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CEC Submission to AEMC Issues Paper 1 (published 12 December 2019)

The Clean Energy Council (CEC) welcomes the opportunity to provide feedback on Issues paper 1 on consumer protections in an evolving market on new energy products and services.

The CEC is the peak body for the clean energy industry in Australia. We represent and work with hundreds of leading businesses operating in solar, wind, hydro and energy storage along with more than 6,800 solar installers. We are committed to accelerating the transformation of Australia's energy system to one that is smarter and cleaner.

Overview of the CEC's voluntary framework

Approved Solar Retailer scheme

The CEC's Solar Retailer Code of Conduct is a way for solar businesses to show their commitment to responsible sales and marketing activities and solar industry best practice. Signatories to the Solar Retailer Code are known as 'Approved Solar Retailers.' The Code Review Panel, which has oversight of the program, is an independent panel with consumer and industry representation. The panel meets regularly to monitor and review the program to ensure it is operating effectively and is meeting its identified objectives and community expectations.

It is a voluntary scheme for retail businesses selling solar PV systems to households and businesses. Authorised by the Australian Competition and Consumer Commission, the code aims to lift the bar higher than the minimum requirements set by government and regulations, and bring about a better standard of service in the solar industry. It aims to do this by increasing accountability on retailers via requirements on every aspect of the customer journey from advertising to refund rights, complaints handling and transparent contracts.

The CEC, in its capacity as Code Administrator, works closely with key stakeholders to detect and respond to issues relating to consumer protection such as misleading advertising or unfair practices under its compliance program or a referral to relevant regulators.

The program has expanded significantly in the last 24 months, with 828 signatories across every state and territory in Australia. The effectiveness of the CEC's voluntary code has been demonstrated in the uptake relating to government initiatives in Victoria, NSW, ACT, SA and Queensland.

New Energy Tech Consumer Code

In August 2017, COAG Energy Council requested that a collection of industry bodies and consumer groups collaborate- collectively known as the Working Group, to produce a voluntary industry code for 'behind the meter' products and services ("NETCC"). This would include solar PV and energy storage, along with a host of new and emerging products and services.

The Working Group agreed that the following key principles should underpin the development of NETCC:

1. Protecting consumers while balancing efficiency and innovation
2. Technologically neutral and future proof
3. Plain English and accessible
4. Following the customer journey
5. Practical guidance and enforceability

The Working Group utilized a modular approach to ensure flexibility and drafted the NETCC according to the customer journey in the typical purchase of emerging products and services. The CEC has contributed heavily in the development of the NETCC, including undertaking extensive industry consultation and utilizing code drafting experts in the development of NETCC.

Whilst voluntary frameworks enable the flexibility to respond to emerging issues in a fast moving industry, there is potential scope for analysis regarding consumer detriment that cannot be appropriately captured in a voluntary framework.

The CEC provides the following comments in response to the AEMC's issues paper 1:

1. Market developments and consumer protections: Are there any other market developments the Commission should consider when assessing consumer protections for new energy products and services?

2. New business models and innovation in the market: Are there other business models the Commission should consider in its analysis of new energy products and services?

The impact of lead generation services, unsolicited sales practices and other evolving and alternative forms of finance for consumers such as buy now pay later. These business models should be analysed for the potential of consumer benefits and consumer detriment in the market.

3. Other key services and products to consider: Are there other energy products and services the Commission should consider in its analysis of the new energy products and services?

4. Efficiency of revenue streams: Which regulatory provisions may be preventing value creation through the adoption of new technology?

5. The supply of energy is an essential service: What are the elements that define the supply of energy as an essential service?

6. Changes in the nature of energy service: Has the essential nature of the sale of energy changed with the market's evolution?

7. Regulatory implications: If the answer to Question 6 is yes, what are the implications for the NECF as the energy specific consumer framework?

8. New energy products and services: For the supply of new energy products and services, is there any risk of consumer detriment that needs to be considered to have additional consumer protections (industry-specific regulation) beyond the voluntary framework? Please explain.

Consumer detriment can be highly subjective, particularly when associated with new energy technology. In a relatively short amount of time there has been a shift from low to high consumer engagement, with many consumers investing in new energy technology out of fear or a sense of urgency. This can mean purchasing decisions are made without sufficient research or prior knowledge – and when something goes wrong, the consumer considers the impacts to be highly detrimental.

There could potentially be a risk as a result of the lack of information available, or too much information available from many different sources - consumers will require basic information on how new energy tech works and integrates into the system. This means ensuring information is available in other languages, provided in Plain English and easily accessible.

9. Application of energy consumer protections: Which elements of the energy market are useful to define the scope of the energy specific consumer framework?

10. Objectives of an overarching consumer framework: Do you agree with the objectives identified by the Productivity Commission? Are there other objectives the AEMC should consider?

CEC agrees with the objectives identified, however would recommend a review of objective: “provide accessible and timely redress where consumer detriment has occurred” to ensure redress can be accessible and timely.

11. Integrating the energy consumer framework: How can the three consumer frameworks be better integrated to make it easier for energy customers and businesses in terms of information requirements? Please give specific examples.

There is an opportunity to adopt and share some basic principles of protection (similar to NECF) across NET consumer frameworks which should not be deemed “voluntary”, including cooling off periods, presentation of information and offers, explicit informed consent, and respecting no contact lists. A clear road map of the energy consumer frameworks or a summary should be developed for consumers.

12. Potential risks to consider: Are there additional risks to consumers that should be considered and are not already addressed by the NECF, ACL and the voluntary codes?

1. Consumer access to redress involves having a working dispute resolution scheme
2. Protecting consumers regarding warranty claim issues when a company goes out of business as this is significant when the new energy product or services is sold with a 10-15 year warranty.
3. Potential risks and issues around recycling and end of life waste management also need consideration.

13. Vulnerable consumer: For new energy services and products, what characteristics of a vulnerable consumer should be considered under the energy-specific regulatory framework different to any other industry? Why?

14. Consumer protections for vulnerable consumers: For new energy services and products, are there additional risks to vulnerable consumers that should be considered and are not already addressed by the ACL and the voluntary codes?

Hardship and disconnection as well as customers who have critical needs (life support etc).

15. Policy risks: What are the risks of extending the obligation of having policies that identify and protect consumers under vulnerable circumstances to new energy services and products suppliers?

16. Other characteristics for consideration: Do new energy products and services have specific characteristics that require additional protections to prevent unfair practices or conduct against good faith that should go beyond the ACL? Please explain.

As a general comment, the unfair contract terms (part of unfair practices) is difficult to enforce. There are difficulties as to how this would apply particularly in situations when a consumer cannot pinpoint the parties responsible in the overall purchase of new energy products – with many parties involved being the retailer, installer, network or energy retailer.

Clear guidelines for retailers of NET on the responsibilities and accountabilities when selling/installing 3rd party manufactured goods and associated warranties. A level of protection (for consumers and retailers) that requires an agreement between parties on “purpose for which products are sold”, which could minimise claims or disputes based solely on perception or unmet expectations. Product safety in installation around new energy products and services may require further clarification and development.

17. Additional redress mechanisms: Does the nature of the market (new energy services and products) require an industry specific system/scheme to handle consumer complaints? Please explain.

Yes as it is unclear which jurisdiction or scheme handles consumer disputes/complaints relating to new energy services and products. This is complicated by the complex nature of how new energy services and products interact with the main energy supply and the grid connection. This trend will only increase over time as more Australian households adopt new energy products and services. Jurisdictional fair-trading bodies may lack the necessary expertise and systems to resolve complex energy-related issues. In general, these bodies are designed to monitor and pursue noncompliance rather than to find a satisfactory resolution for every dispute.

18. Effects of different redress mechanisms: What are the risks of having different redress mechanisms under different consumer frameworks? Please explain.

It may be difficult to monitor and track effectiveness of different redress mechanisms, with the added complication of jurisdictional issues relating to voluntary frameworks.

19. Redress mechanisms beyond the ACL: Is there a better way to provide access to effective and strong redress mechanisms for consumers of new energy products and services?

Having a specific scheme with sanctions (adverse publicity order and fines) rather than non-binding guidelines may prove to be more effective in addressing misconduct. Strong redress schemes will need to be easily accessible, cost and time effective.

20. Enforcement of the energy consumer framework: How could the enforcement tools and actions under the voluntary framework be better integrated with the ACL and the NECF? Please explain.

As the ACL applies to a very broad category of products and services, ACL regulators need to be better informed on how new energy products and services work to be able to apply the ACL specific provisions. This will enable better assessment and application of the ACL in relation to new energy products and services. We would recommend that ACL regulators consult regularly with industry to enable better integration.

21. Principles: Are there any other principles the Commission should consider?