

**SOLAR PV RETAILER CODE
OF CONDUCT –
ANNUAL REPORT**



CLEAN ENERGY COUNCIL
NOVEMBER 2014



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EXECUTIVE SUMMARY

The Solar PV Retailer Code of Conduct (the Code) was devised by the Clean Energy Council (the CEC) after calls from its members and the broader community for improved standards and integrity in the solar PV industry. The CEC worked with the Australian Competition and Consumer Commission (ACCC) to develop what has become a respected code of conduct that serves to guide solar retailers in their business operations and to protect consumers.

The Code has now been operating for one year. Complaints data collected from state and territory fair trading agencies shows an increase in complaints in the solar industry in the lead-up to introduction of the Code. Given that complaints data is not yet available for the current period, the report concludes that it is too early to effectively evaluate the impact which the Code may be having on the solar industry.

The Code has ACCC authorisation until 2018 and the CEC, as the Code Administrator, has developed processes to facilitate its effective implementation over that time. The CEC continues to promote the Code and is preparing for the likely influx of applications and issues arising out of its substantially increased profile. The CEC is committed to genuine evaluation of the Code and, with the support of the overseeing Code Review Panel, will plan the future direction of the Code to 2018 and beyond.

INTRODUCTION

The Solar PV Retailer Code of Conduct (the Code) is a voluntary code that aims to promote best practice measures and activities for retailers of solar photovoltaic (PV) systems.

The Code was launched in 2013 by Federal Environment Minister Greg Hunt. It is administered by the [Clean Energy Council](#), the peak body representing Australia's renewable energy and energy efficiency industry, and is overseen by an independent Code Review Panel. **It is the only solar industry code of conduct authorised by the [ACCC](#).**

The Code was designed as a measure of industry best practice for solar retailers. It aims to protect consumers of solar PV and improve industry integrity by addressing issues identified as negatively impacting the reputation of the solar industry.

All solar PV retailers, including those selling PV to home-owners, small-, medium- and large-scale businesses, community groups and government, are eligible to apply to the Code. Signing onto the Code demonstrates a retailer's commitment to service its customers beyond what is required under the Australian Consumer Law (the ACL).

This is the inaugural Annual Report of the Solar PV Retailer Code of Conduct. It is produced pursuant to section 3.8 of the Code. The Annual Report presents data and analysis on:

- applications to the Code
- compliance with the Code

- reporting obligations of the Code Administrator
- changes to the Code
- how the Code is promoted
- solar industry complaints
- the effectiveness of the Code and its impact on the broader industry

If you would like further information on the Code or any of the data contained in this Annual Report, please contact the Code Administrator on 03 9929 4100 or at codeofconduct@cleanenergycouncil.org.au.

THE CODE ADMINISTRATOR

The Code Administrator is defined in the Code as the Clean Energy Council. Pursuant to section 3.1 of the Code, the Code Administrator is responsible for:

- managing the administration process relating to Code signatories
- monitoring Code compliance
- determining when breaches of the Code have occurred and determining appropriate action
- enforcing sanctions
- referring cases to the Code Review Panel as required
- overseeing promotion of the Code and
- developing training and supporting material on the Code.

THE CODE REVIEW PANEL

The Code Review Panel is an integral part of ensuring the Code is effectively managed with independent oversight. Establishment and engagement of such a panel was a requirement for ACCC authorisation and provides assurance that the CEC is not conflicted in administering the Code.

The Code Review Panel consists of [three members](#) who bring industry, technical and consumer expertise. The Panel and each of its member is highly committed to the success of the Code and supports the Code Administrator in a manner that helps ensure the Code's integrity.

The Panel is eminently credentialed to deal with issues that the Code aims to address. It meets four times each year to ensure the Code is operating effectively and is meeting the identified objectives and community expectations.

Code Review Panel meeting dates	
2014	2015
6 February	17 February
8 May	12 May
7 August	11 August
11 November	10 November (tbc)

The responsibilities of the Code Review Panel include:

- determining cases referred to it by the Code Administrator
- arbitrating appeals against sanctions imposed by the Code Administrator in accordance with section 3.7 of the Code and
- conducting inquiries into Code compliance

The full [terms of reference](#) of the Code Review Panel are available on the Solar Accreditation website.

CHANGES TO THE CODE

The following changes have been made to the Code since its inception.

Section	Amendment
4.2 Signatory Fees	Code Fees Introduction of a non-refundable Application Fee of \$100 for all applications
4.2 Signatory Fees	Code Fees Introduction of a minimum Annual Fee of \$350 regardless of the number of kilowatts (kW) installed by the applicant

PROPOSED CHANGES TO THE CODE

Section 2.1 – Pre-sale activities

The most pressing need for a change to the Code has arisen due to the increase in questionable practices of financiers of Power Purchase Agreements. Similar concerns exist around leasing of solar systems. The CEC and the Code Review Panel have consulted the solar and finance industries on changes proposed to address these issues. The CEC also sought legal advice on these matters.

The CEC is in the process of drafting and seeking ACCC approval on changes to the Code that aim to protect consumers from misleading or unconscionable actions of independent financiers. The new clauses will direct signatories to provide accurate and transparent information about the true cost of solar PV systems sold through finance arrangements. This will help to protect Approved Retailers from complaints by consumers for behaviour of independent financiers that is

beyond the Approved Retailer's control.

2.2 – Post-sale activities

It is proposed to insert a new clause on privacy that requires Approved Retailers to give customers the option to opt-out of marketing and opt-in to having their details shared with third parties.

2.1.17-2.1.20

2.2.7-2.2.9

3.5.3 – Grid connection approval

Approval to Connect to the Network, Connection to the Network, and Breaches of the Code – these clauses require some clarification of when an Approved Retailer is required to provide a customer with a refund when grid-connection approval is denied. Amendments are currently being drafted.

An updated version of the Code will be sent to Approved Retailers when all amendments have been passed. It will also be posted on the CEC website.

REPORTING

The Code Administrator adopts a number of reporting protocols in order to meet its obligations to the ACCC, the Code Review Panel and Approved Retailers, and to ensure that information is readily available to stakeholders and the public. These include:

- biannual reporting to the ACCC on breaches of the Code and potential breaches of Australian Consumer Law
- quarterly reporting to Approved Retailers
- annual reporting to stakeholders
- reporting to regulators and ombudsmen as required

Section 3.8.6 of the Code states that systemic concerns identified during Code reviews will be referred to the relevant regulators, as will any breach of laws and regulations.

Breaches of the Australian Consumer Law

The Code includes provisions that are consistent with existing state and federal consumer protection legislation. The Code also includes monitoring and enforcement provisions to encourage compliance with the Code. Specifically, section 3.6 of the Code states that the Code Administrator and/or the Code Review Panel will investigate all breaches of the Code, including those which may also breach Australian Consumer Law, and that sanctions imposed in the event of non-compliance will vary depending on the severity of the breach. In addition to these requirements, section 3.6.2 of the Code states that the relevant regulator and ombudsman will be notified of any breach of the Australian Consumer Law.

The CEC has not reported any breaches of the Code or potential breaches of ACL to the ACCC or to the Code Review Panel.

Breaches of the Code

Potential breaches of the Code, regardless of whether they might also breach the ACL, are investigated by the Code Administrator. Where necessary, complaints are referred to the Code Review Panel for determination.

While the CEC has developed procedures to support effective administration of the Code, including an audit process, it relies heavily on the public and stakeholders to provide information about potential breaches of the Code. Often complaints brought to the CEC are of a nature that requires referral to a consumer affairs body. When the CEC receives complaints about the actions of an Approved Retailer, it investigates to the full extent of its powers.

In the year since November 2013 the Code Administrator has investigated four complaints about Approved Retailers or other parties using the Code.

No breaches of the Code have been determined by the Code Administrator or the Code Review Panel.

Quarterly reporting to signatories

Quarterly Reports are produced by the CEC. They are published on [the Solar Accreditation website](#), presented to the Code Review Panel, the CEC's Solar PV Leadership Committee and solar PV directorates, and emailed to all Approved Retailers. The data presented in the Quarterly Reports is also used in meeting other reporting obligations and to support marketing efforts.

The Quarterly Report includes:

- statistics on Code applications and rejections
- reasons for rejections
- changes to the Code
- ancillary changes
- breaches
- list of current signatories

In future the Quarterly Report will also include marketing activity so that stakeholders and interested parties can see how the Code is promoted and the resulting benefits for Approved Retailers.

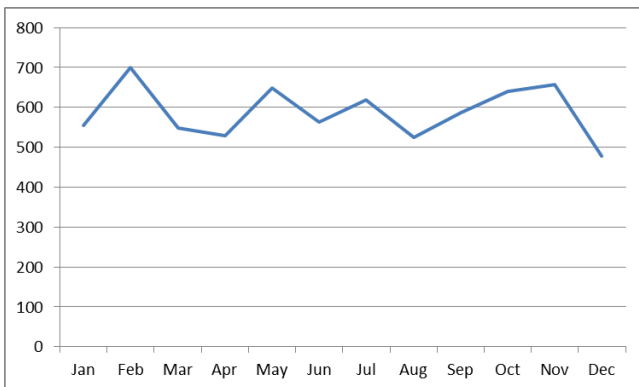
SOLAR INDUSTRY COMPLAINTS – ANALYSIS OF EFFECT OF CODE

The following table summarises complaints about the solar industry made to state and territory fair trading agencies over the last three years. The data does not include complaints made to energy ombudsmen. It should also be noted that there are some solar hot water related contacts and general enquiries in this data.

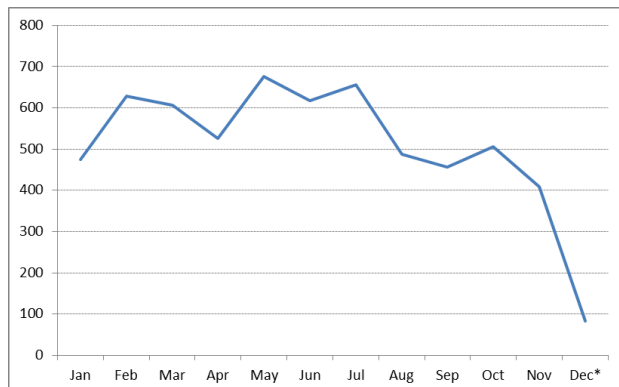
Jurisdiction	2013	2012
VIC	3,032	1,953
ACCC	1,622	1,603
NSW	916	1,044
QLD	*526	268
SA	404	220
WA	363	829
ACT	84	207
NT	75	
TAS	23	
Total	7,045	6,124

*Data does not include Solar hot water, portable solar products, mobile craft eg boats, caravans, mobile homes

Total contacts made to government consumer agencies by month in 2013



Total contacts made to government consumer agencies by month in 2012



Data for 2014 is not available at the time of preparing this Annual Report.

Data on the types of complaints received by consumer affairs agencies is unavailable. Raw data on all contacts to consumer affairs agencies during 2013 indicated that categories of complaints broadly include:

- Misleading or deceptive conduct (e.g. feed in tariff eligibility, missing deadlines for receipt of feed in tariff, promised financial benefits not occurring, rebates not provided as offered)
- Defects/failure of goods/lack of fitness for purpose
- Guarantee relating to the supply of goods by description (e.g. wrong panels received)

- Guarantee of workmanship (e.g. panels installed incorrectly, not generating power)
- Guarantee of reasonable time for supply (e.g. delays in connection to grid, retailer not submitting paperwork for connection to grid)
- Delay in supply of goods/wrongly accepting payment (e.g. deposit paid but system not installed, delays in installation)
- Falsely representing place of origin (panels)
- Not disclosing information (e.g. around cooling off periods)
- Solar installer gone into receivership
- Warranty issues
- Issues with refunds/return rights (e.g. obtaining refund of deposit during cooling-off period where system cannot be installed in time)

The data shows that complaints about the solar industry increased from 2012 to 2013. This supports the proposition for the Code. Given that the Code came into operation towards the end of 2013 (15 November) and that data for 2014 is not yet available, it is too soon to accurately evaluate the effect of the Code. Further analysis will be provided in the second Quarterly Report in 2015.

APPLYING TO SIGN THE CODE

Who applies?

All solar PV retailers, including those selling PV to home owners, small-, medium- and large-scale businesses, community groups and government, are eligible to apply to the Code. Signing onto the Code demonstrates a retailer's commitment to provide service beyond what is required by law.

Why the code is good for retailers?

For a concise summary of how the Code benefits solar retailers, see the [Solar PV Retailer Code of Conduct flyer for businesses](#).

Why the code is good for consumers?

For a concise summary of how the Code benefits consumers of solar PV systems, see the [Solar PV Retailer Code of Conduct flyer for consumers](#).

How many retailers have applied?

In November 2013, at its launch, the Code had five founding signatories. Since then, the CEC has received a further 31 applications. The following table reveals that slightly less than half of the applications have been rejected. Analysis of this data is provided below.

	Total	Q3 2014 Aug-Oct	Q2 2014 May-Jul	Q1 2014 Feb-Apr	Q4 2013/14 Nov-Jan
Applications received	36	10	9	10	7
Applications approved	18	4	7	2	5
Applications rejected	15	3	3	7	2
Applications pending	3	3	2	1	0

Who are the Approved Retailers?

Current Signatories (in order of date approved)

Energy Matters

Springers Solar

Suntrix

Bradford Solar

Evolve Energy

Skyline Solar

Sungevity

United Solar Energy

West Australian Alternative Energy

Clean Energy Solar

EcoLogic Estates

Coffs Solar Energy

Next Power

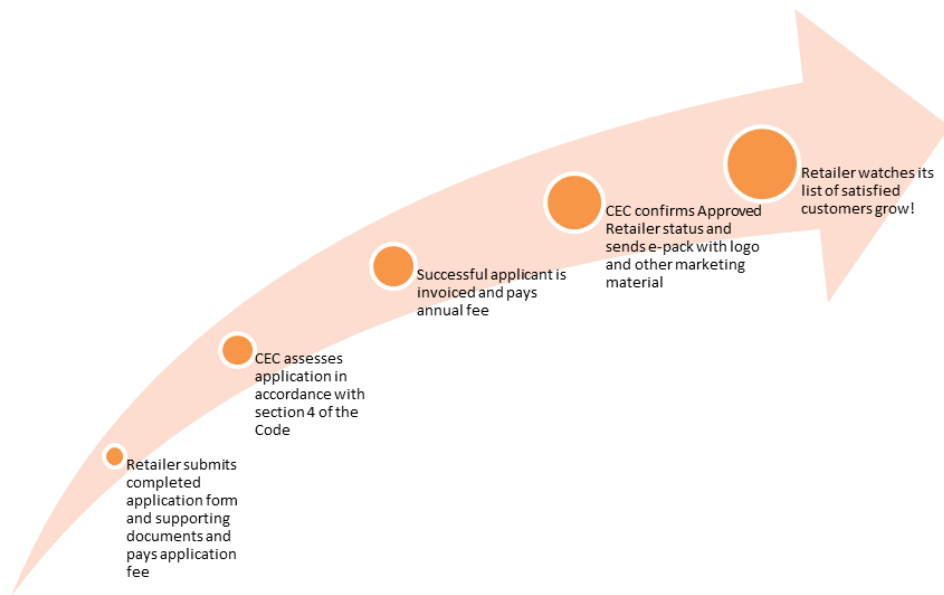
Enigin Western Australia

Solar West

Metro Solar

Clean Earth Services

The application process



Applying to become an Approved Retailer under the Code is a detailed process that requires the applicant to examine and document its business practices. The applicant is required to make binding declarations about its operations and disclosures about previous business in the solar industry. In assessing an application, the CEC may request further documents or information and seek clarification of responses. The rigour of the application process serves to maintain the integrity of the Code by keeping the benchmark for entry at a suitably high level.

The CEC comprehensively assesses each application to ensure the applicant's sales practices, contract documents, advertising material and warranties comply with Australian Consumer Law and the Code. This is a resource-intensive exercise that requires the Code Administrator to evaluate each contract term and the entire suite of documents presented to consumers.

The CEC advises applicants to allow up to eight weeks for processing but the turnaround time is usually considerably shorter than that.

Why do applications get rejected?

Under the data collection and reporting obligations of the Code, the CEC is required to record reasons for rejecting applications. This information is published (anonymously) in each Quarterly Report.

A common reason for an application being rejected is that the terms and conditions of the contract given to consumers do not comply with Australian Consumer Law. As mentioned above, the Code Administrator liaises with applicants during the application process to provide feedback on which contract terms are not compliant and the applicant is given the opportunity to amend the relevant term or terms.

Summary of reasons for rejecting applications

- Terms and conditions of sales contract not meeting requirements of Australian

Consumer Law

- Not providing consumers with a whole-of-system 5 year warranty
- Not providing site specific performance estimate
- Having a director who was a director of a previously failed PV company
- Not providing all required documents to the Code Administrator

Developments in the application process

In the August-October quarter of this year the CEC refined the application form, resulting in clearer presentation of questions and a more streamlined assessment process. An [online application form](#) is now available.

The CEC has been asked to provide further guidance to solar retailers on how to become Code compliant. The number of rejected applications reflects the high standard required to gain approval under the Code. However, it is in the best interests of the industry and consumers for the list of Approved Retailers to grow.

The CEC provides equitable guidance within the application process. Where an applicant's documentation requires significant review before it can meet the requirements of Australian Consumer Law and the Code, it is recommended that the applicant seek its own legal advice.

The CEC is considering options for providing assistance to retailers attempting to meet the requirements of being an Approved Retailer. Solutions will be developed within the limitations of available resources and the scope of services provided by the CEC.

MARKETING AND PROMOTION

The CEC has been busy working behind the scenes to spread the word about the Code, talking to local councils, state government bodies and consumer groups about the consumer benefits of the Code. We are providing these organisations with information on the Code for dissemination. We've also been focusing on telling local councils about the value of using the Code for solar procurement projects. Examples of engagement activities are provided below.

Media/communications:

- CEC media release, social media posts
- CEC events – Clean Energy Week, installer nights, Victorian seminar on solar leasing and financing for councils, small business workshops
- Articles in [Renew Economy](#) , [Climate Spectator](#) , [Solar Choice](#)
- Reference in [WA Today](#) , [Sydney Morning Herald](#) and [Home Renovation magazine](#) articles

- CEC and New South Wales government released the [Guide to Installing Solar PV for Businesses in NSW](#).
- [Clean Energy Regulator website](#) , [Consumer Action Law Centre article](#) , [SolarBusinessServices solar advice page](#)

Meetings/contact:

- Federal Minister for the Environment
- Australian Renewable Energy Agency (ARENA)
- Australian Energy Regulator
- AusTender regarding [Royal Australian Mint targets 230kW-plus solar system](#)
- Choice
- Green Building Association of Australia
- Solar Citizens
- Climateworks
- Victorian Department of State Development, Business and Innovation
- Victorian Department of Environment and Primary Industries
- Victorian Local Government Association ([view their article on the Code](#))
- City of Melbourne ([view their Solar News publication](#) - zero emissions by 2020 target)
- City of Moreland (Victoria) - In July this year, the Moreland Energy Foundation (MEFL) [released a tender](#) for the delivery of a solar PV bulk-buy program for residents and businesses across the City of Moreland. Being an Approved Retailer was a pre-requisite for all applicants in that tender process.
- Moreland Energy Foundation (Victoria)
- Northern Alliance for Greenhouse Action (Victoria)
- Ecobuy (Victoria) ([view their e-bulletin article on the Code](#))
- Totally Renewable Yackandandah
- NSW Department of Industry
- NSW Local Government Association
- NSW Local Government Procurement – Future contracts for energy services with

80+ councils, inclusion of code in tenders, Sustainable Choice Program

- City of Sydney (30% renewables target)
- Lismore City Council (100% renewables target)
- Public Interest Advocacy Centre (NSW) ([view their e-bulletin article on the Code](#))
- Ethnic Communities Council (NSW)
- Total Environment Centre (NSW)
- Queensland Local Government Association
- SA Local Government Association
- SA Local Government Procurement ([view their e-bulletin article on the Code](#))

Website:

In the 12 months since the Code was introduced, nearly 40,000 consumers have visited the CEC website looking for advice on purchasing solar PV systems. The [list of Approved Retailers](#) has attracted more than 23,000. The website has experienced a marked increase in visitors as word gets out about the Code, with hits to the website increasing in each 3 month block.

WHERE TO FROM HERE?

Such was the need for this Code of Conduct that the ACCC took the somewhat unusual measure of authorising it for five years. Now with one year passed, the Code Administrator has ironed out the few teething issues that appeared in its early stages and has established sound procedures for effective administration.

The Code will evolve with the industry and we will seek authorisation of drafted amendments so that the Code can help address current and emerging issues in the industry. Administration of the Code also evolves as unforeseen scenarios present. All changes to the application and administration process are documented on the Solar Accreditation website.

The CEC is focusing on further promotion of the Code by highlighting the benefits this Code brings to the solar industry and to the broader community. The CEC is working to strengthen its administrative support for the Code in order to manage the inevitable flow of applications for signatory status. The CEC will work with industry, under the guidance of the Code Review Panel, to determine the strategic direction of this Code of Conduct in order that its potential is realised and the industry and community continue to experience its benefits.

If you would like further information on the Code or any of the data contained in this Annual Report, please contact the Code Administrator on 03 9929 4100 or at codeofconduct@cleanenergycouncil.org.au.