

2016 Independent Review Solar Retailer Code of Conduct

December 2016

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I. INTRODUCTION

I.1. Nature of Review

The Solar Retailer Code of Conduct (Code) commenced on 17 October 2013 after being authorised by the ACCC. On 23 September 2015, the ACCC released its final determination to approve amendments submitted by the Clean Energy Council (CEC or Code Administrator) and to reauthorise the Code for 5 years. No appeals were made against this decision. Accordingly the new Code came into effect on 15 October 2015.

The Code currently has 38 signatories. It is administered by the CEC. Paragraph 3.8.4 of the Code provides that the Code, Code reporting, Code Review Panel and Code Review Panel Terms of Reference will be independently reviewed every 3 years. This is the first such review. In addition to the matters specified under the Code to be reviewed, we have also been asked to review the efficacy of complaints handling.

Cameronralph Navigator is a Melbourne based consultancy that over the past 14 years has provided services to industry-based organisations in the financial, essential services, telecommunications, public transport and development aid sectors. We have conducted 16 independent reviews of industry-based complaints handling schemes. We have also reviewed the Customer Owned Banking Code of Practice, provided advice about the terms of reference under which the Banking Code Compliance Monitoring Committee operates and drafted the ACFID Code of Conduct and the Privacy (Credit Reporting) Code 2014.

I.2. Structure of Review report

We have used as the framework for our Review the ACCC's guidance for an industry code independent review: *Guidelines for developing effective voluntary industry codes of conduct*, July 2011, Section 4.

We are envisaging that the Code Administrator may want to provide stakeholders with our findings about the Code, the Code Administrator and the Code Review Panel. Our interviews with government stakeholders revealed that at least some do not have a good understanding of, for example, the Code Administrator's monitoring of Code signatories and would welcome more transparency as to this. We have, therefore, detailed our findings in an Annexure that could be provided to stakeholders - and included in this some background description of how the approved retailer scheme operates so as to assist an external reader's understanding. The Annexure also includes seven recommendations for improvement.

The front part of our Report summarises our findings and recommendations. It also discusses the themes and strategic issues that emerge from our Review. Whilst we offer some views as part of that discussion, we are conscious that Code administration is only part of the work of the CEC and that its strategy needs to take account of matters that are well beyond our remit. For that reason, our discussion of themes does not include recommendations.

2. REVIEW APPROACH

2.1. Work program

Our work program included:

- analysis of Code Administrator website materials and other documents;
- meetings with the Code of Conduct Manager;
- meeting with staff who assess applications to become a Code signatory;
- review of the handling of two applications to become a Code signatory;
- review of a sample of audit reports,
- review of the handling of four complaints;
- review of Code reporting;
- telephone interview of 6 Code signatories and 1 applicant that decided not to pursue its application to become a signatory;
- telephone interview of 4 government departments;
- discussions with the ACCC;
- discussions with 5 consumer representative organisations;
- workshop with Code Review Panel;
- telephone discussion with one director of CEC; and
- discussions with Code Administrator to clarify issues and discuss our findings.

2.2. Acknowledgements

We gratefully acknowledge the CEC's and Code Review Panel's assistance and openness in discussing issues with us. Our thanks also go to the many stakeholders who found the time to speak with us.

3. EXECUTIVE SUMMARY

The Code aims to promote best practice by retail businesses selling photovoltaic (PV) systems. The Code does this by setting out requirements in relation to four broad subject areas: pre-sale activities, post-sale activities, documentation and general business.

Consumer representatives and government bodies told us that the Code and Code signatories are highly regarded. Our review of the Code and its administration supports this confidence. We found that:

- The Code is well written and provides customer protections that add substantially to the legislative framework.
- The CEC's administration of the Code is effective, with rigorous review of applications to become a signatory to the Code, the use of the renewal process to obtain appropriate updating information, a well-structured and well-executed audit process and an appropriate process to investigate and resolve complaints about Code signatories that raise the possibility of a breach of the Code.
- The Code Review Panel is fulfilling its Code responsibilities to oversight the breach investigation and resolution process and to undertake reporting. Its Terms of Reference are appropriate.

The Annexure sets out our detailed findings. It also makes seven recommendations. Five recommendations are for changes to the Code:

- to explore the viability of including measures to assist a consumer with a claim against a Code signatory that has become insolvent;
- to introduce a new pre-sales disclosure obligation where a sale is made to a strata title resident;
- to explore the possibility of a one page consumer pre-sales information document to enhance understanding of the potential financial benefits of a PV system;
- to amend the warranty requirements to specify that where products are replaced under warranty the replacement products are subject to a 5 year warranty from the date of replacement, and to give the Code Administrator the ability to conciliate a dispute between a Code signatory and a consumer.

None of these matters are operationally urgent. Each would necessitate research and consultation with stakeholders and are likely to take some time to investigate and resolve.

Our sixth recommendation is for some changes to the Complaints Procedure that we think should be promptly addressed. Our seventh recommendation pertains to data collection and analysis to assess whether the Code is achieving its objective of promoting best practice by Code signatories. Again this will take some time to research the possibilities and costs and thought will need to be given as to when such research could most usefully occur.

Whilst the Annexure presents our very positive view of the Code and its administration, we are conscious (as we know the CEC is) that there are three principal constraints on the full effectiveness of the Code in achieving its purpose of promoting best practice by solar retailers:

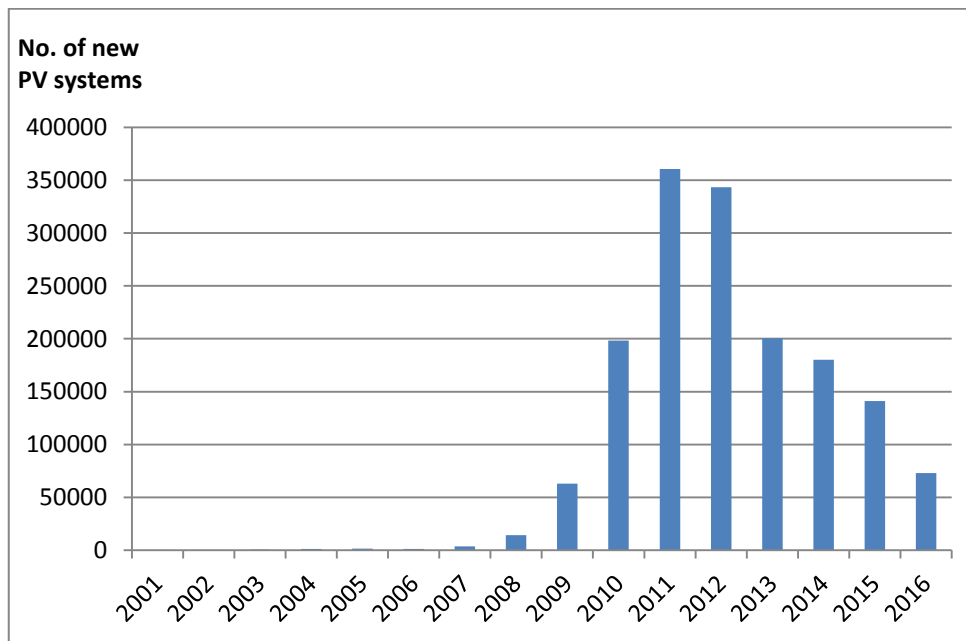
the low level of industry take up of the Code, the financial instability in the industry and some confusion that exists as to the categories of industry participants affiliated with the CEC. These issues, which reflect the newness of the Code, the immaturity of the industry and its competitiveness, were raised by stakeholders in our discussions with them and are discussed in the next sections of our Report.

4. INDUSTRY TAKE-UP OF CODE

4.1. Industry context

The PV system industry has a very recent history. The availability of government incentives contributed to the rapid growth between 2008 and 2012. There are now in excess of 1.5 million rooftops with solar panels. Given this level of market penetration, the current trend of declining rates of growth is likely to continue.

New PV system installations by year¹



The CEC estimates that there are currently 4,000 to 5,000 retailers in Australia. Whilst there has been a steady flow of applications to the CEC to become Code signatories, it remains the case that less than 1% of retailers are Code signatories. These retailers are estimated by the CEC to account for about 3% of PV system installations.

4.2. Discussion

The low number of retailers who have become Code signatories creates a range of difficulties.

From a customer perspective, it has no doubt hampered awareness of the Code. This is less the case in the commercial market where the customer is more likely to undertake research that leads the customer to be aware of the Code and the value of purchasing from a Code signatory. In the residential market, the preponderance of non-Code signatories increases the likelihood of a consumer purchasing a PV system, being unaware of the Code and the extra protections it affords customers.

From a government perspective, there has at times been a reluctance to confine government incentive schemes to purchases from Code signatories. We were told by some government departments that, although they valued the Code's protections for customers, they were

¹ Clean Energy Council, *Clean Energy Australia Report 2016* p.

concerned about the low number of Code signatories based in their State or Territory and considered that a restriction of an incentive scheme to Code signatories would constitute an undue barrier to competition.

Our consultation with Code signatories suggested a range of views as to whether the low number of Code signatories was a problem. Some Code signatories clearly liked being part of an exclusive group and thought this presented them with a marketing advantage. Other Code signatories would prefer broader take-up of the Code so that ‘the industry all plays by the same rules’.

From the CEC’s perspective, the low take-up by industry means that the CEC has to be very mindful that the costs incurred by a Code signatory do not act as an undue disincentive. Direct costs for Code signatories are carefully contained. The application fee is only \$200 and the annual fee between \$600 and \$6,000, depending upon the size of the retailer’s business. The CEC is also mindful of the indirect costs for Code signatories and, for example, undertakes its auditing of Code signatories in a focused way that aims to minimise the time disruption cost for Code signatories, whilst still delivering assurance as to compliance with the Code.

Clearly if a higher number of retailers were Code signatories, the Code would be more effective in achieving its best practice goals. We support the CEC in its efforts to grow its number of Code signatories. (Of course, this should not be done by reducing application standards. We found that the approved retailer application process is rigorous and protects the brand by only approving retailers that can demonstrate that they meet Code requirements.) We think that the challenge is to reach out to those retailers that are prepared to meet the CEC’s standards and to support them in becoming Code signatories.

Possible promotional strategies mentioned by interviewed stakeholders include:

- Proactive targeting of well regarded, longer established retailers, for example retailers that have been approved to participate in a government tender;
- More promotion to the retailer industry (not just Code signatories who are the primary audience for quarterly and annual reports) of the efforts by the CEC to promote the advantages for government and customers of purchasing from a Code signatory;
- Analysis of the relative performance of Code signatories and other retailers as measured by factors such as inclusion in tenders, customer satisfaction, numbers of complaints etc to build the case for the benefits of being a Code signatory – and publicising this to the industry;
- More proactive work with Councils that establish bulk buying schemes for their rate payers ie taking the state government promotional efforts to the local government level;
- Providing greater transparency to government (in its capacity of provider of grants to fund the cost of a PV system) of the work that the CEC does to administer the Code, including to vet applicants and to promote high standards of compliance by Code signatories;
- A mass advertising campaign, taking advantage of not-for-profit opportunities provided by broadcasters, to promote to home owners the advantages of purchasing

a PV system from a Code signatory (at least one signatory indicated a willingness to contribute to the cost of this);

- More outreach to alternative energy community groups such as Total Environment, Solar Citizens and Energy Consumers (as consumer referral points) about the benefits of purchasing from Code subscribers; and
- Enhancing the CEC's website to give greater prominence to the list of Code signatories and the advantages of purchasing from a Code signatory.

This is not to diminish the diligent work of the CEC currently in promoting the Code. We note the CEC's close liaison with consumer bodies including Choice, the Alternative Technology Association and Consumer Affairs/ Fair Trading Offices. The CEC follows up government bodies, when announcements are made about new PV system incentive schemes, to ensure that those bodies consider using the Code as a criterion for participation in the scheme. We are also aware of the CEC's recent newspaper and digital marketing campaigns directed at consumers². Within current resourcing, we think that the CEC is doing what it can.

Whilst there will of course be cost constraints on what the CEC is able to do by way of promotion, we think that now the Code procedures are well established, the time is ripe for the CEC to revisit its resourcing and its promotional initiatives, with the aim of achieving a substantial increase in market coverage.

² The Quarterly Report to Code signatories for February to April 2016 referred to a month-long digital advertising campaign designed to increase consumer awareness of the Approved Retailer Scheme. "The digital display advertising targeted people who have already shown an interest in purchasing solar. The key message of the 'solar made simple' campaign was that consumers should choose an Approved Solar Retailer when buying solar. The objective of the campaign was to drive traffic to www.approvedsolarretailer.com.au with the aim of getting more potential customers viewing the list of Approved Solar Retailers and clicking through to their websites. The campaign finished with 2,223,627 impressions (ie the gif was seen by more than 2.2 million people) and 5,053 conversions (ie more than 5,000 clicked through to the Approved Solar Retailer website)."

5. CODE SIGNATORY FINANCIAL VIABILITY

5.1. Industry context

The PV system retailer market is a crowded and highly competitive market. Not surprisingly, this has meant that there has been a trail of solar retailer insolvencies. It is testimony to the rigour of the Code administration practices that, during the three year life of the Code, there have been just two Code signatories that have become insolvent.

5.2. Discussion

Whilst the Code is not directed to the financial soundness of Code signatories, the failure of Code signatories creates a reputational risk for the Code. It is for this reason that the Code Administrator undertakes some financial/ integrity checking both at the Code signatory application stage and as part of ongoing monitoring of Code signatories.

We think that there would be merit in the Code Administrator being more transparent, particularly to government users of the Code, about its financial/ integrity checking of Code subscribers. We are conscious that this needs to be done with caution so that it is clear that the CEC is not guaranteeing the financial soundness of Code signatories and so the CEC's processes are not seen as a substitute for the government's own due diligence processes. Nevertheless we think that, carefully positioned, some further transparency would build confidence in the Code.

We also think that it would build user confidence in the Code if the Code were to include measures to assist a consumer (as distinct from a commercial customer) with a claim, including a warranty claim, against an approved signatory that becomes insolvent. The Annexure discusses this issue (that we know was considered at the inception of the scheme). Of course, this issue is linked to the issue of industry take-up of the scheme. When the Code reaches a securely entrenched position in the industry by having the vast majority of leading retailers as Code signatories, the CEC will have both the scale and the prestige to enable it to extend the Code's consumer protections more easily.

6. BRANDING ISSUES

6.1. CEC affiliations

As well as Code signatories, the CEC has two other categories of affiliates.

- a) Membership is open to any organisation that has an interest in the renewable energy and energy efficiency industries in Australia.

The CEC has five categories of members with tiered fees and benefits that cater for small, single entity businesses up to large sponsoring organisations. Twelve Code signatories are currently members.

- b) The CEC has accredited installers.

The CEC has a logo for each category of affiliates. Each logo incorporates the CEC's orange C and to that extent is similar³. Aware of the potential for confusion of the categories of affiliates, the CEC undertook a rebranding exercise about 18 months ago in consultation with stakeholders. This led to some greater differentiation as between the logos than had previously been the case.

6.2. Discussion

A number of the Code signatories and government stakeholders who we interviewed raised concerns about the categories of CEC affiliates and the potential for confusion.

- a) Some government representatives told us that they thought that the CEC's website gave insufficient prominence to the approved retailer scheme with the link to further information about the scheme at the bottom of the 'About the Clean Energy Council' webpage. In comparison, the CEC's website has a 'Membership' navigational tab.
- b) A couple of Code signatories thought that some CEC member retailers, that are not Code signatories, are using their CEC membership to gain a marketing advantage that they do not deserve ie. they are implicitly presenting themselves as subject to higher standards when in fact their CEC membership does not carry an obligation to meet higher standards. This concern was fuelled by disquiet about the similarity of the CEC member logo and the CEC approved retailer logo (even after the re-branding). It was also fuelled by dissatisfaction with the CEC's perceived reluctance to remove a CEC member whose conduct is reprehensible.

We understand that there are broader strategic issues for the CEC that are raised here. The CEC members provide much of the funding that is the life blood of the CEC. Their preparedness to support the industry peak body entitles them to receive some return. Nevertheless it would clearly undermine the Code if retailers choose to become CEC members rather than Code signatories, because they perceive that they can thereby obtain the



same marketing advantages as Code subscribers, without having to offer consumers the best practice standards of the Code.

We think that this issue warrants further investigation. If in fact retailers are for cynical motives opting for CEC membership rather than Code subscription, strategies to address this could include:

- Introducing a requirement that CEC members must be Code signatories if they are PV system retailers;
- Adjusting fees to create a strong incentive for PV system retailers to opt for Code signatory status rather than CEC membership;
- Further differentiating the CEC logos for CEC members and Code signatories;
- Website changes to give greater prominence to the Code and Code signatories and the higher standards that they are committed to; and
- Changing the CEC's Constitution to increase its ability to vet and exclude CEC members that in the CEC's opinion create a risk of damaging the CEC brand.

We understand that the CEC is proposing to undertake a review of its services and offerings and as part of that review is likely to revisit these issues.

ANNEXURE

Assessment of effectiveness of Code

Overview of Review findings

Our Review found that the Code constitutes a clear and comprehensive set of obligations that promotes best practice by Code signatories.

The Code monitoring regime is sound. The Code and Code Review Panel Terms of Reference clearly and appropriately set out the responsibilities of the Code Administrator and Code Review Panel. These bodies are carrying out their obligations in a responsible and effective way.

Code reporting is occurring as required by the Code and in a way that achieves a strong accountability framework.

This assessment of the effectiveness of the Code covers the criteria listed in ACCC's guidance for an industry code independent review: *Guidelines for developing effective voluntary industry codes of conduct*, July 2011, Section 4.

I. Code provisions

Our Review found that the Code was a clear and effective statement of the responsibilities of Code signatories and the measures to achieve compliance with the Code.

In the introductory section, the Code clearly states the objectives: to promote best practice measures and activities for retail businesses selling PV systems. Usefully the Code identifies some of the specific problems that had impacted on the reputation of the solar industry and that the Code was designed to address, for example, misleading information and failure by the retailer to take responsibility for product warranties and workmanship.

Section 4 of the Code sets out the process to become a Code signatory. This requires the Code Administrator to make an assessment of 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" (clause 4.1.2).

The Code structures retailer obligations into four broad subject areas: pre-sale activities, post-sale activities, documentation and general business. The first version of the Code did not include detailed finance-related requirements. Last year, the Code was amended so that the pre-sale activities requirements for a retailer advertising finance and alternative purchasing arrangements now require disclosure to be made of the name of the finance provider, whether the credit contract is regulated under consumer credit legislation, the fees and charges payable, the aggregate amount payable and so on. It is commendable that this gap in the Code's coverage was quickly addressed.

To ensure the quality of the PV system and workmanship, the Code obliges signatories to provide a 5 year warranty (in addition to any warranty rights that may apply under the

Australian Consumer Law). This in turn promotes the supply of high quality products that have manufacturer warranties of at least 5 years in duration.

The Code also obliges Code signatories to comply with all laws including renewable energy target legislation, telemarketing legislation and standards and the Australian Consumer Law (clause 2.4.1). To assist Code signatories, Appendix 5.4 of the Code lists relevant legislation. The Code does not, however, require Code signatories to have a compliance program. The Australian Competition and Consumer Commission encourages businesses to have structured compliance programs, and in the case of large corporate entities, to have a program that meets AS 3806-2006 *Compliance Programs*. In our view, however, Code signatories are typically not of a size where it would be appropriate for the Code to specify the processes that should be adopted to achieve Code compliance. But this does mean that the Code Administrator's monitoring of Code compliance is all the more critical.

Our Review of the Code and our interviews with stakeholders confirmed the general appropriateness of the Code's provisions. We identified just a few issues:

- a) Some Code signatories were interested in exploring measures to assist a consumer with a claim, including a warranty claim, against an approved signatory that had become insolvent. Possibilities mentioned included a national warranty manager arrangement or a capped default fund arrangement.

We are aware that the CEC explored this issue at the inception of the Code. Now that the establishment phase of the Code has been completed, we recommend that the CEC revisit this issue in consultation with Code signatories.

- b) A consumer representative raised four issues with us.
 - (i) Concern was expressed about retailers marketing to retirement village residents without advising them that body corporate approval is generally required to install a PV system. To address this, it was suggested that the Code should include an entitlement to a full refund if the retailer fails to provide this disclosure to a consumer and the body corporate subsequently refuses to provide the consumer with permission to install PV systems.

We recommend that this amendment is considered as part of the CEC's next round of Code changes.

- (ii) The consumer representative was concerned that consumers often do not have an accurate understanding of the financial benefits that would flow from installation of a PV system. Her experience is that consumers are often provided with a "scribbled note" with calculations that are extremely difficult to decipher. Her suggestion was a statement in a prescribed format showing the expected cost savings.

Whilst we understand her concern, it is of course difficult to estimate cost savings given that this depends upon the behaviour of the consumer and the balance in energy consumption between daylight hours and night. We are not persuaded that a prescribed format statement is possible. But it may be that the CEC in conjunction with Code signatories could develop a one page document, perhaps with worked examples, that aims to enhance consumer understanding of the financial benefits of panels. This could then be provided by Code signatories to

consumers as part of the pre-sale package. We recommend that the CEC consider this.

- (iii) The third issue raised was that consumers often do not understand the process for connection to the electricity grid and what they must do in relation to this. Her experience is that this can mean that the financial benefits often do not begin to be realised until many months, perhaps even a year, after the panels are installed.

Clause 2.2.8 obliges signatories to clearly explain to the consumer the process from system installation to network connection. Detailed obligations are included: to notify the consumer when the paperwork has been submitted to the electricity retailer and/ or distributor, to give the consumer expected timeframes, to advise the consumer who they can contact to follow up progress and to advise of any potential problems. Clause 2.2.9 obliges signatories to respond within a reasonable timeframe to any additional compliance request. We are satisfied that the Code deals well with this issue – and it may be that this issue is one that arises in relation to non-signatory retailers rather than signatory retailers.

- (iv) Finally the consumer representative raised with us her view that where the warranty is triggered and products are replaced the 5 year warranty should begin again from the date of replacement. Her experience is that this is not currently always the case.

Clause 2.2.10 does not address this issue. In principle, we support this view and recommend that the CEC discuss this with Code signatories to understand current practice and to make the Code explicit as to this.

- c) Clause 3.1.3 states that it is not part of the Code Administrator’s role to resolve disputes between the consumer and a Code signatory. Accordingly clause 2.4 provides that where a consumer is dissatisfied with a Code signatory’s handling of the consumer’s complaint, the Code signatory must provide the consumer with contact details for escalating the complaint to the relevant state or territory consumer protection organisation.

We are concerned that this may discourage consumers from bringing their complaints to the Code Administrator, thereby diminishing transparency in relation to non-compliance. We are also concerned that referral of a consumer to a regulator may not achieve redress for the consumer, given that regulators typically investigate only a small percentage of matters referred to them.

For these reasons, we think that there would be merit in the Code Administrator operating as a point of escalation for a consumer’s dispute and endeavouring to conciliate a solution. A Code signatory’s refusal to provide appropriate recompense to a consumer could be taken into account by the Code Administrator in deciding the sanction to apply where a Code breach is found. Whilst current levels of complaints suggest that the Code Administrator is unlikely to face a deluge of complaints, it would be possible for a fee to be levied to cover the cost of investigating a complaint.

We think that an approach of this kind would be consistent with the Code’s objective of promoting best practice.

Recommendation 1

In consultation with Code signatories, the Code Administrator should explore Code obligations that would assist a consumer with a claim, including a warranty claim, against a Code signatory that has become insolvent. Possibilities might include a national warranty manager arrangement or a capped default fund arrangement. Measures of this kind would need to be carefully assessed to determine when they should be introduced, taking into account the extent to which the Code has achieved industry recognition and support.

Recommendation 2

The Code Administrator should consult with stakeholders as to whether the Code should include an entitlement to a full refund if a strata title resident contracts to buy a PV system from a Code signatory that has failed to disclose to the consumer the importance of obtaining owner corporation/ body corporate approval and in fact the owner corporation/ body corporate subsequently refuses to give its consent.

Recommendation 3

The Code Administrator should consult with stakeholders with a view to developing a one page document, with worked examples, that aims to enhance consumer understanding of the potential financial benefits of a PV system. The Code could require this to be provided by Code signatories to consumers as part of the pre-sale package.

Recommendation 4

The Code Administrator should consult with stakeholders with a view to amending the Code to provide that where the Signatory replaces products under warranty the replacement products are subject to a 5 year warranty from the date of replacement.

Recommendation 5

The Code Administrator should consult with stakeholders as to whether the Code should be amended to give the Code Administrator a conciliation role in relation to customer disputes that have not been resolved via the Code signatory's complaints handling process. This would be by way of extension to its current role of determining whether a breach of the Code has occurred.

2. Code Administration

The Code Administrator is the Clean Energy Council. Its functions are clearly set out in the Code and include:

- a) Managing the process whereby a retailer applies to become a Code signatory (clause 3.1.2(a));
- b) Collecting annual fees (clause 4.2.6);
- c) The development of a flyer describing the Code and the complaints process (clause 2.1.5) – to be made available by Code signatories to consumer customers;
- d) Monitoring Code signatories' compliance with the Code (clause 3.1.1(b)) including by carrying out compliance audits, investigating Code breaches self-reported by the Code signatory as part of the annual renewal process (clause 2.4.7) or breaches reported by other Code signatories (clause 2.4.9) and determining appropriate the action to be taken (clause 3.1.2(d)) or sanctions to apply (clause 3.1.2(e));
- e) Investigating complaints about Code signatories (clause 3.1.2(b)(ii)) and referring consumers with disputes in the first instance to the Code signatory's complaints process and then if the consumer is still not satisfied to the relevant consumer affairs office (clause 3.3);
- f) Developing training and supporting material on the Code to assist Code signatories (clause 3.1.2(i));
- g) Overseeing promotion of the Code (clause 3.1.2(h)); and
- h) Acting as secretariat to the Code Review Panel (clause 3.1.2(g)).

The CEC's staff includes an Accreditation Manager, whose team manages the process of assessing an application to become a Code signatory and the renewals process. There is also a Code of Conduct Manager who is responsible for monitoring Code signatories and investigating and resolving complaints made by or about Code signatories.

To promote independent oversight, the Code also provides for a Code Review Panel (clause 3.2.1). Its monitoring and oversight responsibilities include arbitrating cases referred by the Code Administrator and determining appeals against sanctions imposed by the Code Administrator (clause 3.2.4). The Code Review Panel is also responsible for producing an annual report on the Code's operation to enable assessment of the Code's effectiveness.

The Code Review Panel operates pursuant to Terms of Reference that are published on the CEC's website. Our Review found these to be clear and appropriate.

Consistent with the Code, the Terms of Reference require the Code Review Panel to be comprised of at least 3 members, all of whom must be independent of Code signatories. The Terms of Reference also require the Panel members to be independent of the Code Administrator.

To ensure a balance of skills and knowledge, the Code and Terms of Reference require the Panel to include a consumer representative and a PV representative. The Chair must have regulatory or government administration of consumer law. All Panel members are appointed by the Code Administrator for a period of 3 years. Re-appointments are possible. Currently

the Panel is comprised of Gerard Brody as Chair (a lawyer and public policy expert who is the CEO of Consumer Action Law Centre) and Damien Moyse (Energy Projects and Policy Manager at the Alternative Technology Association). The PV industry representative, Olivia Coldrey has just resigned and a replacement will need to be made before the next Panel meeting due to take place in mid November.

The Terms of Reference require the Panel to meet regularly – several times per year. Consistent with this, the Panel meets 4 times per year. The Code Administrator is required to maintain minutes of meetings. We reviewed a sample of minutes and were satisfied that the Panel meeting processes are sound. Our consultations with stakeholders raised no concern about the operations of the Code Review Panel.

Our Review found the framework for administration of the Code meets best practice.

3. Application to become a Code signatory

Our Review found that the Code Administrator has a rigorous application process that meets best practice. The process involves the following steps:

a) Completion by the applicant of an online application form that:

- establishes the requirement that an applicant must have been in operation for a minimum of 12 months;
- asks the applicant to confirm compliance with all aspects of the Code and the Australian Consumer Law and to confirm that staff and contractors are aware of Code requirements;
- includes specific questions about such matters as consumers' cooling off rights, warranty rights and complaints processes;
- asks the applicant to confirm that during the past 5 years no director, manager, partner or shareholder, or any of their close family members, have been involved as a director, executive, manager, or shareholder of a business that has (amongst other things) suffered insolvency, brokered an agreement with creditors, been expelled from the Code, received a court judgement against it or had a complaint upheld by a consumer protection regulator or that remains under investigation; and
- requires the applicant to provide de-identified paperwork sent to an actual consumer ie a site specific work performance assessment and the contract.

b) Verification of applicant's certifications

The Code Administrator undertakes a range of searches to verify the information provided by the applicant. This includes searches of ASIC's corporations and business names database and internet searches to find any regulator media releases, news articles and community database discussion about the applicant and its people. The Code Administrator's complaints database is also used as a resource to vet applicants. In addition, a Dun & Bradstreet credit report is obtained.

c) Analysis of applicant’s website and customer documentation

The Code Administrator undertakes a detailed review of the applicant’s website including advertising material and the sample customer documentation that has been provided. Where changes will be made to the terms and conditions to comply with the Code, the proposed new documentation must also be provided.

d) Request for further information

If the applicant passes the initial vetting, the Code Administrator will ask for additional documentation, for example, in relation to the applicant’s complaints handling process and to check compliance with the Code requirements pertaining to customer purchase financing.

Because the application process is so rigorous, many applications are unsuccessful, as Figure 1 demonstrates. Sometimes the Code Administrator will encourage the applicant to re-apply after a specified period of time, thereby giving the applicant further time to establish its bona fides and position itself to comply with Code requirements.

Figure 1 – Cumulative statistics as at 31 July 2016 (CEC website information)

Total no. of applications received	84
Total no. of applications approved	40
Total no. of applications rejected	30
Total no. of applications resigned or removed	4
Total no. of applications pending	14
Current no. of Code signatories	36

Our Review found that the Code Administrator has a rigorous application process that meets best practice.

4. Monitoring

There are four principal strands to the Code Administrator’s current monitoring of Code signatories.

a) Annual renewal process

A Code signatory is required to renew their status annually. The Code Administrator has a written procedure that governs this process. The first step is for the Code Administrator to send the Code signatory a letter prompting renewal and seeking information as to:

- the amount of solar PV (in kW) installed during the last 12 months;
- consumer complaints data for the last year (the number of complaints received, explanations of the types of complaints received and the number of resolved complaints); and

- re-submission of documentation provided to consumers if significant changes have been made in the last year.

In addition, the Code Administrator obtains a Dun & Bradstreet credit report for the Code signatory and the Code Administrator reviews the Code signatory's website. Renewal only occurs if these steps do not cause the Code Administrator to have concerns as to the Code signatory's compliance with the Code.

b) Auditing program

Last financial year, the Code Administrator began a rolling program of Code signatory audits. This calendar year, the audits have been undertaken via a visit to the Code signatory's premises.

The Code Administrator's Audit Plan commits the Code Administrator to audit, every 6 months, at least 10% of Code signatories. Auditing priority is given to new Code signatories and to Code signatories with higher levels of complaints or that are otherwise regarded as posing a higher risk of non-compliance with the Code.

Consistent with this Audit Plan, the Code of Conduct Manager visited Code signatories in Perth in March and in Sydney in May. A checklist is used to structure the audit activities. The focus is on Code obligations that cannot be monitored remotely via a desk audit. Each visit takes about one hour. Discussions with the Code of Conduct Manager suggest that the audits are undertaken in a constructive way with training integrated into the audit and opportunity provided to the Code signatory to offer feedback. After the audit a report (in table form) is provided by the Code Administrator to the Code signatory listing the Code obligations focused on during the audit, the audit activity undertaken, the Code of Conduct Manager's findings and any Code signatory action required to be taken. We reviewed two audit reports and found these to be an effective statement of the audit work and outcomes. We also interviewed the Code signatories and were told that they thought the process had been a good one.

c) Financial integrity monitoring

The Code Administrator has recently subscribed to a Dun & Bradstreet alert service whereby it is provided with:

- an analysis of the level of risk posed by each Code signatory (ie default and late payment risk); and
- a notification if there is any new credit reporting information in relation to a Code signatory.

At this stage, there are no Code signatories who are rated as a high risk.

d) Complaints

The Code Administrator's investigation of complaints also provides a mechanism to monitor Code signatories (see discussion below). In addition, the Code Administrator is planning a 'mystery shopping' monitoring program that will focus on Code signatories that have been the subject of complaints. This is consistent with clause 3.4.2(b) of the Code. We encourage this initiative.

Our Review found that the Code Administrator’s monitoring of Code signatories is working well to support the integrity of the Code.

5. Complaints handling

The Code requires Code signatories to have a complaints handling process that meets the Complaints Handling Standard AS ISO 10002-2006.

The Code Administrator and Code Review Panel have a documented Complaints Procedure (last revised October 2015) that details their processes for responding where there is an allegation that a Code signatory has breached the Code. This procedure has been published on the CEC’s website since early this year.

Promoting accessibility, complaints may be made using the complaints form on the CEC website. The complaints procedure requires the Code Administrator to acknowledge complaints within 3 business days, to check that the complaint is within jurisdiction and, if so, to inform the Code signatory within 5 business days.

To ensure fairness, the Code Administrator must provide the Code signatory with a complete list of allegations made against it, copies of all documents provided to the Code administrator as evidence of the alleged breach and, where the complainant is not an individual consumer, the name of the complainant. The Code signatory then has 21 days to respond and provide its evidence. Where the breach is admitted, the Code signatory must explain the action it has taken to rectify the breach and ensure that there will not be a reoccurrence of the problem.

The Code Administrator has powers to investigate in which case an investigation plan will be documented by “three appropriately credentialed Code Administrator personnel” and provided to the Code signatory. Investigation may involve talking with the parties, requesting further information and auditing the Code signatory’s procedures. The findings of an investigation and sanction must be considered by all of the Code Administrator personnel who devised the investigation plan. The findings will then be reported to the Code signatory.

Where the Code Administrator personnel find a breach has occurred and the Code signatory has not admitted the breach and outlined an adequate response:

- the Code Administrator can refer the matter to the Code Review Panel for consideration of a sanction; or
- the Code Administrator can itself impose a sanction – in which case the Code signatory has one month to appeal the decision to the Code Review Panel. A template form is available on the CEC’s website to facilitate appeals. Where the Code Review Panel decides an appeal, its decision is final.

The Code includes guidance as to the sanctioning process. A breach is categorised as minor, medium, major or severe. A breach matrix table lists Code signatory requirements and specifies the severity level that applies in each case (clause 3.5.3).

- In the case of a severe breach or a three-times reoccurring major breach, the Code signatory must specify a rectification strategy and an independent auditor will be appointed to audit the breach at the Code signatory’s cost (clause 3.6.1).

- For other major breaches or a medium breach, the Code signatory must detail its rectification strategy and implement an agreed action plan (clause 3.6.1). The breach will be listed on the CEC website and the Code signatory named (clause 3.6.3).
- For a minor breach, the Code signatory must provide a written undertaking that the breach will not be repeated (clause 3.6.1).

The complainant is informed of the outcome of a complaint with brief reasons. In the case of a major breach, the breach will be listed on the CEC website but the Code signatory will not be named unless the breach is not rectified in a reasonable timeframe as determined by the Code Administrator or Code Review Panel (clause 3.6.3). Serious, wilful, systemic or repeat non-compliance which is detrimental to consumers may cause the retailer to be removed as a Code signatory, in which case the Code Administrator may publicise this development (clause 3.6.5). Suspension or cancellation is also possible if the Code signatory fails to provide timely evidence that a breach has been rectified (clause 3.6.5).

The Code Administrator maintains a register of complaints. The register lists 6 complaints for the last financial year. We selected a sample of these complaints. Our Review of these complaints satisfied us that the new complaints procedure is being appropriately applied and the Code Administrator is handling complaints efficiently and fairly. The Code Review Panel's role provides an independent oversight to the process and clear mechanism where there is dissatisfaction with the Code Administrator's complaints handling. We spoke with a couple of Code signatories that had experienced these procedures, either as complainant or as the subject of a complaint, and these interviewees were supportive of the new procedures.

We think that there is scope, however, to make minor improvements to the documented complaints procedure.

- a) Section 2.1 of the procedure should specifically permit the Code Administrator to investigate a Code signatory where the Code signatory admits a breach, but proposes rectification steps that in the Code Administrator's view are inadequate to address the breach (not just where section 1.6B of the procedure has not been satisfied).
- b) Similarly section 2.6 of the procedure should permit a sanction where the Code signatory's rectification steps are inadequate to address the breach (not just where section 1.6B of the procedure has not been satisfied).
- c) As noted above, we think that there would be merit in the Code Administrator's role extending beyond a disciplinary-only role and should incorporate a conciliation role, at least in the case of consumer complaints.
- d) The documented procedure does not specifically require the Code Administrator or Code Review Panel to provide reasons for their decisions in relation to complaints. In practice, brief reasons are given and we think that this is good practice that should be entrenched in the documented procedures.

Promoting accountability, the Code Administrator reports about complaint numbers and outcomes in its annual reports which are published on the CEC's website.

Recommendation 6

The Code Administrator should amend the Complaints Procedure to address the issues that we have raised.

6. Sanctions for non-compliance

As noted earlier, the Code Administrator and Code Review Panel have an escalating hierarchy of sanctions available to them to address Code breaches. Appropriately, the focus is on facilitating compliance with the Code requirements. Suspension or expulsion of a Code signatory is reserved for a Code signatory that is unwilling or unable to meet Code requirements.

The Code Review Panel's 2014 Annual Report reported that no findings of breach were made in 2014/15. The 2015 Annual Report reported that 5 reported breaches of the Code, with one suspension of a Code signatory and one refusal to renew a Code signatory. In 2015/16, there have been a couple of breaches, but these have been resolved by agreeing rectification action with the Code signatory.

Our Review satisfied us that the Code Administrator and Code Review Panel are responding appropriately to breaches and enforcing the Code appropriately.

7. Accountability

The Code Administrator prepares a quarterly report to Code signatories. The most recent quarterly report is posted on CEC's website. This typically covers such matters as applications, reported Code breaches and information about Code Administrator activity including audits, marketing, communications and engagement activities.

Each November, the Code Review Panel issues an annual report. As required by clause 3.8.1, the 2014 and 2015 annual report provided data as to the number of matters investigated by the Code Administrator and the outcomes of the investigations (breaches found and sanctions). The annual reports also provide an overview of the work of the Code Administrator during the year including work to promote the Code, applications to sign the Code and any changes to the Code. The annual reports also set out the dates on which the Code Review Panel met.

As a further accountability measure, the Code Administrator reports any detected breach of the Australian Consumer Law to the ACCC. Whilst there has been no detected breaches by Code signatories, the Code Administrator has reported to the ACCC detected breaches of the Australian Consumer Law by non-signatory solar retailers. During our Review, we sighted a referral of this kind.

We are satisfied that the reporting meets Code requirements and that these reporting arrangements together achieve a strong accountability framework.

8. Coverage

The CEC estimates that there are currently 4,000 to 5,000 retailers in Australia. Whilst there has been a steady flow of applications to the CEC to become Code signatories, it remains the

case that less than 1% of retailers are Code signatories. These retailers are estimated by the CEC to account for about 3% of PV system installations.

The CEC is working actively to promote the Code and to increase the number of Code signatories. Recent statistics suggest that a growing trend by retailers to seek to become Code signatories, with 16 applications to become a Code signatory received in the 3 months to 31 July 2016 of which 9 have been approved. The CEC has made it clear that it is not prepared to compromise its standards to increase the number of Code signatories – and we support this stance.

9. Consumer awareness

The Code Administrator has not to date undertaken research to gauge the level of consumer awareness of the Code. However, it is likely that consumer awareness is very low, given the Code is just 3 years old and there is such a small number of retailers that are Code signatories.

The CEC's website is, however, a regularly used resource that is generating referrals for Code signatories and so helping to build consumers' awareness of the Code. The Code Administrator is also working with consumer referral points such as the Australian Technology Association as a way of promoting the Code to consumers. Earlier this year, the Code Administrator undertook a digital marketing campaign to target consumers and co-ordinated a newspaper advertising campaign.

To assess the success of future promotional efforts, it would be worthwhile for the Code Administrator to commission some surveying to test awareness before and after.

10. Industry awareness

Similarly the Code Administrator has not undertaken research to gauge the level of industry awareness of the Code. Any research of this type should, we think, be highly selective and only target retailers that are likely to be eligible to become Code signatories eg the well regarded, longer established retailers.

11. Data collection

The Complaints Procedure requires the Code Administrator to collate relevant data from state and federal consumer protection agencies and from complaints data supplied by Code signatories. The data is to be analysed to track the effectiveness of the Code and to highlight new problem areas that may need to be addressed. A regular summary is required to be provided by the Code Administrator to the Code Review Panel.

Consistent with these requirements, the Code Administrator requested the ACCC last year to provide data about complaints about retailers. The ACCC provided anonymised data for 2014 that indicates that it received a very large number of solar complaints and enquiries. Of course, the receipt of a complaint or enquiry does not mean that there has been any misconduct. Nevertheless this data is concerning. We encourage the Code Administrator to continue to analyse this information in the interests of understanding consumer concerns and assisting Code subscribers to provide best practice service to consumers.

12. Review

The Code Administrator and Code Review Panel are required to regularly review the Code to identify any changes that may need to be made (clause 2.4.25). This has occurred. The first

changes were to the fees provisions (2014 annual report). In 2015, the Code was revoked, replaced and re-authorised by the ACCC. In particular, obligations relating to financing were included in the new version of the Code.

The first independent review is due by the end of 2016 (clause 3.8.4). Our Review meets this requirement.

13. Competitive implications

The Code has been authorised by the ACCC, thereby addressing any possible anti-competitive implications.

14. Performance indicators

To assess whether the Code is being effective in its objective of promoting best practice by Code signatories, we sought complaints data to test whether Code signatories were experiencing less customer complaints than other solar retailers. We were only able to obtain data from one source as per Figure 2.

Figure 2 – Complaints about Victorian solar retailers (Consumer Action Law Centre data for the 2015/16 financial year)

	No.	Percentage
Estimated no of solar retailers operating in Victoria		
No. of Code signatories operating in Victoria		
Total no. of complaints	44	100
No. of complaints about Code signatories	2	4.5%

Whilst this data is inconclusive, we encourage the CEC to use its links with consumer representative organisations to try to obtain further data that may shed more light on the impact of the Code.

Recommendation 7

The Code Administrator should use its links with consumer protection agencies with a view to seeking complaints data that sheds light on whether Code signatories are experiencing below market volumes of complaints.



Independent Assessment of effectiveness of Code

Overview of Review findings

Our Review found that the Code constitutes a clear and comprehensive set of obligations that promotes best practice by Code signatories.

The Code monitoring regime is sound. The Code and Code Review Panel Terms of Reference clearly and appropriately set out the responsibilities of the Code Administrator and Code Review Panel. These bodies are carrying out their obligations in a responsible and effective way.

Code reporting is occurring as required by the Code and in a way that achieves a strong accountability framework.

This assessment of the effectiveness of the Code covers the criteria listed in ACCC's guidance for an industry code independent review: *Guidelines for developing effective voluntary industry codes of conduct*, July 2011, Section 4.

I. Code provisions

Our Review found that the Code was a clear and effective statement of the responsibilities of Code signatories and the measures to achieve compliance with the Code.

In the introductory section, the Code clearly states the objectives: to promote best practice measures and activities for retail businesses selling PV systems. Usefully the Code identifies some of the specific problems that had impacted on the reputation of the solar industry and that the Code was designed to address, for example, misleading information and failure by the retailer to take responsibility for product warranties and workmanship.

Section 4 of the Code sets out the process to become a Code signatory. This requires the Code Administrator to make an assessment of 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” (clause 4.1.2).

The Code structures retailer obligations into four broad subject areas: pre-sale activities, post-sale activities, documentation and general business. The first version of the Code did not include detailed finance-related requirements. Last year, the Code was amended so that the pre-sale activities requirements for a retailer advertising finance and alternative purchasing arrangements now require disclosure to be made of the name of the finance provider, whether the credit contract is regulated under consumer credit legislation, the fees and charges payable, the aggregate amount payable and so on. It is commendable that this gap in the Code's coverage was quickly addressed.

To ensure the quality of the PV system and workmanship, the Code obliges signatories to provide a 5 year warranty (in addition to any warranty rights that may apply under the Australian Consumer Law). This in turn promotes the supply of high quality products that have manufacturer warranties of at least 5 years in duration.

The Code also obliges Code signatories to comply with all laws including renewable energy target legislation, telemarketing legislation and standards and the Australian Consumer Law (clause 2.4.1). To assist Code signatories, Appendix 5.4 of the Code lists relevant legislation. The Code does not, however, require Code signatories to have a compliance program. The Australian Competition and Consumer Commission encourages businesses to have structured compliance programs, and in the case of large corporate entities, to have a program that meets AS 3806-2006 *Compliance Programs*. In our view, however, Code signatories are typically not of a size where it would be appropriate for the Code to specify the processes that should be adopted to achieve Code compliance. But this does mean that the Code Administrator's monitoring of Code compliance is all the more critical.

Our Review of the Code and our interviews with stakeholders confirmed the general appropriateness of the Code's provisions. We identified just a few issues:

- a) Some Code signatories were interested in exploring measures to assist a consumer with a claim, including a warranty claim, against an approved signatory that had become insolvent. Possibilities mentioned included a national warranty manager arrangement or a capped default fund arrangement.

We are aware that the CEC explored this issue at the inception of the Code. Now that the establishment phase of the Code has been completed, we recommend that the CEC revisit this issue in consultation with Code signatories.

- b) A consumer representative raised four issues with us.
 - (i) Concern was expressed about retailers marketing to retirement village residents without advising them that body corporate approval is generally required to install a PV system. To address this, it was suggested that the Code should include an entitlement to a full refund if the retailer fails to provide this disclosure to a consumer and the body corporate subsequently refuses to provide the consumer with permission to install PV systems.

We recommend that this amendment is considered as part of the CEC's next round of Code changes.

- (ii) The consumer representative was concerned that consumers often do not have an accurate understanding of the financial benefits that would flow from installation of a PV system. Her experience is that consumers are often provided with a "scribbled note" with calculations that are extremely difficult to decipher. Her suggestion was a statement in a prescribed format showing the expected cost savings.

Whilst we understand her concern, it is of course difficult to estimate cost savings given that this depends upon the behaviour of the consumer and the balance in energy consumption between daylight hours and night. We are not persuaded that a prescribed format statement is possible. But it may be that the CEC in conjunction with Code signatories could develop a one page document, perhaps with worked examples, that aims to enhance consumer understanding of the financial benefits of panels. This could then be provided by Code signatories to consumers as part of the pre-sale package. We recommend that the CEC consider this.

- (iii) The third issue raised was that consumers often do not understand the process for connection to the electricity grid and what they must do in relation to this. Her experience is that this can mean that the financial benefits often do not begin to be realised until many months, perhaps even a year, after the panels are installed.

Clause 2.2.8 obliges signatories to clearly explain to the consumer the process from system installation to network connection. Detailed obligations are included: to notify the consumer when the paperwork has been submitted to the electricity retailer and/ or distributor, to give the consumer expected timeframes, to advise the consumer who they can contact to follow up progress and to advise of any potential problems. Clause 2.2.9 obliges signatories to respond within a reasonable timeframe to any additional compliance request. We are satisfied that the Code deals well with this issue – and it may be that this issue is one that arises in relation to non-signatory retailers rather than signatory retailers.

- (iv) Finally the consumer representative raised with us her view that where the warranty is triggered and products are replaced the 5 year warranty should begin again from the date of replacement. Her experience is that this is not currently always the case.

Clause 2.2.10 does not address this issue. In principle, we support this view and recommend that the CEC discuss this with Code signatories to understand current practice and to make the Code explicit as to this.

- c) Clause 3.1.3 states that it is not part of the Code Administrator's role to resolve disputes between the consumer and a Code signatory. Accordingly clause 2.4 provides that where a consumer is dissatisfied with a Code signatory's handling of the consumer's complaint, the Code signatory must provide the consumer with contact details for escalating the complaint to the relevant state or territory consumer protection organisation.

We are concerned that this may discourage consumers from bringing their complaints to the Code Administrator, thereby diminishing transparency in relation to non-compliance. We are also concerned that referral of a consumer to a regulator may not achieve redress for the consumer, given that regulators typically investigate only a small percentage of matters referred to them.

For these reasons, we think that there would be merit in the Code Administrator operating as a point of escalation for a consumer's dispute and endeavouring to conciliate a solution. A Code signatory's refusal to provide appropriate recompense to a consumer could be taken into account by the Code Administrator in deciding the sanction to apply where a Code breach is found. Whilst current levels of complaints suggest that the Code Administrator is unlikely to face a deluge of complaints, it would be possible for a fee to be levied to cover the cost of investigating a complaint.

We think that an approach of this kind would be consistent with the Code's objective of promoting best practice.

Recommendation 1

In consultation with Code signatories, the Code Administrator should explore Code obligations that would assist a consumer with a claim, including a warranty claim, against a Code signatory that has become insolvent. Possibilities might include a national warranty manager arrangement or a capped default fund arrangement. Measures of this kind would need to be carefully assessed to determine when they should be introduced, taking into account the extent to which the Code has achieved industry recognition and support.

Recommendation 2

The Code Administrator should consult with stakeholders as to whether the Code should include an entitlement to a full refund if a strata title resident contracts to buy a PV system from a Code signatory that has failed to disclose to the consumer the importance of obtaining owner corporation/ body corporate approval and in fact the owner corporation/ body corporate subsequently refuses to give its consent.

Recommendation 3

The Code Administrator should consult with stakeholders with a view to developing a one page document, with worked examples, that aims to enhance consumer understanding of the potential financial benefits of a PV system. The Code could require this to be provided by Code signatories to consumers as part of the pre-sale package.

Recommendation 4

The Code Administrator should consult with stakeholders with a view to amending the Code to provide that where the Signatory replaces products under warranty the replacement products are subject to a 5 year warranty from the date of replacement.

Recommendation 5

The Code Administrator should consult with stakeholders as to whether the Code should be amended to give the Code Administrator a conciliation role in relation to customer disputes that have not been resolved via the Code signatory's complaints handling process. This would be by way of extension to its current role of determining whether a breach of the Code has occurred.

2. Code Administration

The Code Administrator is the Clean Energy Council. Its functions are clearly set out in the Code and include:

- a) Managing the process whereby a retailer applies to become a Code signatory (clause 3.1.2(a));
- b) Collecting annual fees (clause 4.2.6);
- c) The development of a flyer describing the Code and the complaints process (clause 2.1.5) – to be made available by Code signatories to consumer customers;
- d) Monitoring Code signatories' compliance with the Code (clause 3.1.1(b)) including by carrying out compliance audits, investigating Code breaches self-reported by the Code signatory as part of the annual renewal process (clause 2.4.7) or breaches reported by other Code signatories (clause 2.4.9) and determining appropriate the action to be taken (clause 3.1.2(d)) or sanctions to apply (clause 3.1.2(e));
- e) Investigating complaints about Code signatories (clause 3.1.2(b)(ii)) and referring consumers with disputes in the first instance to the Code signatory's complaints process and then if the consumer is still not satisfied to the relevant consumer affairs office (clause 3.3);
- f) Developing training and supporting material on the Code to assist Code signatories (clause 3.1.2(i));
- g) Overseeing promotion of the Code (clause 3.1.2(h)); and
- h) Acting as secretariat to the Code Review Panel (clause 3.1.2(g)).

The CEC's staff includes an Accreditation Manager, whose team manages the process of assessing an application to become a Code signatory and the renewals process. There is also a Code of Conduct Manager who is responsible for monitoring Code signatories and investigating and resolving complaints made by or about Code signatories.

To promote independent oversight, the Code also provides for a Code Review Panel (clause 3.2.1). Its monitoring and oversight responsibilities include arbitrating cases referred by the Code Administrator and determining appeals against sanctions imposed by the Code Administrator (clause 3.2.4). The Code Review Panel is also responsible for producing an annual report on the Code's operation to enable assessment of the Code's effectiveness.

The Code Review Panel operates pursuant to Terms of Reference that are published on the CEC's website. Our Review found these to be clear and appropriate.

Consistent with the Code, the Terms of Reference require the Code Review Panel to be comprised of at least 3 members, all of whom must be independent of Code signatories. The Terms of Reference also require the Panel members to be independent of the Code Administrator.

To ensure a balance of skills and knowledge, the Code and Terms of Reference require the Panel to include a consumer representative and a PV representative. The Chair must have regulatory or government administration of consumer law. All Panel members are appointed by the Code Administrator for a period of 3 years. Re-appointments are possible. Currently

the Panel is comprised of Gerard Brody as Chair (a lawyer and public policy expert who is the CEO of Consumer Action Law Centre) and Damien Moyse (Energy Projects and Policy Manager at the Alternative Technology Association). The PV industry representative, Olivia Coldrey has just resigned and a replacement will need to be made before the next Panel meeting due to take place in mid November.

The Terms of Reference require the Panel to meet regularly – several times per year. Consistent with this, the Panel meets 4 times per year. The Code Administrator is required to maintain minutes of meetings. We reviewed a sample of minutes and were satisfied that the Panel meeting processes are sound. Our consultations with stakeholders raised no concern about the operations of the Code Review Panel.

Our Review found the framework for administration of the Code meets best practice.

3. Application to become a Code signatory

Our Review found that the Code Administrator has a rigorous application process that meets best practice. The process involves the following steps:

- a) Completion by the applicant of an online application form that:
 - establishes the requirement that an applicant must have been in operation for a minimum of 12 months;
 - asks the applicant to confirm compliance with all aspects of the Code and the Australian Consumer Law and to confirm that staff and contractors are aware of Code requirements;
 - includes specific questions about such matters as consumers' cooling off rights, warranty rights and complaints processes;
 - asks the applicant to confirm that during the past 5 years no director, manager, partner or shareholder, or any of their close family members, have been involved as a director, executive, manager, or shareholder of a business that has (amongst other things) suffered insolvency, brokered an agreement with creditors, been expelled from the Code, received a court judgement against it or had a complaint upheld by a consumer protection regulator or that remains under investigation; and
 - requires the applicant to provide de-identified paperwork sent to an actual consumer ie a site specific work performance assessment and the contract.
- b) Verification of applicant's certifications

The Code Administrator undertakes a range of searches to verify the information provided by the applicant. This includes searches of ASIC's corporations and business names database and internet searches to find any regulator media releases, news articles and community database discussion about the applicant and its people. The Code Administrator's complaints database is also used as a resource to vet applicants. In addition, a Dun & Bradstreet credit report is obtained.

c) Analysis of applicant’s website and customer documentation

The Code Administrator undertakes a detailed review of the applicant’s website including advertising material and the sample customer documentation that has been provided. Where changes will be made to the terms and conditions to comply with the Code, the proposed new documentation must also be provided.

d) Request for further information

If the applicant passes the initial vetting, the Code Administrator will ask for additional documentation, for example, in relation to the applicant’s complaints handling process and to check compliance with the Code requirements pertaining to customer purchase financing.

Because the application process is so rigorous, many applications are unsuccessful, as Figure 1 demonstrates. Sometimes the Code Administrator will encourage the applicant to re-apply after a specified period of time, thereby giving the applicant further time to establish its bona fides and position itself to comply with Code requirements.

Figure 1 – Cumulative statistics as at 31 July 2016 (CEC website information)

Total no. of applications received	84
Total no. of applications approved	40
Total no. of applications rejected	30
Total no. of applications resigned or removed	4
Total no. of applications pending	14
Current no. of Code signatories	36

Our Review found that the Code Administrator has a rigorous application process that meets best practice.

4. Monitoring

There are four principal strands to the Code Administrator’s current monitoring of Code signatories.

a) Annual renewal process

A Code signatory is required to renew their status annually. The Code Administrator has a written procedure that governs this process. The first step is for the Code Administrator to send the Code signatory a letter prompting renewal and seeking information as to:

- the amount of solar PV (in kW) installed during the last 12 months;
- consumer complaints data for the last year (the number of complaints received, explanations of the types of complaints received and the number of resolved complaints); and

- re-submission of documentation provided to consumers if significant changes have been made in the last year.

In addition, the Code Administrator obtains a Dun & Bradstreet credit report for the Code signatory and the Code Administrator reviews the Code signatory's website. Renewal only occurs if these steps do not cause the Code Administrator to have concerns as to the Code signatory's compliance with the Code.

b) Auditing program

Last financial year, the Code Administrator began a rolling program of Code signatory audits. This calendar year, the audits have been undertaken via a visit to the Code signatory's premises.

The Code Administrator's Audit Plan commits the Code Administrator to audit, every 6 months, at least 10% of Code signatories. Auditing priority is given to new Code signatories and to Code signatories with higher levels of complaints or that are otherwise regarded as posing a higher risk of non-compliance with the Code.

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c) Financial integrity monitoring

The Code Administrator has recently subscribed to a Dun & Bradstreet alert service whereby it is provided with:

- an analysis of the level of risk posed by each Code signatory (ie default and late payment risk); and
- a notification if there is any new credit reporting information in relation to a Code signatory.

At this stage, there are no Code signatories who are rated as a high risk.

d) Complaints

The Code Administrator's investigation of complaints also provides a mechanism to monitor Code signatories (see discussion below). In addition, the Code Administrator is planning a 'mystery shopping' monitoring program that will focus on Code signatories that have been the subject of complaints. This is consistent with clause 3.4.2(b) of the Code. We encourage this initiative.

Our Review found that the Code Administrator's monitoring of Code signatories is working well to support the integrity of the Code.

5. Complaints handling

The Code requires Code signatories to have a complaints handling process that meets the Complaints Handling Standard AS ISO 10002-2006.

The Code Administrator and Code Review Panel have a documented Complaints Procedure (last revised October 2015) that details their processes for responding where there is an allegation that a Code signatory has breached the Code. This procedure has been published on the CEC's website since early this year.

Promoting accessibility, complaints may be made using the complaints form on the CEC website. The complaints procedure requires the Code Administrator to acknowledge complaints within 3 business days, to check that the complaint is within jurisdiction and, if so, to inform the Code signatory within 5 business days.

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The Code includes guidance as to the sanctioning process. A breach is categorised as minor, medium, major or severe. A breach matrix table lists Code signatory requirements and specifies the severity level that applies in each case (clause 3.5.3).

- In the case of a severe breach or a three-times reoccurring major breach, the Code signatory must specify a rectification strategy and an independent auditor will be appointed to audit the breach at the Code signatory's cost (clause 3.6.1).

- For other major breaches or a medium breach, the Code signatory must detail its rectification strategy and implement an agreed action plan (clause 3.6.1). The breach will be listed on the CEC website and the Code signatory named (clause 3.6.3).
- For a minor breach, the Code signatory must provide a written undertaking that the breach will not be repeated (clause 3.6.1).

The complainant is informed of the outcome of a complaint with brief reasons. In the case of a major breach, the breach will be listed on the CEC website but the Code signatory will not be named unless the breach is not rectified in a reasonable timeframe as determined by the Code Administrator or Code Review Panel (clause 3.6.3). Serious, wilful, systemic or repeat non-compliance which is detrimental to consumers may cause the retailer to be removed as a Code signatory, in which case the Code Administrator may publicise this development (clause 3.6.5). Suspension or cancellation is also possible if the Code signatory fails to provide timely evidence that a breach has been rectified (clause 3.6.5).

The Code Administrator maintains a register of complaints. The register lists 6 complaints for the last financial year. We selected a sample of these complaints. Our Review of these complaints satisfied us that the new complaints procedure is being appropriately applied and the Code Administrator is handling complaints efficiently and fairly. The Code Review Panel's role provides an independent oversight to the process and clear mechanism where there is dissatisfaction with the Code Administrator's complaints handling. We spoke with a couple of Code signatories that had experienced these procedures, either as complainant or as the subject of a complaint, and these interviewees were supportive of the new procedures.

We think that there is scope, however, to make minor improvements to the documented complaints procedure.

- a) Section 2.1 of the procedure should specifically permit the Code Administrator to investigate a Code signatory where the Code signatory admits a breach, but proposes rectification steps that in the Code Administrator's view are inadequate to address the breach (not just where section 1.6B of the procedure has not been satisfied).
- b) Similarly section 2.6 of the procedure should permit a sanction where the Code signatory's rectification steps are inadequate to address the breach (not just where section 1.6B of the procedure has not been satisfied).
- c) As noted above, we think that there would be merit in the Code Administrator's role extending beyond a disciplinary-only role and should incorporate a conciliation role, at least in the case of consumer complaints.
- d) The documented procedure does not specifically require the Code Administrator or Code Review Panel to provide reasons for their decisions in relation to complaints. In practice, brief reasons are given and we think that this is good practice that should be entrenched in the documented procedures.

Promoting accountability, the Code Administrator reports about complaint numbers and outcomes in its annual reports which are published on the CEC's website.

Recommendation 6

The Code Administrator should amend the Complaints Procedure to address the issues that we have raised.

6. Sanctions for non-compliance

As noted earlier, the Code Administrator and Code Review Panel have an escalating hierarchy of sanctions available to them to address Code breaches. Appropriately, the focus is on facilitating compliance with the Code requirements. Suspension or expulsion of a Code signatory is reserved for a Code signatory that is unwilling or unable to meet Code requirements.

The Code Review Panel's 2014 Annual Report reported that no findings of breach were made in 2014/15. The 2015 Annual Report reported that 5 reported breaches of the Code, with one suspension of a Code signatory and one refusal to renew a Code signatory. In 2015/16, there have been a couple of breaches, but these have been resolved by agreeing rectification action with the Code signatory.

Our Review satisfied us that the Code Administrator and Code Review Panel are responding appropriately to breaches and enforcing the Code appropriately.

7. Accountability

The Code Administrator prepares a quarterly report to Code signatories. The most recent quarterly report is posted on CEC's website. This typically covers such matters as applications, reported Code breaches and information about Code Administrator activity including audits, marketing, communications and engagement activities.

Each November, the Code Review Panel issues an annual report. As required by clause 3.8.1, the 2014 and 2015 annual report provided data as to the number of matters investigated by the Code Administrator and the outcomes of the investigations (breaches found and sanctions). The annual reports also provide an overview of the work of the Code Administrator during the year including work to promote the Code, applications to sign the Code and any changes to the Code. The annual reports also set out the dates on which the Code Review Panel met.

As a further accountability measure, the Code Administrator reports any detected breach of the Australian Consumer Law to the ACCC. Whilst there has been no detected breaches by Code signatories, the Code Administrator has reported to the ACCC detected breaches of the Australian Consumer Law by non-signatory solar retailers. During our Review, we sighted a referral of this kind.

We are satisfied that the reporting meets Code requirements and that these reporting arrangements together achieve a strong accountability framework.

8. Coverage

The CEC estimates that there are currently 4,000 to 5,000 retailers in Australia. Whilst there has been a steady flow of applications to the CEC to become Code signatories, it remains the

case that less than 1% of retailers are Code signatories. These retailers are estimated by the CEC to account for about 3% of PV system installations.

The CEC is working actively to promote the Code and to increase the number of Code signatories. Recent statistics suggest that a growing trend by retailers to seek to become Code signatories, with 16 applications to become a Code signatory received in the 3 months to 31 July 2016 of which 9 have been approved. The CEC has made it clear that it is not prepared to compromise its standards to increase the number of Code signatories – and we support this stance.

9. Consumer awareness

The Code Administrator has not to date undertaken research to gauge the level of consumer awareness of the Code. However, it is likely that consumer awareness is very low, given the Code is just 3 years old and there is such a small number of retailers that are Code signatories.

The CEC's website is, however, a regularly used resource that is generating referrals for Code signatories and so helping to build consumers' awareness of the Code. The Code Administrator is also working with consumer referral points such as the Australian Technology Association as a way of promoting the Code to consumers. Earlier this year, the Code Administrator undertook a digital marketing campaign to target consumers and co-ordinated a newspaper advertising campaign.

To assess the success of future promotional efforts, it would be worthwhile for the Code Administrator to commission some surveying to test awareness before and after.

10. Industry awareness

Similarly the Code Administrator has not undertaken research to gauge the level of industry awareness of the Code. Any research of this type should, we think, be highly selective and only target retailers that are likely to be eligible to become Code signatories eg the well regarded, longer established retailers.

11. Data collection

The Complaints Procedure requires the Code Administrator to collate relevant data from state and federal consumer protection agencies and from complaints data supplied by Code signatories. The data is to be analysed to track the effectiveness of the Code and to highlight new problem areas that may need to be addressed. A regular summary is required to be provided by the Code Administrator to the Code Review Panel.

Consistent with these requirements, the Code Administrator requested the ACCC last year to provide data about complaints about retailers. The ACCC provided anonymised data for 2014 that indicates that it received a very large number of solar complaints and enquiries. Of course, the receipt of a complaint or enquiry does not mean that there has been any misconduct. Nevertheless this data is concerning. We encourage the Code Administrator to continue to analyse this information in the interests of understanding consumer concerns and assisting Code subscribers to provide best practice service to consumers.

12. Review

The Code Administrator and Code Review Panel are required to regularly review the Code to identify any changes that may need to be made (clause 2.4.25). This has occurred. The first

changes were to the fees provisions (2014 annual report). In 2015, the Code was revoked, replaced and re-authorised by the ACCC. In particular, obligations relating to financing were included in the new version of the Code.

The first independent review is due by the end of 2016 (clause 3.8.4). Our Review meets this requirement.

13. Competitive implications

The Code has been authorised by the ACCC, thereby addressing any possible anti-competitive implications.

14. Performance indicators

To assess whether the Code is being effective in its objective of promoting best practice by Code signatories, we sought complaints data to test whether Code signatories were experiencing less customer complaints than other solar retailers. We were only able to obtain data from one source as per Figure 2.

Figure 2 – Complaints about Victorian solar retailers (Consumer Action Law Centre data for the 2015/16 financial year)

	No.	Percentage
Estimated no of solar retailers operating in Victoria		
No. of Code signatories operating in Victoria		
Total no. of complaints	44	100
No. of complaints about Code signatories	2	4.5%

Whilst this data is inconclusive, we encourage the CEC to use its links with consumer representative organisations to try to obtain further data that may shed more light on the impact of the Code.

Recommendation 7

The Code Administrator should use its links with consumer protection agencies with a view to seeking complaints data that sheds light on whether Code signatories are experiencing below market volumes of complaints.