privacy Act 1988* (Cth) and clause 4.1 of the Credit Reporting Privacy Code.
- 2.1.22 When offering to a consumer, whether through the Signatory's own or associated company or via a third party provider, an arrangement that provides an alternative to initial outright purchase, a Signatory must ensure that the consumer clearly and accurately receives the following information:
- (a) the name of the provider to whom the consumer will be contracted;
  - (b) a clear statement regarding the nature of the arrangement being entered into (e.g. whether it involves a credit contract or other financial product within the meaning of the Australian Securities and Investments Commission Act or a non-regulated credit arrangement);
  - (c) a clear statement that the periodic payments are available only if the consumer wishes to take advantage of the finance or alternative purchasing arrangement;
  - (d) the comparative cost of that same product if the consumer was to purchase it outright on that day;
  - (e) a clear statement that fees and charges apply in relation to the arrangement, including:
    - (i) the dollar amount of fees and charges applied under the arrangement and what each fee and charge represents;
    - (ii) whether the fees are fixed and, if not, details of escalation rates; and
    - (iii) where and in what form the consumer can expect the fees and charges to appear in the finance or alternative purchasing arrangement contract;
  - (f) under a solar leasing agreement, the aggregate amount payable over the life of the agreement's term;
  - (g) under a power purchase agreement, the aggregate amount payable over the agreement's term based on a reasonable and stated estimate of the solar-generated electricity consumed by the consumer;

- (h) under a power purchase agreement, a clear statement that the consumer must pay the stated price for solar-generated electricity for the term of the contract and that the stated price may not reflect the market price and may not be competitive with the price of electricity purchased through other methods;
- (i) details of any exit payments or penalties associated with the finance or alternative purchasing arrangement;
- (j) a statement as to whether the consumer owns the system at the conclusion of any plan or agreement under the terms of the arrangement and/or details, including any associated costs and/or fees, of any option or options available to the consumer to purchase the system at the end of the term; and
- (k) a statement that questions and complaints about the arrangement should be directed to the provider with whom the consumer is or will be contracted and:
  - (i) if the provider is a member of such a scheme, to the relevant external dispute resolution scheme;
  - (ii) if the arrangement involves a credit or other financial product, the Australian Securities and Investments Commission (ASIC) or
  - (iii) if the arrangement does not involve regulated credit or other financial product, to the relevant state based authority which has responsibility.

To comply with this section 2.1.22, a Signatory may, for example, provide the third party provider with a pro forma to be completed by that provider and attached to the Signatory's contracts, or attach the standard terms of the provider.

2.1.23 A Signatory must make reasonable enquiries as to whether the arrangement that is to be offered to a consumer (whether by the Signatory or by another business introduced to the consumer by the Signatory or Approved Retailer) is regulated by the *National Consumer Credit Protection Act 2009* (Cth) ("the NCCP Act"), such that the provider of the arrangement would need to hold an Australian Credit Licence.

If as a result of those enquiries, the Signatory believes that the arrangements will not be regulated by the NCCP Act, the Signatory must ensure that:

- (a) The relevant contract includes a provision substantially in the form set out in section 2.1.24 below ; and
- (b) the provision referred to in section 2.1.23(a) is signed by the consumer.

Note: If an arrangement is a credit contract or a consumer lease that is regulated by the NCCP Act, the credit provider must hold an Australian Credit Licence. Any business that has a role in introducing the consumer to the credit provider (e.g. the Signatory or the Approved Retailer) may also need to hold a licence or be a credit representative of a licensee. It is a breach of the NCCP Act to engage in activities without holding a required licence or being a credit representative of a licensee. The obligations in this section are in addition to the legal obligations under the NCCP Act. A Signatory or Approved Retailer should obtain advice as to their obligations under the NCCP Act.

2.1.24 “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.
- (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.”

2.1.25 Signatories will not offer an agreement which involves “third line forcing”, such as supplying solar panels on condition that the consumer purchase energy from another energy supplier, unless prior notification to, or authorisation from, the ACCC has been provided in accordance with the *Competition and Consumer Act 2010*.

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## 2.2 Post-Sale Activities

### Pre-installation

#### **Cooling-off period**

- 2.2.1 For unsolicited sales, consumers must be given ten business days after they sign the contract to cancel the contract without penalty (the “cooling-off period”).
- 2.2.2 Where a consumer wishes to withdraw from a valid contract after the expiry of any cooling-off period, signatories are entitled to apply their own policies regarding fees for cancellation, in line with the termination rights specified in the initial contract, provided that such cancellation fees do not amount to unfair contract terms under the ACL. Cancellation fees must be reasonable, and related to the cost incurred by the Signatory. Consumers have rights under unfair contract terms provisions in ACL relating to cancellation of contracts and termination fees.

#### **Refunds**

- 2.2.3 Once the consumer has signed the contract, any variations to the system design must be documented and signed off by the consumer prior to installation.
- 2.2.4 The Signatory must provide the consumer with a full refund upon request when:
  - (a) the final system design provided in accordance with section 2.1.6(e) is significantly different to that quoted at the point of contract and is not signed off by the consumer;

- (b) in accordance with section 2.1.6(f), the site-specific full system design and performance estimate is provided as a deliverable of the contract and:
  - (i) this information is not provided before the expiry of any cooling-off period; and
  - (ii) the consumer does not consent to this information upon receiving it;
- (c) the estimated delivery timeframe for installation completion that was agreed upon at the point of contract is not honoured, for reasons reasonably within the Signatory's control, and the consumer does not consent to a revised timeframe;
- (d) in accordance with 2.1.19 above, the Signatory acting on behalf of the consumer to obtain grid connection approval does not do so prior to installation, and the consumer does not receive approval from the distributor to connect a system; and
- (e) extra chargeable work arises, which was not specified in the initial contract, and the additional costs are not borne by the Signatory and the consumer does not consent to these additional costs.

### **Post-installation**

2.2.5 A Signatory must advise the consumer how to measure the performance of their system. The Signatory must specify, using at least one of the following methods, how energy output can be measured:

- (a) demonstration;
- (b) written instructions on how to read the inverter; or
- (c) provision of a measuring device that links back to the inverter.

Energy output is a reasonable measure of performance; savings are not.

2.2.6 Signatories must inform consumers how to appropriately maintain their system and that they should do so on a regular basis (providing maintenance documentation in accordance with section 2.3 below is sufficient).

### ***Connection to the electricity grid***

2.2.7 To facilitate connection to the grid, the Signatory must:

- (a) in accordance with section 2.1.18, prepare and submit within a reasonable timeframe all relevant documentation required by the electricity retailer and/or distributor for meter installation and connection of the system to the network; or
- (b) in accordance with section 2.1.17, signatories must clearly explain to the consumer the process for preparing and submitting the documentation required by the electricity retailer and/or distributor.

- 2.2.8 The Signatory must explain to the consumer the process from system installation to network connection. The Signatory must:
- (a) notify the consumer when it has provided the relevant paperwork to the electricity retailer and/or distributor (if applicable) and how the paperwork was provided, for example, by email;
  - (b) give the consumer expected timeframes for each step of the process;
  - (c) advise the consumer who they should contact to follow up on progress; and
  - (d) advise of any potential problems that may arise.
- 2.2.9 The Signatory must respond within a reasonable timeframe to any additional compliance requests from the distributor or electricity retailer (for example, re-submitting incorrect paperwork), and consult with the consumer if necessary.

### **Warranty**

- 2.2.10 A standard minimum retailer's warranty period of five years<sup>1</sup> on the operation and performance of the whole solar PV system, including workmanship and products, must be provided to the consumer by the Signatory.
- (a) That retailer's warranty exists over and above the consumer's rights under consumer guarantees in ACL.
  - (b) The consumer is entitled to claim a remedy if the goods or services do not meet a consumer guarantee or retailer's warranty.
    - (i) The Signatory must implement warranty repairs or replacements within a reasonable timeframe.
    - (ii) The consumer is not entitled to a remedy when the Signatory does not meet a consumer guarantee (statutory and retailer's warranty) due to something:
      - A. someone else said or did (excluding the Signatory's agents or employees); or
      - B. beyond human control that happened after the goods or services were supplied (for example, *force majeure* events, possums, extreme weather).

### **Privacy**

- 2.2.11 The Signatory has obligations under the *Privacy Act 1988* (Cth) and the *Spam Act 2003* (Cth) in relation to collection, use and disclosure of personal information. The Signatory must be aware of and comply with such legal obligations at all times.

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<sup>1</sup> This warranty period is the minimum applicable to the service component of installation and all products (inverters, panels, electrical components etc.). Certain products, for example, panels and inverters, might have a warranty that exceeds five years.

- 2.2.12 Subject to 2.1.11, a Signatory may use personal information collected from consumers:
- (a) for the purpose of the intended sale; and
  - (b) for future marketing of its products and services that relate to the sale; or
  - (c) where a consumer might otherwise reasonably expect to receive marketing material from the Signatory.
- 2.2.13 Signatories may (but are not required under this Code to do so) seek the consumer's consent, by way of an opt-in clause in the contract or other appropriate document, to receive marketing material.
- 2.2.14 Regardless of whether a consumer consented to receiving marketing material pursuant to 2.2.13 above, Signatories must provide a simple means by which the consumer may easily request not to receive direct marketing communications, and include a prominent opt-out provision in each marketing communication, clearly telling consumers about the means for opting out of future marketing communications.
- 2.2.15 Signatories must not use consumers' personal data for purposes other than those described in 2.2.12 above (for example, they must not provide the data to a third party, or use the data to promote a business other than that with which the consumer has a direct relationship) unless they have obtained express permission from the consumer.
- 2.2.16 This section sets out the minimum standard for use of customer data. Signatories can determine their own marketing practices, in accordance with all other provisions of this Code and pursuant to the *Privacy Act* 1988, beyond meeting this minimum standard.



## 2.3 Documentation

- 2.3.1 Section 2.3.2 contains a list of documents that the consumer must receive once the PV system is installed and who is responsible for providing that documentation. Signatories must ensure that the responsible parties below provide the consumer with this documentation.
- 2.3.2 The following documentation must be provided to the consumer in either electronic format or hard copy. Where appropriate, specified details of where this information can be found (for example, a web link) is acceptable. However, hard copies must be provided upon request by the consumer.

Party responsible	Documents
Retailer	<ul style="list-style-type: none"> <li>• List of equipment</li> <li>• Warranty information</li> <li>• Equipment manual</li> <li>• Equipment handbook</li> <li>• Array frame engineering certificate</li> </ul>
Designer	<ul style="list-style-type: none"> <li>• Shut down and isolation procedure</li> <li>• System performance estimate</li> <li>• Maintenance</li> <li>• Earth fault alarm actions</li> <li>• System connection diagram</li> <li>• Site inspection checklist</li> </ul>
Installer	<ul style="list-style-type: none"> <li>• Testing/commissioning</li> <li>• Declaration of compliance</li> <li>• Certificate of electrical safety (where applicable)</li> </ul>

- 2.3.3 Signatories are accountable for the work of their sub-contractors. In addition to the document requirements set out above, Signatories must be aware of any other documentation required by electricity distributors and regulators in their regions of operation.

## 2.4 General Business and Obligations of Signatories

### Compliance with the law

- 2.4.1 Signatories must comply with all local, state and federal legislation, CEC Accreditation Guidelines and regulations including but not limited to:
- (a) The Renewable Energy Target (*Renewable Energy (Electricity) Act 2000* and *Renewable Energy (Electricity) (Charge) Act 2000*) which is supported by the *Renewable Energy (Electricity) Regulations 2001*.
  - (b) The Australian Government Do Not Call Registry (*Do Not Call Register Act 2006*) and associated telemarketing standards including permitted hours for contacting consumers.
  - (c) Schedule 2 of the *Competition and Consumer Act 2010*, which replaced the *Trade Practices Act 1974*.
  - (d) Respecting “Do Not Knock” and “No Hawkers” stickers
  - (e) Additional outlined in Appendix 5.4.

### In-house procedures and complaints handling

- 2.4.2 Signatories must be responsive to, and deal appropriately with, consumers at all times.
- 2.4.3 Consumers have the right to expect that PV systems supplied by a Signatory will:
- (a) perform properly;
  - (b) reflect the agreed contract;
  - (c) be fit for purpose as per the specifications provided and as outlined by the Signatory; and
  - (d) meet the standards the consumer would reasonably expect, including those set out in this section 2: General Rules and Standards.
- 2.4.4 If a consumer is dissatisfied with a product or service offered or provided, they can submit a complaint to the Signatory. A complaint may include, for example, any expression of dissatisfaction with a product or service offered or provided, with the sales process or salesperson, or with the complaints handling procedure itself.
- 2.4.5 Signatories must have an appropriate internal complaint handling procedure that is fair, efficient and transparent, in line with the following:
- (a) the complaint handling procedure must be compliant with relevant legislation and standards including the Australian Standard on Complaints Handling AS ISO 10002-2006, which Australia adopted as the replacement for AS 4269 in 2006;

- (b) information about the complaints process must be made available to consumers and staff;
- (c) the Signatory must log the complaint and begin its investigation within a reasonable time of its receipt;
- (d) every reasonable effort must be made to advise the complainant as soon as possible of receipt of the complaint and the expected timeframe for resolution of that complaint;
- (e) feedback on the outcome of complaints must be provided to the consumer within 21 days of receipt. Where additional time is required:
  - (i) consumers must be informed of the need for more time to complete investigation; and
  - (ii) the investigation must be completed within 45 days of receipt of the complaint;
- (f) where a consumer is dissatisfied with the outcome of a complaint, the Signatory must provide the consumer with the appropriate contact details for escalating that complaint either internally or externally to the relevant state or territory industry consumer protection organisation, as an independent dispute resolution body.

Signatories must ensure that consumers fully understand the various avenues of complaint available to them. This is best done by clearly documenting those avenues in the complaints handling procedure. Consumers who have attempted to have their complaint resolved by the Signatory and are dissatisfied with that response must be referred by the Signatory to the applicable industry ombudsman or consumer affairs body; and

- (g) Signatories must maintain appropriate record keeping of complaints and their outcomes.

2.4.6 Signatories must be able to demonstrate compliance with the Code and provide evidence of compliance to the Code Administrator when a suspected breach of the Code is being investigated. This may include:

- (a) documented procedures;
- (b) discussion of standard practices; and
- (c) examples of standard documentation given to consumers such as contracts and warranty documents.

#### **Information to be provided to the Code Administrator**

2.4.7 Signatories are required to provide an annual confirmation of their compliance with the Code, which also serves to reaffirm the Signatory's ongoing commitment to implementing the Code.

- 2.4.8 Signatories must nominate a person who is authorised by the company to be the primary contact for all matters and correspondence relating to the Code (the Primary Contact). Signatories must provide the Code Administrator with up-to-date details including email address, title and telephone number for the Primary Contact. Signatories must inform the Code Administrator within 28 days of a change to the Primary Contact's details. Signatories must inform the Code Administrator immediately of any change in circumstances that may impact on the Primary Contact's ability to fulfil their role.
- 2.4.9 A Signatory must inform the Code Administrator, within 10 business days of the Signatory being notified by the relevant body of receipt of a complaint, of any complaints lodged against them with an energy ombudsman or consumer affairs body.
- 2.4.10 Signatories must undertake to inform the Code Administrator of any breaches to the Code made by other signatory companies.
- 2.4.11 Signatories must provide the Code Administrator with the following information and data upon request:
- (a) relevant procedures outlined above in section 2.4: *In-house procedures and complaints handling*;
  - (b) records of all relevant business activities and transactions relating to a suspected breach, including (if applicable) information provided to the consumer who lodged the complaint, and training provided to employees. These records must be kept for a minimum period of five years for audit purposes in the administration of this Code;
  - (c) details of any known breaches of the Code;
  - (d) regular (for example, quarterly) complaints data, including:
    - (i) the number of complaints received;
    - (ii) the type of complaints received; and
    - (iii) the number of resolved complaints; and
  - (e) any other information that the Code Administrator deems relevant for investigating a suspected breach of the Code.
- This information will be used by the Code Administrator in managing the administration of and compliance with the Code, including compliance audits and investigating all suspected breaches of the Code.
- 2.4.12 All commercial-in-confidence information will be treated with appropriate confidentiality.
- 2.4.13 Signatories must comply in a timely manner with reasonable requests made by the Code Administrator for the provision of information or documentation in relation to compliance audits or investigation of suspected breaches of the Code.

2.4.14 Signatories must comply with all reasonable requests of the Code Review Panel in pursuance of its functions (see section 3.2).

### **Training and promotion of the Code**

2.4.15 Signatories must ensure consumers are made aware of the Code and:

- (a) take all reasonable steps to promote the benefits of the Code to consumers, including telling consumers about the Code and providing copies on request;
- (b) advertise the latest version of the Code on their website and in other relevant marketing documents;
- (c) ensure that consumers are aware of the Signatory's complaints handling provisions.

2.4.16 Signatories must ensure that its employees and representatives, whether employed directly, subcontracted or selling or providing services on the company's behalf, are aware of the Code and their responsibilities under the Code.

2.4.17 For all system designs and installations, Signatories must employ and contract CEC-accredited designers/installers who abide by the CEC Accreditation Code of Conduct and Accreditation Terms and Conditions, or an equivalently trained accredited designer/installer as defined by the federal government in accordance with the Renewable Energy (Electricity) (Cth) Regulations 2001.

2.4.18 Signatories must ensure the safety of their installers, subcontractors and employees.

- (a) Persons must be appropriately qualified and have completed safety training modules (as listed in CEC Accreditation Guidelines) appropriate to the work including working from heights training.
- (b) Signatories must demonstrate due diligence in ensuring the safety of persons under their direct or indirect responsibility.

### **Obligations of Signatories and grounds for action to be taken**

2.4.19 Signatories have given an undertaking that they agree to follow the Code as outlined in this document.

2.4.20 Signatories must comply with the Code General Rules and Standards (this section 2) when selling, designing and installing solar PV systems.

2.4.21 Signatories are also subject to the Code Administrator's Complaints Procedure, the Code Review Panel Terms of Reference and the Brand Mark Guidelines.

2.4.22 Signatories must not act in any way that might bring the Code into disrepute.

2.4.23 Signatories must not make any vexatious or unfounded claims against another Signatory.

- 2.4.24 Signatories must ensure that their employees, contractors, agents, and any other individuals or businesses acting on the Signatory's behalf comply with the latest version of the Code. Signatories will be held responsible for all the actions of their employees, contractors, agents, and any other individuals or businesses acting on the Signatory's behalf to the extent that such actions are governed by this Code..
- 2.4.25 The Code Administrator/Code Review Panel may need to modify both the Code and supporting documentation to reflect the changing industry and ensure the Code standards continue to meet the stated objectives of the Code. Changes required may be identified through regular reviews of the Code which will assess the Code's effectiveness and possible areas for improvement (see section 3.8). Any major changes will be undertaken in consultation with the key stakeholders including signatories, industry, ACL regulators and consumer protection agencies. Signatories are obliged to comply with the most current version of these documents at all times. Code signatories will be notified by email of any changes to these documents, and will be given three months' notice of any significant changes.
- 2.4.26 The Code Administrator/Code Review Panel may take action where there is any failure by a Signatory to meet their obligations under the Code. These circumstances include:
- (a) any conduct or activity which has or may bring the Code into disrepute;
  - (b) failure to observe and conform to all relevant Australian Standards and all relevant CEC Accreditation Guidelines, and all applicable laws, ordinances, regulations and codes of practice;
  - (c) failure to comply with the requirements for provision of information and data as outlined above in section 2.4: *Information to be provided to the Code Administrator*;
  - (d) failure to pay any fees and charges associated with being a Signatory;
  - (e) making any false or misleading declarations or statements to the CEC relating to the Code and the Signatory's conduct;
  - (f) where there are complaints of a serious nature made against the Signatory that are unresolved;
  - (g) where the Signatory becomes bankrupt, insolvent, or their organisation is placed under administration; and
  - (h) serious, wilful, systemic, repetitive non-compliance with the potential to impact a large number of consumers or to have a serious impact on a lesser number of consumers.

## 3. CODE ADMINISTRATION AND COMPLIANCE

Signatories to this Code are also subject to the Code administration and compliance arrangements as set out below.

### 3.1 Role of Clean Energy Council (Code Administrator)

- 3.1.1 The Code will be administered by the CEC Accreditation Team. The Accreditation Team also manages the PV Accreditation Program to accredit designers and installers of PV.
- 3.1.2 The Code Administrator (CEC Accreditation Team) will be responsible for:
- (a) managing the administration process relating to Code signatories;
  - (b) monitoring Code compliance, including:
    - i. carrying out compliance audits and initiating inquiries into compliance; and
    - ii. investigating complaints that the Code has been breached;
  - (c) determining when breaches of the Code have occurred;
  - (d) determining appropriate action when breaches of the Code have occurred;
  - (e) enforcing sanctions;
  - (f) referring cases to the Code Review Panel for consideration as required;
  - (g) performing secretariat functions for the Code Review Panel;
  - (h) overseeing promotion of the Code; and
  - (i) developing training and supporting material on the Code to assist signatories to comply with the Code.
- 3.1.3 The Code Administrator is not a dispute resolution body and will refer consumers to either the Code Signatory or the relevant consumer protection organisation in accordance with section 3.3 below.

## 3.2 Role of the Code Review Panel

3.2.1 The oversight, monitoring and direction of the Code will be undertaken by the Code Review Panel (the Panel).

3.2.2 The Panel will:

- (a) be an independent body. All representatives must be independent of Code signatories. They must not have any conflict of interest, for example, having recently been employed by, or consultant to, any Code Signatory;
- (b) have no representative of the Code Administrator sitting on the Panel;
- (c) be suitably qualified to arbitrate cases referred to it by the Code Administrator, and to hear appeals against sanctions imposed by the Code Administrator;
- (d) consist of at least three participants that are all non-signatories to the Code, including:
  - (i) a consumer representative with relevant experience and knowledge in, for example, consumer advocacy, protection and law, appointed by the Code Administrator in consultation with regulators of ACL;
  - (ii) a PV representative with experience in the solar PV industry appointed by the Code Administrator; and
  - (iii) a Chair with relevant experience and knowledge in, for example, regulatory or government administration of consumer law, or a suitable background to ensure due process is followed at all times, particularly when dealing with any breach of the Code. The Chair will be appointed by the Code Administrator and not employed in the PV industry.

3.2.3 Panel members will be appointed for a period of three years, and will be eligible for reappointment.

3.2.4 The Panel will be responsible for:

- (a) arbitrating cases referred to it by the Code Administrator;
- (b) arbitrating appeals against sanctions imposed by the Code Administrator in accordance with section 3.7; and
- (c) conducting its own inquiries into Code compliance.

3.2.5 The Panel will adhere to the Panel Terms of Reference, which set out its powers and functions.

3.2.6 The Panel will meet regularly to look at revisions to the Code, policy changes, how the Code operates, and complaints data.

3.2.7 All decisions of the Panel are final. Signatories have no right of review beyond the Panel.



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### 3.3 Consumer Disputes

- 3.3.1 The Code Administrator will investigate all reported breaches of the Code but will not resolve a dispute between the Code Signatory and the consumer.
- 3.3.2 Consumers who wish to make a complaint against a Signatory should first contact the Signatory directly. Signatories are required to have a fair and transparent consumer complaints process that meets or exceeds the requirements of the Complaints Handling standard, AS ISO 10002-2006. Details of this process are outlined in section 2.4: In-house procedures and complaints handling.
- 3.3.3 If the consumer is not satisfied with the complaint resolution by the Signatory, the consumer should then contact the relevant industry consumer protection organisation, for example the state consumer affairs or fair trading body (see Appendix 5.3).
- 3.3.4 Consumers are encouraged to inform the Code Administrator of any behaviour which may be in breach of the Code that is lodged with a consumer protection organisation, even if their complaint is subsequently resolved. They can do so using the dispute form available online or in writing or by telephone.

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### 3.4 Compliance and Auditing

- 3.4.1 The Code Administrator has put in place arrangements for monitoring Signatories' compliance with the Code to ensure it delivers the desired outcomes. Signatories must agree to comply with the requirement for regular monitoring and to allow audits on their compliance with the Code.
- 3.4.2 The Code Administrator will carry out the following monitoring and auditing measures and assess ongoing compliance with the code through:
  - (a) audit compliance checks;
  - (b) mystery shopping;
  - (c) assessing feedback from consumers obtained through consumer satisfaction surveys;
  - (d) investigating cases it is aware of in which signatories may have breached the Code;
  - (e) analysis of conciliation and arbitration cases;
  - (f) analysis of consumer complaints;
  - (g) using information obtained from media reports;
  - (h) using information received from other Code signatories; and

- (i) using information obtained from any additional sources.

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## 3.5 Breaches of the Code

3.5.1 The Code Administrator will investigate potential breaches of the Code. Breaches can be raised via:

- (a) self-reporting from Code signatories;
- (b) consumers using the dispute forms available on CEC websites;
- (c) any other person or body using the dispute form on the CEC solar accreditation website; or
- (d) evidence of breaches taken from any source including those outlined in section 3.4.

3.5.2 Alleged breaches of the Code will be investigated by the Code Administrator, which will follow the Complaints Procedure. The key steps of this procedure are:

- (a) Where the only source of information on a potential breach is raised by a third party (section 3.5.1(a), (b) or (c) above), evidence of the breach will be requested from the third party.
- (b) The Code Administrator will contact the Signatory in writing, providing details of the alleged breach as soon as practicable.  
The Signatory will be given 21 days to respond to the Code Administrator setting out its comments and evidence on the alleged breach.  
Once a Signatory is aware a breach may have occurred, if the matter is not disputed, they must explain the actions they have taken to address the alleged breach as soon as practicable.
- (c) The Code Administrator will investigate and assess the issue as soon as reasonably practicable in order to minimise consumer dissatisfaction and improve industry standards.
- (d) Where a breach is found to have been made, depending on the severity of the breach (see section 3.5: *Breach Matrix* below), the Code Administrator will either:
  - (i) allocate a sanction in accordance with section 3.6; or
  - (ii) provide documentation relating to the breach along with a recommended course of action to the Code Review Panel for consideration.
- (e) In the event that the breach is handled solely by the Code Administrator, a Signatory is entitled to appeal the ruling to the Code Review Panel (see section 3.7).
- (f) If a breach is referred to the Code Review Panel (either by the Code Administrator or by appeal), the Panel will determine if a breach has occurred and the subsequent action, if any, that will be taken against the Signatory.

(g) All parties involved in the complaint/breach will be notified of the outcomes of the investigation.

(h) All decisions by the Code Review Panel are binding.

### Breach matrix

3.5.3 The table below indicates the severity of the breaches. In order to proactively target systemic issues in the industry, the breach levels can be altered at the discretion of the Code Review Panel. Any changes will be made in accordance with section 2.4.25.

Section of the Code	Breach level
<b>Pre-sale activities</b>	
<b>Advertisements and promotions</b> Any advertisements, promotions, quotations and statements produced must be legal, truthful, and comply with all relevant legislation.	Severe
<b>Sales and quoting practices</b> Signatories must adhere to ethical sales and quoting practices during all steps of the process	Major
Any reference to Small-scale Technology Certificates (STCs) must be consistent with Clean Energy Regulator wording.	Medium
<b>Point of contract</b> A written contract must be provided to the consumer and executed as described in the Code.	Severe
Receipts must be issued for all deposits collected.	Severe
<b>Prior to signing the contract</b> Before the contract is signed the Signatory must provide the consumer with the address of the local office or showroom, or a telephone number where any queries can and will be answered.	Minor
Consumers must be given a flyer describing this Code and also including: a) the process for provision of consumer feedback and lodging consumer complaints; and b) a link to the CEC's <i>Guide to Installing Solar PV for Households</i> Solar PV Consumer Guide.	Medium
Signatories must ensure that the contract is explained to the consumer before the contract is signed.	Major
Signatories must clearly explain the process surrounding the payment and trade of STCs.	Medium

Consumers must be advised that their electricity contract/tariff may change following installation of solar and that they should check with their electricity retailer as to what new electricity tariff rates may be applied.	Medium
Signatories must advise consumers of potential billing issues that may arise following changeover of the meter.	Minor
Where relevant in the State of installation, the Signatory must inform the consumer before a contract is signed that approval is required from the distributor to connect a system to the electricity grid, that the relevant paperwork must be completed and submitted prior to installation and that approval should be gained prior to installation.	Medium
Where the Signatory prepares and submits the documentation required for approval to connect to the network on behalf of the consumer, they must ensure consumers have approval prior to installation.	Medium
<b>Post-sale activities</b>	
<b>Pre installation</b> Cooling-off periods and requirements must be adhered to.	Major
Refund requirements must be adhered to.	Major
<b>Post-installation</b> Signatories must inform consumers as to how to measure the performance of their system.	Minor
Signatories must inform consumers as to how to appropriately maintain their system on a regular basis.	Medium
Signatories must prepare and submit all relevant documentation on behalf of the consumer (where permitted to do so) or otherwise clearly explain to the consumer the process for preparing and submitting such documentation.	Major
Signatories must inform provide adequate details of the process between system installation and network connection.	Medium
Signatories must endeavour to respond in a timely manner to any additional compliance requests from the distributor or electricity retailer, and if required, in consultation with the consumer.	Medium
Warranty requirements must be adhered to.	Severe
<b>Documentation</b>	
Signatories must ensure that the responsible parties provide the consumer with the relevant documentation in either electronic format or hard copy.	Medium
<b>General business and obligations of signatories</b>	
<b>Compliance with the law</b> Signatories must comply with all local, state and federal legislation, CEC accreditation guidelines and regulations.	Severe
<b>In-house procedures and complaints handling</b> Signatories must be responsive to, and deal appropriately with,	Medium

consumers at all times.	
Complaint handling requirements will be adhered to. Signatories must have an appropriate internal complaint handling process that is fair, efficient and transparent.	Severe
Signatories must be able to demonstrate compliance with the Code and provide evidence of compliance to the Code Administrator when a suspected breach of the Code is being investigated.	Medium
<b>Information to be provided to the Code Administrator</b> Signatories must comply with the requirements for information and data to be provided to the Code Administrator.	Severe
<b>Training and promotion of the code</b> Signatories must ensure consumers are made aware of the Code.	Medium
Signatories must ensure employees and representatives, whether employed directly, subcontracted or selling on the company's behalf are aware of the Code and their responsibilities under the Code.	Major
Signatories must employ and contract CEC-accredited designers/installers for all system designs and installations, or an equivalently trained accredited designer/installer as defined by the federal government in accordance with the Renewable Energy (Electricity) Regulations 2001.	Severe
Signatories must ensure the safety of their installers, subcontractors and employees.	Severe
<b>Obligations of signatories and grounds for action to be taken</b> Signatories must adhere to the Complaints Procedure , Code Review Panel Terms of Reference, and Brand Mark Guidelines.	Severe
Signatories must not make any vexatious or unfounded claims against other Signatories.	Medium
<b>Code administration</b>	
Failure to pay any fees or charges associated with the Code.	Major
Failure to comply with agreed action plan from an audit.	Major
Failure to comply with directives from the Code Administrator relating to Code breaches.	Major
<b>Systematic breaches</b> This is a breach of the Code that is not a singular event but is, in the Code Administrator's opinion, a procedural lack of compliance with the Code by the Signatory.	Severe

## 3.6 Sanctions

3.6.1 Once a breach of the Code has been confirmed then the sanctions will be undertaken as per the matrix below:

Breach	Actions / Sanctions
Severe	Signatory details to the Code Administrator its strategy to rectify the issue and appoints an independent auditor to audit the areas of activity where the breach(es) occurred at the Signatory's cost. Audit results and actions to prevent the breach occurring again to be sent to the Code Administrator. The breach will be listed on the CEC website in accordance with section 3.6.3 below.
Major	Signatory details to the Code Administrator its strategy to rectify the issue and implements an agreed action plan (at their cost) to prevent the issue re-occurring. If more than three major breaches occur within a 12 month timeframe, the Signatory must appoint an independent auditor, at the Signatory's cost, to audit the areas of activity where the breach(es) occurred. Audit results and actions to prevent the breach occurring again to be sent to the Code Administrator.
Medium	Signatory details to the Code Administrator its strategy to rectify the issue, and implements an agreed action plan (at their cost) to prevent the issue re-occurring.
Minor	The Signatory provides a written undertaking to the Code Administrator that the breach will not be repeated.

3.6.2 The relevant regulator and ombudsman will be notified of any breach of ACL.

3.6.3 Where a major breach has been made, Signatories will be given an opportunity to rectify the breach within a reasonable timeframe, in accordance with a determination by the Code Administrator/Code Review Panel.

- (a) If the breach is not rectified during this time, the breach will be publicly listed on the CEC website and in the Code Annual Report, identifying the name of the Signatory involved.
- (b) If the breach is rectified during this time, the breach will be publicly listed on the CEC website and in the Code Annual Report, but will not name the Signatory involved (i.e. de-identified listings of major breaches will be published in order to advise customers of issues prevailing in the sector).

### Termination of Signatories

- 3.6.4 Serious, wilful, systemic or repetitive non-compliance which is detrimental to consumers may be cause to remove the retailer as a Signatory to the Code with immediate effect.
- 3.6.5 Suspension or cancellation of a Signatory can occur if:
  - (a) the Signatory fails to provide evidence that they have rectified or addressed a breach of the Code within a reasonable timeframe; or
  - (b) the Signatory has multiple breaches that signify a systematic failure to adhere to the Code. In this case, they can be suspended until they provide evidence the systemic issue has been rectified.
- 3.6.6 Where a Signatory has been suspended or withdrawn from the Code, the Code Administrator/Code Review Panel has the right to inform the general public and any interested party that the Signatory is no longer a signatory to the Code. The Signatory will also immediately cease to:
  - (a) describe itself as a signatory to the Code or an Approved Retailer;
  - (b) use the Code brand mark; and
  - (c) advertise or portray itself as in any way being connected to the Code.

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## 3.7 Appeals

- 3.7.1 If a Signatory believes that the Code Administrator did not exercise reasonable discretion, that they were denied natural justice, or that new evidence has come to light that was not available at the time of original determination, they are entitled to appeal the determination of the Code Administrator to the Code Review Panel.
- 3.7.2 Signatories can lodge an appeal using the appeals form online.
- 3.7.3 Appeals must be lodged within one month of the original Code Administrator determination. They must be submitted in writing, detailing the relevant issue, and reasons why the appeal is being made.
- 3.7.4 The Code Review Panel will consider and provide a ruling on the appeal in writing, along with reasons for the determination, as soon as reasonably practicable.
- 3.7.5 All parties involved will be notified of the outcomes of the investigation.
- 3.7.6 All decisions by the Code Review Panel are binding and there is no further right of appeal.

### 3.8 Review of the Code and Public Reporting

- 3.8.1 An annual report on the Code's operation, including reporting on Code compliance, will be produced by the Code Review Panel, to enable a periodic assessment of the Code's effectiveness, ensure the Code standards meet the identified objectives and community expectations, and to identify systemic issues and areas for improvement.
- 3.8.2 All breaches and sanctions occurring each year will be reported in the Code's annual report. This information will not identify the names of any signatories, with the exception of:
  - (a) cases where a Signatory has been removed or suspended from the Code; and
  - (b) severe breaches that are not rectified by the Signatory, as outlined in section 3.6.3 above.
- 3.8.3 For the purpose of sections 2.4.7 to 2.4.11, none of this information will be made publicly available, with the exception of 2.4.7(c) and (d), which may be included de-identified in the Code's annual report.
- 3.8.4 The Code, Code reporting, Code Review Panel and Code Review Panel Terms of Reference will also be independently reviewed every three years following their commencement. The review will be undertaken by a suitably qualified, independent person/body.
- 3.8.5 The independent three-yearly reviews will be conducted in consultation with relevant stakeholders including consumer advocacy groups, government bodies and regulators of consumer law. The independent reviewer will have access to all necessary documentation including procedures and reporting from the Code Review Panel and Code Administrator.
- 3.8.6 Systemic concerns identified during Code reviews will be referred to the relevant regulators, as will any breaches of laws and regulations.
- 3.8.7 The Code annual report and independent reviews will be published online.



## 4. BECOMING A CODE SIGNATORY

### 4.1 Application Process

4.1.1 PV retailers wanting to sign on to the Code will need to complete the following steps:

- (a) complete the online application form or print and complete the application form and submit it to the CEC (both forms located at <http://www.solaraccreditation.com.au/retailers/application-process.html>);
- (b) agree to and sign the Code including the Code *General Rules and Standards* (section 2);
- (c) provide examples of standard documentation as requested (for example, contracts and quotes);
- (d) submit to an integrity/financial check using an external agency;
- (e) allow documentation to be checked by independent experts (for example, lawyers) as required by the Code Administrator. This will be completed in confidence;
- (f) explain any adverse findings from a summary report on any dispute history lodged with the Code Administrator;
- (g) if required by the Code Administrator, attend an interview with Code Administrator; and
- (h) if required by the Code Administrator, provide referees for reference checks/consumer feedback data.

4.1.2 Based on the information submitted by the applicant, the Code Administrator will make an assessment as to whether the application sufficiently demonstrates that the applicant retailer complies with the Code and has the systems and procedures in place to ensure ongoing compliance.

4.1.3 Formal feedback on the application assessment will be provided to the applicant.

4.1.4 Incorrect or incomplete information submitted by an applicant may lead to the delay or rejection of an application.

- 4.1.5 Where an applicant's actions or behaviour is considered to be inconsistent with the Code, the Code Administrator has the right to decline an application.
- 4.1.6 Becoming a Signatory to the Code is open to both non-CEC members and CEC members.

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## 4.2 Code Fees

- 4.2.1 All fees are stated exclusive of GST.
  - 4.2.2 All fees are subject to GST.
  - 4.2.3 All fees are published on the Solar Accreditation website at [www.solaraccreditation.com.au/codeofconduct/application](http://www.solaraccreditation.com.au/codeofconduct/application), including in the Application Form available for download in pdf format from that website.
  - 4.2.4 The CEC reserves the right to vary the fees from time to time. Notice of fee variations will be given to signatories in accordance with section 2.4.25.
  - 4.2.5 A non-refundable Application Fee will be charged for each application. On receipt of an application, the CEC will issue a tax invoice for the Application Fee to the applicant's Primary Contact. On receipt of the Application Fee, the CEC will process the application. The Application Fee is not charged to Signatories undertaking their annual renewal.
  - 4.2.6 Signatories are required to pay an Annual Fee. The Annual Fee is calculated at a price per kilowatt (kW) of solar PV installed by the applicant company in the previous financial year or calendar year, whichever concluded more recently. The Annual Fee charged will have a set minimum and maximum, published in accordance with section 4.2.1 above.
  - 4.2.7 Becoming and remaining a Signatory is conditional upon the timely payment of fees, charges and additional agreed costs associated with being a Signatory (for example, agreed payment for advertising).
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### **4.3 Withdrawing from the Code**

- 4.3.1 A Signatory can withdraw from the Code at any time provided they advise the Code Administrator of their intention in writing, and give two weeks' notice of their request to be removed as a Signatory.
- 4.3.2 Signatories who choose to withdraw from the Code will not be entitled to a refund of any fees or associated charges already paid at the date of receipt of notice to withdraw.

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### **4.4 Use of Brand Mark**

- 4.4.1 Signatories are required to use the Code brand mark in accordance with the relevant guidelines. The Code brand mark remains the intellectual property of the CEC and legal action may be taken in regard to its misuse.

## 5. APPENDIX

### 5.1 Glossary and Definitions

The definitions for terms used in this document are as follows.

**Approved Retailer** – A solar retailer who is a current signatory to this Code of Conduct.

**Australian Consumer Law** – Schedule 2 to the *Competition and Consumer Act 2010* (Commonwealth).

**Agreement** – See ‘Contract’

**Best Industry Practice** –

- a) Developing and conducting a business in a manner in line with leading practice in the industry, in order to maintain quality that goes beyond mandatory legislated standards.
- b) A benchmark for the industry that shows results superior to those achieved purely through adherence to legislation.
- c) Can evolve over time as improvements are discovered.

**Breach** – Any failure to comply with the Code of Conduct including the Code General Rules and Standards, and other documentation referred to in the Code.

**Business day** – A day that is not a Saturday, Sunday or public holiday in the relevant location in Australia.

**CEC** – the Clean Energy Council.

**Code** – This Solar Retailer Code of Conduct, as published by the Clean Energy Council.

**Code Administrator** – Clean Energy Council. Has the meaning outlined in section 3.1.

**Code Review Panel** – Has the meaning outlined in section 3.2.

**Complaint** – Any expression of dissatisfaction with a product or service offered or provided, or with a complaints process.

**Consumer** – A person, business or not for profit organisation that seeks to buy or lease goods or services from a business or other provider, is party to a contract, or is eligible under the criteria set by a retailer to enter into a contract to acquire a product. Includes the following categories of consumer:

- a) **Residential Consumer** – A person who purchases solar PV principally for personal, household or domestic use at premises.
- b) **Small Business Consumer** – A business or not for profit organisation which at the time it enters into the contract, may not have a genuine and reasonable opportunity to negotiate the terms of the contract. A small business is defined in accordance with the *Fair Work Act 2009* as one with fewer than 15 employees, not including casual employees. Associated entities are taken to be one entity when calculating the number of employees.

- c) **Medium and Large Scale Business Consumer** – Any that does not fit into a) or b) above.

**Contract** – An agreement made between two or more parties (for example, a retailer and a consumer) to supply goods or services relating to a solar PV product, that is intended to be legally enforceable. Contracts can be made in writing or orally.

**Designer** – A designer of solar PV systems.

**Dispute** – A complaint by a consumer in relation to a Code signatory, that has not been immediately resolved when brought to the attention of that signatory.

**Distribution** – The activity of delivering electricity from the generator via wires to the end user (retail customers including homes, businesses, etc.).

**Distributor** – A distribution network service provider, which is an owner, controller or operator of an electricity distribution system.

**Electricity Retailer** – An entity that delivers and sells electricity directly to the end-use customer.

**Force Majeure Event** – an extraordinary event outside the reasonable control of a retailer or a consumer.

**Inform** – To advise in writing or verbally.

**Installer** – An installer of solar PV systems.

**Manufacturer** – Includes a person who:

- a) grows, extracts, produces, processes or assembles goods
- b) portrays himself to the public as the manufacturer of goods
- c) causes or permits their name, business name or brandmark to be applied to goods they supply
- d) permits himself to be held out as the manufacturer by another person, or
- e) imports goods into Australia where the manufacturer of the goods does not have a place of business in Australia.

**Product** – The solar PV system including panels, inverters and components.

**Signatory** – A signatory to the Solar Retailer Code of Conduct, also referred to as an Approved Retailer.

**Signed** – Has the meaning of something signed in person or equivalent point of acceptance in accordance with the *Electronic Transaction Act* and other relevant legislation.

**Solar PV** - Solar photovoltaic.

**System** – The solar PV system. Refers to the entire arrangement, including PV modules and all other equipment required to make it work including inverters and components.

## 5.2 Additional Information

Further information relating to this Code including documentation referred to in the Code, guides for signatories to assist in complying with the Code, Code templates, and information for consumers, can be found online.

### Designer/Installer Accreditation

- Design Guidelines: [solaraccreditation.com.au/installers/compliance-and-standards/accreditation-guidelines](http://solaraccreditation.com.au/installers/compliance-and-standards/accreditation-guidelines)
- Install Guidelines: [solaraccreditation.com.au/installers/compliance-and-standards/accreditation-guidelines](http://solaraccreditation.com.au/installers/compliance-and-standards/accreditation-guidelines)
- Accreditation Code of Conduct: [solaraccreditation.com.au/installers/compliance-and-standards/accreditation-guidelines/accreditation-code-of-conduct](http://solaraccreditation.com.au/installers/compliance-and-standards/accreditation-guidelines/accreditation-code-of-conduct)
- Accreditation Terms and Conditions: [solaraccreditation.com.au/installers/compliance-and-standards/accreditation-guidelines/accreditation-terms-and-conditions](http://solaraccreditation.com.au/installers/compliance-and-standards/accreditation-guidelines/accreditation-terms-and-conditions)

### The Code

- Code Review Panel terms of reference: [approvalsolarretailer.com.au](http://approvalsolarretailer.com.au)
- Brandmark guidelines: [approvalsolarretailer.com.au](http://approvalsolarretailer.com.au)
- Code flyer (consumer guide to the Code): [approvalsolarretailer.com.au](http://approvalsolarretailer.com.au)

### Consumer Information

- CEC Consumer guide to buying household solar panels: [solaraccreditation.com.au/consumers/purchasing-your-solar-pv-system.html](http://solaraccreditation.com.au/consumers/purchasing-your-solar-pv-system.html)
- CEC guides to connecting to the grid: [cleanenergycouncil.org.au/technologies/grid/grid-connection.html](http://cleanenergycouncil.org.au/technologies/grid/grid-connection.html)

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## 5.3 Consumer Protection Organisations/Other Contacts

### Consumer Affairs

#### Australian Competition and Consumer Commission

GPO Box 3131  
Canberra ACT 2601  
T. 1300 302 502  
[acc.gov.au](http://acc.gov.au)

#### Australian Capital Territory Office of Regulatory Services

GPO Box 158  
Canberra ACT 2601  
T. (02) 6207 0400  
[ors.act.gov.au](http://ors.act.gov.au)

#### New South Wales NSW Fair Trading

PO Box 972  
Parramatta NSW 2124  
T. 13 32 20  
[fairtrading.nsw.gov.au](http://fairtrading.nsw.gov.au)

#### Northern Territory Consumer Affairs

GPO Box 1722  
Darwin NT 0801  
T. 1800 019 319  
[consumeraffairs.nt.gov.au](http://consumeraffairs.nt.gov.au)

**Queensland**  
**Office of Fair Trading**  
 GPO Box 3111  
 Brisbane QLD 4001  
 T. 13 13 04  
[fairtrading.qld.gov.au](http://fairtrading.qld.gov.au)

**South Australia**  
**Office of Consumer**  
**& Business Services**  
 GPO Box 1719  
 Adelaide SA 5001  
 T. (08) 8204 9777  
[ocba.sa.gov.au](http://ocba.sa.gov.au)

**Tasmania**  
**Office of Consumer**  
**Affairs & Fair Trading**  
 GPO Box 1244  
 Hobart TAS 7001  
 T. 1300 654 499  
[consumer.tas.gov.au](http://consumer.tas.gov.au)

**Victoria**  
**Consumer Affairs Victoria**  
 GPO Box 123  
 Melbourne 3001  
 T. 1300 55 81 81  
[consumer.vic.gov.au](http://consumer.vic.gov.au)

**Western Australia**  
**Department of Commerce: Consumer**  
**Protection**  
 Locked Bag 14  
 Cloisters Square WA 6850  
 T. 1300 30 40 54  
[commerce.wa.gov.au](http://commerce.wa.gov.au)

**Australian Securities and**  
**Investments Commission**  
 PO Box 9827  
 (in your capital city)  
 T. 1300 300 630  
[asic.gov.au](http://asic.gov.au)

#### **Other Bodies**

- Clean Energy Regulator [ret.cleanenergyregulator.gov.au](http://ret.cleanenergyregulator.gov.au)
- Australian Competition and Consumer Commission [accc.gov.au](http://accc.gov.au)

## 5.4 Relevant Acts and Legislation

The Code and *Code General Rules and Standards* should be read in conjunction with relevant legislation including:

- *Australian Consumer Law* (Schedule 2 of the *Competition and Consumer Act 2010*, the new name of the *Trade Practices Act 1974*) (Cth).
- State and Territory fair trading legislation, where relevant.
- State and Territory door-to-door sales legislation, where relevant.
- The *Disability Discrimination Act 1992* (Cth).
- The *Racial Discrimination Act 1975* (Cth).
- Any other relevant equal opportunity legislation.
- *The Privacy Act 1988* (Cth).
- *The Spam Act 2003* (Cth).
- *The Do Not Call Register Act 2006* (Cth).
- Renewable Energy Target legislation (*Renewable Energy (Electricity) Act 2000* and *Renewable Energy (Electricity) (Charge) Act 2000*) which is supported by the *Renewable Energy (Electricity) Regulations 2001* (Cth).
- Relevant state domestic building work contracts Acts:
  - *Domestic Building Contracts Act 1995* (Victoria).
  - *Home Building Act 1989* (New South Wales).
  - *Domestic Building Contracts Act 2000* (Queensland).
  - *Building Work Contractors Act 1995* (South Australia).
  - *Home Building Contracts Act 1991* (Western Australia).
  - *Housing Indemnity Act 1992* (Tasmania).
- The *Electronic Transactions Act 1999* (Cth).
- Relevant state and territory electrical licensing legislation (for example, *Electricity (Licensing) Regulations 1991* (Western Australia)).



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Melbourne VIC 3000 F: +61 3 9929 4101  
Australia E: [info@cleanenergycouncil.org.au](mailto:info@cleanenergycouncil.org.au)  
[cleanenergycouncil.org.au](http://cleanenergycouncil.org.au)  
ABN: 84 127 102 443



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](mailto: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

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## 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 ~~3.24~~:

- 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 ~~17171716a~~) 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 ~~17171716a~~) 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) — 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 252524 does not apply if the finance is provided by a government body.

25-27. Paragraph 252524 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 252524 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 ~~7-76~~), 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)~~~~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 ~~35353534~~), 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 ~~9.11(9-11)(9-18-n)~~ 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

~~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)(iii)(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
- ~~c)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

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## Part A - Overview

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### 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”).

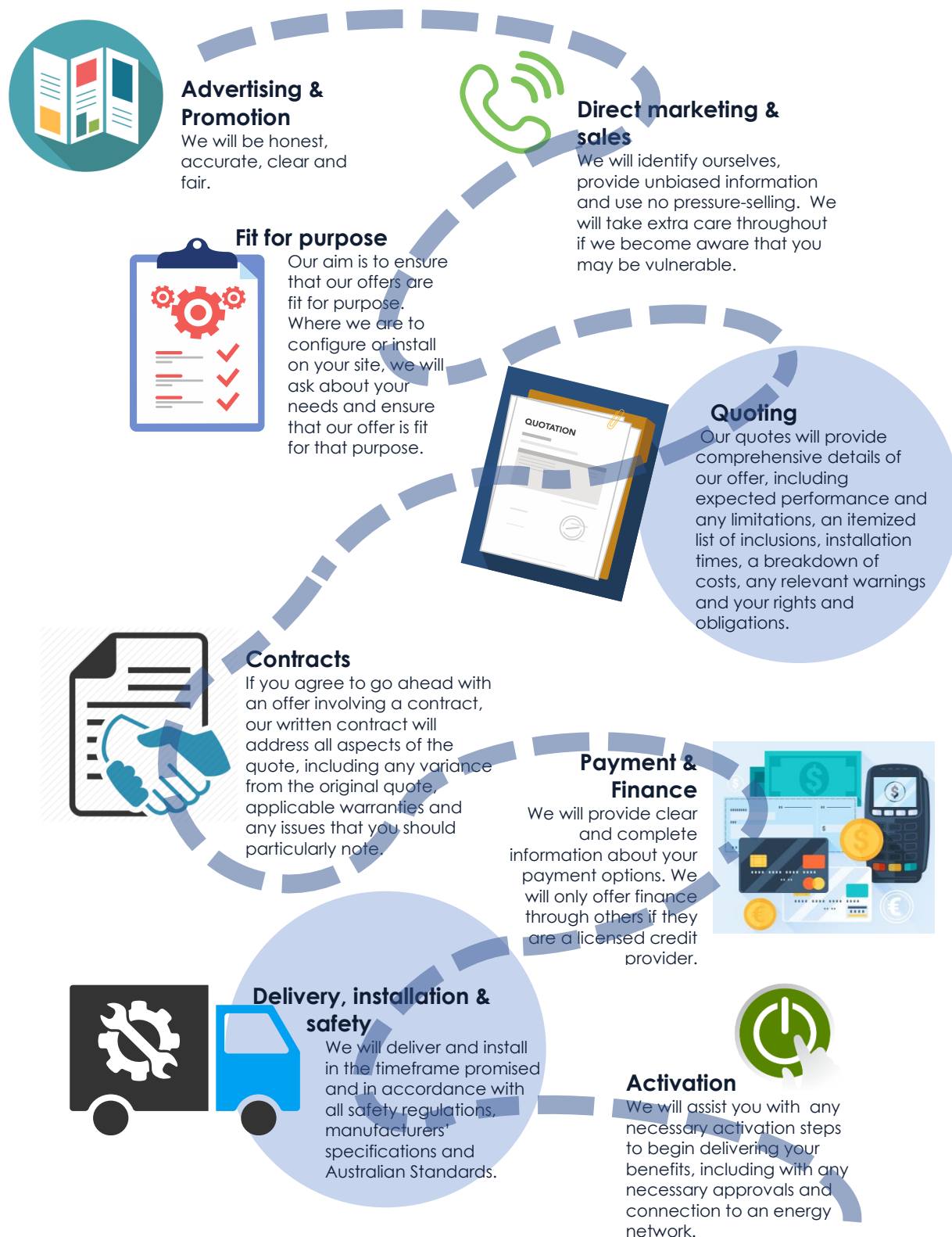
The Code operates alongside a range of existing legal and regulatory protections. Generally, it does not repeat these protections except as needed to provide you with a complete understanding of what to expect from us.

### 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:
- 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.
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:
- 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

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:



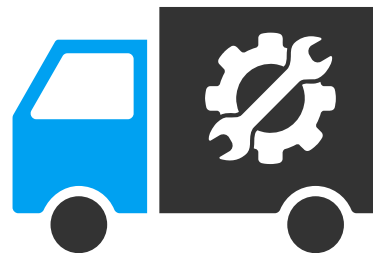
- a) this deferred payment arrangement is offered through a credit provider (whether ourselves or a third party) that is:
- i. licenced under the NCCPA and the deferred payment arrangement is regulated by the NCCPA and the National Consumer Code ("NCC"), or
  - ii. licensed under the NCCPA or is a related 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:
- 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

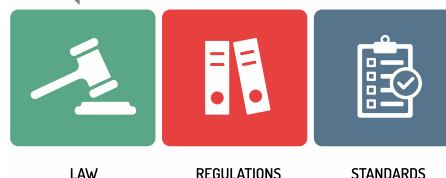


- g) we will maintain appropriate record keeping of complaints and their outcomes and steps that we take to minimise similar complaints in the future.

## Legal and privacy obligations

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

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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

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### 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.