

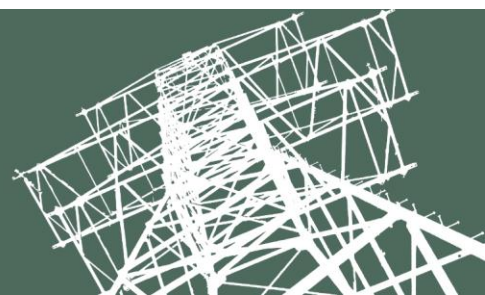


Government of Western Australia
Department of Finance
Public Utilities Office

Retail licence exemptions for Solar Power Purchase Agreement Providers

Final Recommendations Report

Department of Finance | Public Utilities Office
August 2016



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Abbreviations

Term	Definition
ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
Act	Electricity Industry Act 2004
AER	Australian Energy Regulator
Authority	Economic Regulation Authority
Customer Framework	National Energy Customer Framework
Minister	Minister for Energy
Ombudsman	Energy and Water Ombudsman Western Australia
PDS	Product Disclosure Statement
Public Utilities Office	Department of Finance, Public Utilities Office
REBS	Renewable Energy Buyback Scheme
Retail Law	National Energy Retail Law
Small-Use Customer Code	Code of Conduct for the Supply of Electricity to Small Use Customers 2014
Solar PPA	Solar Power Purchase Agreement

Executive Summary

This Final Recommendations Report presents the final recommendations of the Department of Finance, Public Utilities Office (**Public Utilities Office**) on granting Solar Power Purchase Agreement (**solar PPA**) providers an exemption from the requirement to hold a retail licence to supply electricity to customers under a solar PPA.

Businesses have responded to increasing consumer demand for alternative energy products by developing new and innovative ways to sell energy. These new sources offer an alternative to grid sourced electricity. One method that has been popular, both overseas and in other jurisdictions around Australia, is selling electricity through a solar PPA. This involves the solar PPA provider installing the solar power system on a customer's premises without any initial capital outlay by the customer. In exchange, the customer agrees to purchase the electricity generated by the solar power system for an agreed rate over the life of the contract. While this market is yet to fully develop in Western Australia, the Public Utilities Office has been approached by companies expressing interest in providing solar PPAs.

Households and businesses in Australia are increasingly shifting to solar power due to the environmental benefits and the substantial savings to their electricity bills. It is likely there will be increased consumer demand for arrangements, such as solar PPAs, as consumers look for alternative means of accessing solar power without the costly initial capital outlay required to install a new system. As demand increases, the question arises as to whether to regulate this new type of business model.

Under section 7(4) of the *Electricity Industry Act 2004* (**Act**), a person requires a licence to sell electricity to customers for consumption. Under section 8 of the Act, the Governor can grant an exemption from the requirement to hold a licence. The Governor grants licence exemptions on advice from the Minister for Energy (**Minister**). In response to the potential demand from consumers for solar PPAs and interest from solar PPA providers to enter this market, the Public Utilities Office, on behalf of the Minister, is assessing whether solar PPA providers should be granted a retail licence exemption, and if so, what form the licence exemption should take.

On 8 July 2015, the Public Utilities Office published a Draft Recommendations Report for public comment. The report outlined why the solar PPA arrangement does not readily fit within the existing retail licensing framework, and the reasons for exempting solar PPA providers from the requirement to hold a retail licence. Furthermore, as this is an emerging market, without evidence indicating there is a problem requiring government intervention, there is no clear case for additional regulatory protections and monitoring through a retail licence. Imposing a retail licence at this stage will possibly hinder innovation and delay entrants into the market.

Instead, the Draft Recommendations Report recommended an exemption approach be adopted. There are two options available for exemptions from the regulatory framework, and each has its advantages and disadvantages. The two options are a class exemption, which is a blanket exemption that applies automatically on meeting the specified requirements, or an individual exemption that each solar PPA provider would have to apply for.

The Draft Recommendations Report explored both options, as well as assessing the potential risks associated with introducing an exemption and how these risks may be mitigated.

The Public Utilities Office received nine submissions on its Draft Recommendations Report.¹ The respondents included solar PPA providers, industry associations and licensed retailers. This Final Recommendations Report has been prepared in response to the submissions received and to provide the Public Utilities Office's final recommendations regarding the licensing of solar PPA providers.

To encourage alternative energy seller business models (specifically solar PPAs) and increase the choice consumers have to access different sources of energy, this Final Recommendations Report details the Public Utilities Office recommendation that an application process be put in place that allows prospective solar PPA providers to apply to the State Government for an individual licence exemption. It is also recommended that any licence exemptions that are granted to solar PPA providers be made subject to consumer protection and reporting conditions.

¹ The Draft Recommendations Report and submissions are available on the Department of Finance website: http://www.finance.wa.gov.au/cms/Public_Utillities_Office/Energy_Initiatives/Retail_licence_exemptions_for_Solar_Power_Purchase_Agreement_Providers.aspx

1. Introduction

1.1 Purpose of Final Recommendations Report

The purpose of this Final Recommendations Report is to detail the Public Utilities Office's final recommended approach to exempting solar PPA providers from the requirement to hold a licence to retail electricity to residential and commercial customers.

The recommendations in this Final Recommendations Report will be submitted to the Minister for consideration and approval.

This Final Recommendations Report takes into account respondents' submissions on the Draft Recommendations Report, but does not refer explicitly to the views of any particular respondent, or provide an overview of each submission. All submissions are available on the Department of Finance website.²

This Final Recommendations Report is not open for public comment.

For further information on this Final Recommendations Report and the licence exemption process, please contact Alex Kroon, A/Project Leader, Public Utilities Office at alexander.kroon@finance.wa.gov.au or on (08) 6551 4686.

1.2 Draft Recommendations Report and submissions

On 8 July 2015, the Public Utilities Office published its Draft Recommendations Report inviting public comment on options to exempt solar PPA providers from the requirement to hold a licence to retail electricity to customers for consumption.

The purpose of the Draft Recommendations Report was to elicit stakeholder feedback on the options proposed for the regulation (through exemptions with conditions) of solar PPA providers and their business model of selling electricity to residential and commercial customers.

The Draft Recommendations Report explored the two exemption options available, including assessing the potential risks associated with introducing an exemption and how these risks may be mitigated. The two exemption options are:

- Option 1: individual exemptions.
- Option 2: new class exemption.

Under Option 1, solar PPA providers would be required to apply for an individual exemption from the retail licence requirement. Option 2 would also exempt these providers, but rather than requiring providers to apply for the exemption, a new class exemption would be introduced. The class exemption automatically exempts providers from the requirement to hold a retail licence.

² Submissions are available on the Department of Finance website:
http://www.finance.wa.gov.au/cms/Public_Utillities_Office/Energy_Initiatives/Retail_licence_exemptions_for_Solar_Power_Purchase_Agreement_Providers.aspx

After assessing the advantages and disadvantages of each exemption option, the Draft Recommendations Report detailed the Public Utilities Office recommendation of a new class exemption (Option 2) as the preferred option for regulating solar PPA providers. Associated with this recommendation was the proposal that consumer protection, registration and reporting conditions be attached to the class exemption; and the exemption be reviewed after three years.

The Public Utilities Office received submissions on these recommendations from:

- Alinta Energy;
- Carbon Footie;
- Clean Energy Council;
- Community Electricity;
- Concise Energy;
- Energy Retailers Association of Australia;
- Energy Supply Association of Australia;
- Enhar; and
- Origin Energy.

1.3 Timetable

Activity	Completed
Publish Draft Recommendations Report	July 2015
Receive submissions on Draft Recommendations Report	August 2015
Publish Final Recommendations Report	August 2016
Seek Ministerial approval for final recommendations	August 2016

1.4 Next steps

The Public Utilities Office's final recommendations will be submitted to the Minister for consideration and approval.

If the final recommendations receive ministerial approval, the Public Utilities Office will publish Licence Exemption Application Guidelines for prospective solar PPA providers and accept individual applications after the Guidelines are published.

1.5 Background

This section outlines the main options available to a customer to have a solar power system installed on their premises.

1.5.1 Purchase and installation of a solar power system

This is one of the most common forms of accessing solar power in Western Australia. Customers pay for the solar power system outright, and enjoy the immediate benefits of solar power, including reduced electricity bills, and a smaller carbon footprint. Usually, the customer is responsible for managing the system that has been purchased.

1.5.2 Solar leasing arrangements

This is similar to a pay-as-you-go arrangement and is akin to renting the solar power system for a set period of time. The supplier installs the system on the premises and retains ownership, and the customer makes monthly payments for the contracted period. Different options are available at the end of the lease depending on the terms of the contract.

For example, some companies will transfer ownership of the system to the customer at the end of the lease, while in other cases ownership will revert back to the supplier. Customers may also have the opportunity to buy the system by paying a residual amount, or choosing to extend the lease. The advantage of this arrangement is that it provides financial flexibility for customers, as they are able to spread the cost of the solar installation across the lease period. However, this also means they are effectively paying more for the system than if they had bought it upfront, due to the interest charged on the payments over the term of the lease.

A solar lease does not require a retail licence or exemption, as the customer is not being sold electricity for consumption, the customer is renting the system from the supplier. The Act requires a person to hold a retail licence or exemption if the person is selling electricity to a customer for consumption (further information on the current regulatory framework is in section 1.6).

1.5.3 Solar power purchase agreements

Solar PPAs are a different means of accessing solar power. The terms solar lease and solar PPA are sometimes used interchangeably, but there is one main difference between the two. Under a solar lease, the consumer pays a monthly lease payment, or 'rent', in exchange for using the power produced by the system. Under a solar PPA, the consumer agrees to buy the electricity generated at a set price per kilowatt hour.

The solar PPA arrangement involves a provider installing and maintaining a solar power system at a customer's premises at no up-front cost to the customer. In exchange, the customer agrees to purchase the energy generated by the system from the provider over an agreed period at an agreed rate. A typical contractual period can be between 10 to 20 years. The agreed price is usually below that charged by a retailer for electricity supply from the grid.

The nature of the agreement will vary from case to case, depending on the needs of the customer, and the terms of use will be negotiated prior to installation.

Benefits and risks

The solar PPA business model can be beneficial for both residential and commercial customers. Similar to a solar leasing arrangement, customers benefit from having no direct maintenance costs and no upfront payment for the solar power system. There are no performance risks or operational risks as the retailer is responsible for maintaining the system. There is also consistency in electricity pricing as the rate is agreed prior to entering the contract.³ Most importantly, customers will enjoy an immediate reduction in their energy bills as the price of electricity generated by the solar power system is likely to be lower than that purchased through the grid.

Some of the disadvantages for solar PPA customers are higher transaction costs over the long-term compared with buying a system outright, and potential administrative burdens as a result of paying, and managing, two separate electricity bills. Furthermore, there are two possible consumer protection concerns to consider from the residential customer perspective.

- The first is in relation to potential changes to the Renewable Energy Buyback Scheme (**REBS**)⁴ rebate rate and the effect this will have on customer benefits and savings under a solar PPA.
 - Under a solar PPA, it is likely the provider will require that the customer purchase all the electricity generated, regardless of whether they use this energy.
 - Through REBS, a residential customer is potentially eligible for a rebate directly from Synergy (or Horizon Power) for any excess energy generated that they do not use.
 - The agreed rate for purchasing electricity generated by the solar PPA will likely be higher than the REBS rate provided by Synergy. Horizon Power's REBS rate varies depending on which town the customer lives in.
 - There could be adverse effects for customers if the REBS rate drops, or if consumption needs change over the term of the solar PPA (which may be up to 20 years). Customers need to be made aware of the potential financial implications of changes in circumstance and consumption behaviour.
- The second is in relation to early termination options available to customers, and the flexibility of any exit clauses.
 - Customer circumstances may change over the course of the arrangement. For example, their electricity consumption patterns could change over the course of the contract which would diminish the financial benefits received under the solar PPA, or they may move house.
 - Rights and obligations of the customer should be made clear prior to entering the contract.
 - In relation to termination clauses, a customer should be made aware of any costs with terminating early and having the system removed. If any termination fees are imposed, these should be calculated purely on real costs, and should not be punitive.

³ Note that the agreement may include a term stating that the electricity charge will be subject to increases in line with CPI movements.

⁴ Information on the scope of REBS and REBS Terms and Conditions is outlined on pages 7-8.

1.6 Current regulatory framework

Any person wishing to sell electricity to a customer in Western Australia must hold a retail licence, or an exemption from the retail licence requirement. The licensing scheme is administered by the Economic Regulation Authority (**Authority**), including monitoring and enforcing licence compliance. Retail licence holders are subject to specific administrative and compliance requirements, designed to provide consumer protections and transparency in the market.

The current regulatory framework for electricity retailers was not designed with solar PPAs in mind. Solar PPAs are an innovative and alternative method of selling energy distinct from the arrangements where electricity is supplied from the grid. Some of the requirements imposed on retail licence holders by the Act are therefore either not relevant to solar PPA providers, or such that the costs of complying with the requirements are likely to outweigh the benefits.

1.6.1 Retail competition

Under section 54(2) of the *Electricity Corporations Act 2005*, Western Power is not allowed to supply services for the purpose of supplying electricity to a 'prescribed customer' unless the customer is a customer of Synergy. Under the *Electricity Corporations (Prescribed Customers) Order 2007*, a 'prescribed customer' is a customer who consumes not more than 50 megawatt hours of electricity per year at the network connection point.

These provisions create the contestability threshold that makes all customers who consume not more than 50 megawatt hours of electricity per year Synergy customers for the purposes of electricity supplied from Western Power's network (this group of customers is often referred to as 'non-contestable' customers).

These provisions only apply to electricity services supplied by Western Power; for example, the contestability threshold does not apply to electricity generated on the customer's premises under a solar PPA (as it is not supplied from Western Power's network). This allows residential and small business customers who consume less than 50 megawatt hours of electricity per year to enter into a solar PPA, while retaining their Synergy supply contract for electricity supplied from Western Power's network.

Under the Electricity Market Review, the contestability threshold is being reviewed with a view to introducing full retail competition in Western Australia.⁵ Full retail competition would allow all customers to choose their electricity retailer.

1.6.2 Consumer protections

Consumer protection is an important component of the electricity market and licensing framework. While reducing barriers to entry in the solar energy market is beneficial, this needs to be balanced with protections to safeguard the interests of customers. The risk of exposing customers to unscrupulous business operators or unfair arrangements is a concern that needs to be addressed when deciding the most suitable way to regulate solar PPA providers.

⁵ http://www.finance.wa.gov.au/cms/Public_Utility_Office/Electricity_Market_Review/Electricity_Market_Review.aspx

Solar PPAs are long-term contracts between customers and their provider and, if customers are not provided with the relevant information upfront, they may find themselves locked into a contract with unfair terms and few options for termination.

The remit of the Western Australian Energy and Water Ombudsman (**Ombudsman**) does not extend to persons operating under licence exemptions; therefore, customers that have entered into a solar PPA will not be able to refer a dispute with their solar PPA provider to the Ombudsman for investigation and determination.⁶ The Ombudsman's remit extends only to holders of distribution, retail or integrated regional⁷ licences who supply small-use customers.⁸

Outside the retail licensing framework, consumer protections can be found in the Australian Consumer Law (**ACL**).⁹ Compliance and enforcement activities associated with the ACL are undertaken by the Australian Competition and Consumer Commission (**ACCC**) and State and Territory consumer regulators on a one law, multiple regulator model.¹⁰ In Western Australia, the Consumer Conciliation Service within the Consumer Protection division of the Department of Commerce is available to consumers with individual complaints about a service provider. The ACCC's focus is more on circumstances that will, or have the potential to, result in widespread consumer detriment or conduct of major public interest or concern.

The regulatory approach adopted for solar PPA providers should be proportionate to the risk of consumer detriment, and reflect the nature of the solar PPA business model (that electricity supplied under a solar PPA is ancillary to the customer's main electricity supply from the grid).

1.6.3 Retailer standard form contracts

Under Part 3 of the Act, licensed electricity retailers who supply electricity to small-use customers are required to have an Authority-approved standard form contract.¹¹

Standard form contracts specify the terms and conditions upon which a retailer will supply electricity to its customers. A retailer and small-use customer can also negotiate terms and conditions different from the retailer's standard form contract, referred to as a 'non-standard contract'. A non-standard contract does not require the Authority's approval, but must comply with relevant legislation (such as the *Electricity Industry (Customer Contracts) Regulations 2005*).

Standard form contracts can contain provisions relating to electricity supply equipment (such as the electricity network that the customer's supply address is connected to) and the customer's equipment (if they have any at the supply address, such as a solar power system).

For example, Synergy's standard form contract¹² includes provisions on customer equipment,¹³ including clause 8.3, which requires that the customer must not do anything, or

⁶ The scope of the Electricity Ombudsman Scheme is prescribed by Part 7 of the Act and the *Electricity Industry (Ombudsman Scheme) Regulations 2005*.

⁷ Integrated regional licences that authorise distribution and/or retail supply to small use customers.

⁸ A 'small use customer' is a customer who consumes not more than 160 megawatt hours of electricity per year.

⁹ An overview of the ACL and the protections it affords consumers is available in Appendix B.

¹⁰ <https://www.accc.gov.au/about-us/australian-competition-consumer-commission/compliance-enforcement-policy>

¹¹ <https://www.erawa.com.au/electricity/electricity-licensing/standard-form-contracts>

allow anyone else to, contravene any applicable laws in relation to the use of electricity, use or operation of the electricity supply equipment (the network) or use or operation of the customer's equipment. Clause 8.3 also prohibits the customer from using a connection point to transfer electricity into Western Power's network without the prior written consent of both Western Power and Synergy.

Furthermore, clause 8.1 of Synergy's standard form contract requires that the customer "not do anything that will damage or interfere with the electricity supply equipment or use electricity in a way that interferes with that equipment".

Therefore, the provisions in Synergy's standard form contract provide Synergy, Western Power and the customer with certain obligations and protections in the event the customer installs a solar power system at the supply address. The relevant provisions in the contract do not differentiate between equipment at the customer's premises owned by the customer or leased by the customer through a solar PPA or other leasing arrangement.

For regional and remote areas supplied by Horizon Power, its standard form contract is similar to Synergy's standard form contract, including the provisions relating to electricity supply equipment installed on the customer's premises.¹⁴

1.6.4 Payment difficulties and financial hardship

Under Part 6 of the *Code of Conduct for the Supply of Electricity to Small-Use Customers 2014 (Small-Use Customer Code)*, a licensed retailer supplying residential customers has obligations in relation to customers experiencing payment difficulties and financial hardship. For example, a retailer must have an Authority-approved financial hardship policy to assist customers in meeting their financial responsibilities. There are also restrictions on disconnecting customers experiencing payment problems and retailers must offer customers alternative payment arrangements in certain situations.

These Small-Use Customer Code provisions will not apply to solar PPA providers operating under a licence exemption. A licensed retailer's obligations under the Small-Use Customer Code apply only to the customer's grid supply (that is, a solar PPA customer will not be able to access the Small-Use Customer Code's financial hardship and payment difficulties provisions in relation to the electricity supply made under the solar PPA and any payment owed under this agreement). Late payment problems under a solar PPA will be a matter for the customer and solar PPA provider to resolve within the boundaries of the contract (and potentially the ACL if there is a dispute).

The requirement for licensed retailers to comply with the Small-Use Customer Code and not solar PPA providers under an exemption is considered a proportionate regulatory response to the nature of the electricity supply being provided. Solar PPA providers are providing electricity services to customers that are supplementary to the primary source to the premises of grid supplied electricity. Therefore, a different level of consumer protection is required.

¹² http://www.synergy.net.au/about_us/contracts_and_agreements.xhtml

¹³ "Your equipment" is defined in clause 8.2 of Synergy's standard form contract as "all wiring, apparatus and other equipment or works located at the premises which are used for, or in connection with, the supply or consumption of electricity, except any electricity supply agreement."

¹⁴ <https://www.erawa.com.au/cproot/11882/2/Horizon%20Power%20-%20Standard%20Form%20Contract.pdf>

1.6.5 Western Power Technical Rules

Western Power's Technical Rules¹⁵ specify the technical standards used for the design and operation of its network. They also set out performance and technical specifications for equipment connected to the network.

Equipment, including solar power systems, connecting to Western Power's network must comply with Western Power's Technical Rules.¹⁶ This ensures solar power systems that connect to Western Power's network adhere to approved technical standards and Western Power has visibility and approval of the equipment connecting to its network. The Technical Rules will apply to solar power systems connecting to Western Power's network that are financed through a solar PPA.

In relation to metering, the Technical Rules (clause 3.7.4) require a network user to make provision for a Western Power approved bidirectional meter as part of the connection of a solar power system to the low voltage distribution system. The *Electricity Industry (Metering) Code 2012* (clause 3.3A) requires network operators to ensure that if bidirectional electricity flows¹⁷ occur at the network connection point, those flows are measured and recorded by a bidirectional meter.

For its regional and remote service areas, Horizon Power also has technical requirements and a network connection approval process for connecting solar power systems to its distribution system.¹⁸

1.6.6 Renewable Energy Buyback Scheme

When the solar power system produces more electricity than is used by the customer, additional electricity is fed into the grid and customers may be eligible for payment under REBS.¹⁹ Horizon Power provides differing rebates depending on the location of the customer.

Synergy and Horizon Power are required by regulation 8 of the *Electricity Industry (Licence Conditions) Regulations 2005* to purchase renewable energy from eligible customers.

REBS is available to residential customers, non-profit organisations and educational institutions that have a small renewable energy system with capacity between 500 watts and five kilowatts located on the premises owned or occupied by the customer.

¹⁵ Technical Rules are approved by the Authority under Chapter 12 of the *Electricity Networks Access Code 2004*.

¹⁶ <http://www.westernpower.com.au/documents/User%20guide.pdf>

¹⁷ Bidirectional electricity flows occur when electricity flows in (export) and out (import) of the network at the connection point. Electricity typically flows into the network when a solar power system is exporting excess electricity (because the system is generating more electricity than the customer requires at the time).

¹⁸ <http://horizonpower.com.au/being-energy-efficient/solar/technical-requirements-assessment-fees-and-schedules/>

¹⁹ http://www.synergy.net.au/at_home/what_is_rebs.xhtml

Under Synergy's REBS Terms and Conditions,²⁰ the system must have an approved bidirectional meter (paid for by the customer) and all of the necessary approvals, including technical approval from Western Power to connect the system to its network.²¹ The customer is also responsible for the solar power system and its use, and is liable for any damage caused by the customer breaching the REBS Terms and Conditions, or Western Power's Technical Rules.

The Public Utilities Office understands that customers who are not eligible for REBS, or choose not to apply for REBS, are normally offered an alternative generation contract by Synergy if they wish to install a solar power system at their premises. This contract is similar to the REBS Terms and Conditions, but excludes provisions relating to REBS.

Horizon Power also has REBS Terms and Conditions²², containing similar requirements to Synergy's REBS Terms and Conditions.

With the exception of the *Electricity Industry (Licence Conditions) Regulations 2005*, there is no legislation that requires retailers to purchase renewable energy from their customers. This is a commercial matter between the retailer and its customer.

As a general point, customers considering entering into a solar PPA with a third party are strongly encouraged to contact their retailer and network operator before doing so, to understand the requirements to install a solar power system at the customer's premises.

1.6.7 Renewable Energy Target and liable entities

Under the Commonwealth Government's Renewable Energy Target legislation, a 'liable entity' is classified as an individual or company who is the first person to acquire electricity supplied in a grid that has an installed capacity of 100 megawatts or more. Liable entities are usually electricity retailers.

To meet their obligations, liable entities must purchase and surrender an amount of large-scale generation certificates and small-scale technology certificates based on the volume of electricity they purchase each year. This is a legal requirement under the Commonwealth Government's *Renewable Energy (Electricity) Act 2000* to increase the amount of renewable energy generated and supplied to the Australian electricity market.

The Clean Energy Regulator²³ can provide further information on whether a party to a solar PPA is a liable entity for the purposes of the *Renewable Energy (Electricity) Act 2000* and the requirements for the purchasing of renewable energy certificates and associated reporting.

²⁰ http://www.synergy.net.au/docs/REBS_Terms_and_Conditions.pdf

²¹ To connect to Western Power's network, equipment, such as solar power systems, must comply with Western Power's Technical Rules: <http://www.westernpower.com.au/corporate-information-technical-rules.html>

²² <http://horizonpower.com.au/media/1586/buybackterms-and-conditions-general-new.pdf>

²³ <http://www.cleanenergyregulator.gov.au/RET/Scheme-participants-and-industry/Renewable-Energy-Target-liable-entities>

2. Final Recommendations

2.1 Licence or licence exemption

The rationale for pursuing licence exemptions over retail licensing for solar PPA providers was explained in the Draft Recommendations Report. This was a two-fold argument.

- Firstly, the sale of energy through a solar PPA is a discretionary arrangement that operates in addition to a customer's main electricity supply arrangements.²⁴ The customer retains access to grid supplied electricity from its licensed retailer.
- Secondly, without clear evidence indicating that unlicensed solar PPA providers pose a consumer risk, existing protections under the ACL and targeted exemption conditions should be adequate for solar PPA customers.

A majority of submissions supported the Public Utilities Office's position that exemptions are more suitable than retail licensing for solar PPA providers. However, some submissions argued that solar PPA providers should be required to comply with the same regulatory obligations as licensed retailers, because they are supplying the same product (electricity) to customers.

While the Public Utilities Office acknowledges there are some similarities between electricity supplied from the grid and that supplied under a solar PPA, the nature of solar PPAs is still sufficiently different to the traditional energy retailing model to warrant an alternative regulatory approach.

For example, the majority of codes and regulations that retail licensees are required to comply with are designed for the traditional network operator/retailer business model and do not address new technologies or alternative energy seller models. This makes the existing licensing and regulatory frameworks unsuitable for solar PPA providers.

Solar PPA providers are providing electricity services to customers that are supplementary to the primary source to the premises of grid supplied electricity. This means the effect of disconnection of the solar PPA electricity supply on the customer will be reduced, as the customer will still have access to reliable continuous electricity supply from the grid. This also means customers do not necessarily need the complete set of consumer protections under the Authority's licensing scheme (via licence conditions) that they receive in relation to their grid supply. In this situation, a lesser level of regulation is considered suitable for solar PPA providers and an exemption is deemed sufficient to achieve that.

The cost of licensing is also potentially prohibitive for solar PPA providers and is likely to act as a barrier to entry for companies looking to enter this new emerging solar market. For example, licensees incur compliance costs through the Authority's licence application fees, annual licence charge and quarterly standing charge.²⁵

²⁴ The Australian Energy Regulator, *Industry Guidance: solar power purchase agreements*. (<http://www.aer.gov.au/node/22188>)

²⁵ The Authority's licence fees and charges are prescribed by the *Economic Regulation Authority (Licensing Funding) Regulations 2014*.

Licensees are also required to have a periodic licence performance audit conducted by an independent auditor, at cost to the licensee, and incur costs associated with developing and maintaining internal systems and processes to achieve licence compliance. These costs are likely to outweigh the benefits the market will receive from licensing solar PPA providers.

Conditions can be attached to exemptions to ensure consumers receive a suitable level of protection and there is adequate oversight of exempt persons. The Draft Recommendations Report recommended that an exemption for solar PPA providers have consumer protection, registration and reporting conditions attached.

Customers also have access to consumer protection measures outside the State's licensing framework. For example, consumer protection provisions can be found in the ACL, which is regulated by the ACCC and the Department of Commerce's Consumer Protection Division.²⁶

Ultimately, the solar PPA market is in its infancy and still evolving. The regulatory approach should support, not hinder, this market and market innovation. Exemptions are a flexible and proportionate regulatory response to this emerging market.

2.2 Class or individual licence exemptions

The Draft Recommendations Report sought stakeholders' views on two options for exempting solar PPA providers from the requirement to hold a retail licence.

- Option 1: individual licence exemption for each solar PPA provider.
- Option 2: new class exemption for solar PPA providers.

Both options would include conditions being attached to the individual or class exemption.

Under Option 1, solar PPA providers would be required to apply for an individual exemption. Option 2 would also exempt these providers, but rather than requiring providers to apply for an exemption, a new class exemption would be introduced. The class exemption automatically exempts providers from the licence requirement.²⁷

In its Draft Recommendations Report, the Public Utilities Office expressed the view that solar PPA providers should be given a class exemption, with consumer protection, registration and reporting conditions attached.

A majority of submissions supported solar PPA providers being given an exemption, with slightly more favouring a class exemption over individual exemptions. Respondents that supported solar PPA providers having to apply for their own individual exemption were primarily concerned about the Public Utilities Office having visibility of the market and ensuring applicants have the requisite capability to carry out the activities authorised by an exemption. Respondents that supported solar PPA providers being granted a class exemption focused mainly on the certainty, consistency and minimal red tape for business this approach provides.

²⁶ An overview of the ACL and the protections afforded to consumers is available in Appendix B.

²⁷ Detailed analysis of the advantages and disadvantages of both exemption options is available in the Draft Recommendations Report, pages 12-14.

After considering the submissions received on the Draft Recommendations Report, the Public Utilities Office recommends that solar PPA providers be granted individual exemptions from the requirement to hold a retail licence. The individual exemptions will be subject to consumer protection and reporting conditions. Individual licence exemption applications would be required to meet the exemption requirements specified in the Act in order to be granted.²⁸

While the final recommendation that solar PPA providers are granted individual exemptions is a departure from the draft recommendation that a class exemption is granted, individual exemptions will allow the Public Utilities Office to assess each solar PPA provider's suitability to operate under an exemption before it is granted. The exemption application process will provide the Public Utilities Office with greater visibility of applicants and the market, which will in turn provide consumers with more protection. There is a concern that a class exemption that applies to any solar PPA provider automatically will not provide consumers with adequate protection. Requiring each prospective solar PPA provider to go through an exemption application process with the Public Utilities Office will reduce the risk of consumers entering into unfair arrangements.

To ensure a consistent regulatory approach is applied to solar PPA providers, it is recommended that each individual exemption that is granted is made subject to the same consumer protection and reporting conditions. These proposed conditions are explained in more detail in sections 2.3 and 2.4.

The Draft Recommendations Report recommended an exemption condition that requires solar PPA providers to register with the Public Utilities Office before they begin operating under the class exemption, but this condition will not be required if solar PPA providers apply individually to the Public Utilities Office for an exemption, as any exemption that is granted is in the public domain (as it is a legislative instrument published in the Government Gazette).

The Public Utilities Office recognises that there will be an administrative burden on businesses to prepare their exemption application, but this is not considered to outweigh the benefits that consumers and the market will receive from individual exemptions rather than a class exemption. To reduce the administrative burden on applicants and to ensure a consistent approach to processing applications, the Public Utilities Office will publish, on behalf of the Coordinator of Energy²⁹, Licence Exemption Application Guidelines on the Department of Finance website for prospective solar PPA providers. For example, the Licence Exemption Application Guidelines will provide advice to applicants on the type of information that an application will need to include. Applications will be assessed on a case-by-case basis.

As this is an emerging market and exemptions represent a light-handed regulatory approach to solar PPA providers, the Public Utilities Office is committed to reviewing this approach three years after the first solar PPA licence exemption is granted. This will provide an opportunity to assess whether solar PPA licence exemptions are fit-for-purpose and contributing to suitable outcomes for consumers and industry.

²⁸ Section 8 of the Act requires that the Governor must not grant a licence exemption unless he or she is satisfied that it would not be contrary to the public interest to do so. Factors that must be taken into account when making this decision include economic and regional development considerations, the interests of consumers and the policy objectives of government.

²⁹ The Coordinator of Energy is a statutory appointment by the Minister for Energy under the *Energy Coordination Act 1994* (the current Coordinator of Energy is the Deputy Director General of the Public Utilities Office). The Public Utilities Office supports the Coordinator in fulfilling the Coordinator's statutory functions.

2.3 Consumer protection conditions

2.3.1 Product disclosure statement

One of the exemption conditions proposed by the Draft Recommendations Report was that a solar PPA provider must provide a Product Disclosure Statement (**PDS**) to the customer outlining the important elements of the contract.

The Draft Recommendations Report proposed that the PDS must contain the following information (as a minimum):

- The provider should clearly explain the nature of the business model – including that the provider is responsible for the equipment, the electricity is provided as an alternative service, and the electricity generated by the solar power system is not the primary source of energy.
- The provider is not licensed, and accordingly is not bound by the obligations of the Act and its subsidiary legislation, for example, the Small-Use Customer Code. Instead, a consumer should be directed to the consumer protections available under the ACL.
- Disclosure of any applicable fees and charges.³⁰
- Disclosure of the format and frequency of billing.
- Disclosure of the estimated amount and cost of electricity that will be supplied.
- Comparative cost of the same product if the consumer were to buy the solar power system outright. This should be compared to the aggregate amount payable over the financing term based on a reasonable estimate of the electricity generated by the system.
- Disclosure of the termination rights and obligations of the customer.
 - This might include identifying whether there is an option for individuals wanting to buy the system outright or transfer ownership of the system.
 - The customer should also know whether there are any costs with terminating early and having the system removed.
 - The obligations of the customer will be expected to include information on the role the customer has in obtaining the necessary approvals to connect the solar power system to the network and any liabilities the customer has under the solar PPA, such as for network damage caused by the solar power system.

The submissions to the Draft Recommendations Report that supported solar PPA providers being given an exemption supported the PDS requirement. None of these submissions objected to this requirement.

One respondent raised concerns about the potential confusion for customers in relation to whether a solar PPA provider falls under the Ombudsman's remit. In order to address this potential uncertainty, it is recommended that the PDS include information to clarify, that as the solar PPA provider is not licensed, it is not required to become a member of the Electricity Ombudsman Scheme.³¹

³⁰ Fees and charges will include metering costs, fees associated with breaking the contract early and late payment fees.

³¹ Further information about the Ombudsman's remit is in section 1.6.1.

One respondent questioned the requirement to provide a comparative cost of the same product if the customer were to purchase the system outright. The respondent explained that there are fundamental differences between buying a system outright and obtaining it through a solar PPA, that make comparing these options confusing and unhelpful to customers. For example, when a customer enters into a solar PPA, the per unit rate the customer pays for the generated electricity is likely to cover a multitude of services, including the ongoing maintenance of the system, a replacement inverter (or two, depending on the length of the solar PPA), and metering and monitoring costs. The electricity charge is also likely to factor the solar PPA provider's amortisation³² of the value of the system.

These costs and factors may not be relevant to the purchase of the system outright, making it difficult for the solar PPA provider to estimate any comparative value for items like maintenance (the customer may not carry out any maintenance of their system, whereas a solar PPA provider is likely to carry out system maintenance). Another consideration is that some solar PPA providers may not sell solar systems outright, making it hard for them to provide a comparison of the two products based on their own costs.

The Public Utilities Office agrees with the respondent's suggestion that the requirement to provide a comparative cost of the same product if the customer were to purchase the system outright should not be included in the exemption.

A change to the requirement for the solar PPA provider to disclose to the customer the likely amount of electricity that will be supplied and the cost is also recommended. On further analysis, this requirement could be clearer and provide more benefits to the customer. It is recommended that this requirement be changed to require the solar PPA provider to disclose:

- the per unit rate the customer will pay for the generated electricity;
- how the rate can change over the life of the solar PPA; and
- the estimated total generation and cost for the first 12 months of the solar PPA.

Estimated generation and costs for the first 12 months will give the customer useful information to compare with their previous 12 months consumption, and cover all the seasons of the year (as the generation output of the system will be affected by the time of year it occurs).

Requiring the solar PPA provider to provide more than 12 months of generation and cost data will be problematic and potentially misleading for the customer. Accurate generation and cost data over a longer period may be difficult to provide, as the solar PPA provider will not know what CPI increases there will be in the future and system performance is likely to change over an extended period of time. The unpredictability of these factors makes it more suitable to require solar PPA providers to give customers information on the first 12 months of generation and costs.

With the generation and cost information for the first 12 month period, the customer would still be able to do an indicative calculation on the total generation and costs over the life of the solar PPA, but will need to account for variable factors, such as rate changes and changes in system performance.

³² Amortisation is the process of reducing an asset's value to reflect its reduced worth over time.

Solar PPA providers will also not be prohibited from providing generation and cost data for the life of the solar PPA (the exemption prescribes minimum requirements the solar PPA provider must meet, meaning the solar PPA provider can exceed those requirements and provide the customer with more information).

A number of additional requirements are also recommended for the PDS. Some of the submissions to the Draft Recommendations Report raised concerns about whether customers will receive adequate information under the proposed PDS. In response to those concerns, and to ensure customers receive the information they will potentially need to make an informed decision about entering into a solar PPA, it is recommended that the following additional provisions are added to the PDS to require solar PPA providers to give customers information on the following matters:

- As a contract, the solar PPA is covered by the Australian Consumer Law;
- The dispute resolution procedures in place to deal with complaints;
- The person responsible for the maintenance and repair of the solar power system;
- The type of meter and its accuracy standard that will be used to measure generation output of the solar power system;
- The length of the contract; and
- The customer's options at the end of the contractual period.

These additional PDS requirements are not expected to be onerous for solar PPA providers to comply with. They represent standard information the solar PPA provider should already be aware of and it is a matter of passing this information to the customer. To help solar PPA providers understand their PDS obligations, the Public Utilities Office (on behalf of the Coordinator of Energy) will publish guidance material on the Department of Finance website.

To ensure solar PPA providers give attention to the Licence Exemption Application Guidelines, and customers receive the benefit of the guidelines in the PDS, it is recommended that a condition is attached to individual exemptions to require solar PPA providers to have regard to any guidelines published by the Coordinator of Energy in relation to the exemption.

It will also be a requirement of the Licence Exemption Application Guidelines that prospective solar PPA providers submit their PDS to the Public Utilities Office as part of their application for an individual exemption.

In conclusion, taking into account the submissions received and the recommendation that solar PPA providers are granted individual licence exemptions on application, it is recommended that the exemptions include the requirement for solar PPA providers to give a PDS to prospective customers, disclosing (as a minimum) the information outlined in the Draft Recommendations Report, with the exception of the changes recommended in this section.³³

³³ The final recommendations, including what the PDS must include, are in section 2.5.

2.4 Reporting condition

To provide the Public Utilities Office with an understanding of the development and uptake of solar PPA products, and whether there have been any consumer complaints, the Draft Recommendations Report recommended that it be a condition of the exemption (individual or class) that solar PPA providers report annually to the Public Utilities Office on:

- the number of customers contracted under a solar PPA;
- the amount of capacity installed (covering both residential and commercial customers); and
- the number and type of customer complaints³⁴ received.

The submissions to the Draft Recommendations Report that supported solar PPA providers being given an exemption also supported this reporting requirement. None of the submissions objected to this requirement.

In conclusion, taking into account the submissions received and the recommendation that solar PPA providers are granted individual exemptions on application, it is recommended that any exemption granted include a condition requiring solar PPA providers to report annually to the Coordinator of Energy (via the Public Utilities Office) on the matters listed above. It is recommended that solar PPA providers be required to submit their annual returns to the Coordinator of Energy by no later than 31 August, to cover the most recent financial year.

The Public Utilities Office proposes to support solar PPA providers in meeting this reporting requirement by providing a basic reporting template.

³⁴ The definition of 'complaint' in clause 1.5 of the *Code of Conduct for the Supply of Electricity to Small Use Customers* will guide the drafting of this exemption condition, that is: "...an expression of dissatisfaction made to an organisation, related to its products or services, or the complaints-handling process itself where a response or resolution is explicitly or implicitly expected".

2.5 Final Recommendations

Recommendation

It is recommended that:

1. Persons are granted individual licence exemptions from the requirement to hold a retail licence for the purpose of selling electricity to customers under a solar PPA (individual licence exemption applications must meet the exemption requirements specified in the Act in order to be granted).
2. A solar PPA licence exemption require the solar PPA provider to give prospective customers a product disclosure statement that includes the following information:
 - a. That the solar PPA business model is an alternative service and the electricity generated by the solar power system is not the primary source of electricity supply, including that the solar PPA is separate to the customer's supply contract with an electricity retailer.
 - b. The solar PPA provider is not licensed, and is not bound by the obligations under the Act or its subsidiary legislation relevant to licensees, including the obligation to be a member of the Electricity Ombudsman Scheme.
 - c. As a contract, the solar PPA is covered by the Australian Consumer Law.
 - d. The length of the contract.
 - e. The customer's options at the end of the contractual period.
 - f. Any applicable fees and charges.
 - g. Billing format and frequency.
 - h. The type of meter and its accuracy standard that will be used to measure generation output of the solar power system.
 - i. The per unit rate the customer will pay for the generated electricity and how the rate is able to change over the life of the solar PPA.
 - j. The estimated generation output and cost of the solar PPA for the first 12 months.
 - k. Disclosure of the termination rights and obligations of the customer.
 - l. The dispute resolution procedures in place to deal with customer complaints.
 - m. The person responsible for the maintenance and repair of the system.
3. A solar PPA licence exemption require the solar PPA provider to report annually, by 31 August (for the most recent financial year), to the Coordinator of Energy on the:
 - a. number of customers contracted under a solar PPA;
 - b. amount of capacity installed under solar PPAs (residential and commercial); and
 - c. number and type of complaints received in relation to a solar PPA.
4. A solar PPA licence exemption is to require the solar PPA provider to have regard to relevant guidelines published by the Coordinator of Energy (for example, guidelines on information to be disclosed to the customer in the product disclosure statement).
5. The licence exemption framework for solar PPA providers is reviewed three years after the first solar PPA licence exemption is granted.

Appendix A – Jurisdictional comparison

From 1 July 2012, the AER has been responsible for regulating retail energy markets in jurisdictions around Australia where the National Energy Customer Framework (the **Customer Framework**) applies. The Customer Framework includes the National Energy Retail Law (the **Retail Law**), the National Energy Retail Rules and National Energy Retail Regulations.

The Retail Law requires anyone selling energy to customers to either hold a retailer authorisation or a valid exemption.³⁵ The AER regulates energy sellers and administers retail authorisations and exemptions.

Table 1 outlines the regulatory framework, and the relevant regulator, for retail electricity markets around Australia.

Table 1: Regulation of retail electricity markets

Jurisdiction	Regulator	Regulatory framework
ACT	AER	Retail Law
QLD	AER	Retail Law
NSW	AER	Retail Law
SA	AER	Retail Law
TAS	AER	Retail Law (but limited application of the AER's exempt selling framework)
VIC	Essential Services Commission	Energy Retail Code (version 11)
NT	Utilities Commission	<i>Electricity Reform Act</i>
WA	Economic Regulation Authority	<i>Electricity Industry Act 2004</i> ³⁶

³⁵ Section 88 of the Retail Law.

³⁶ The Retail Law does not apply in Western Australia, where the retail energy market is monitored by the Authority. However, adopting the Retail Law framework may be considered in the future.

Australian Energy Regulator

As part of its responsibility to regulate exempt selling, the AER has developed an exempt selling guideline that outlines the framework for regulating exempt sellers.³⁷ It details various exemption classes, and the conditions attached to those exemptions. There are three kinds of exemptions provided, as outlined in Table 2.

Table 2: Australian Energy Regulator Exemption Framework

Exemptions	Details
Deemed exemptions	<ul style="list-style-type: none"> Deemed exemptions are usually for small-scale selling and apply automatically to certain classes of persons. An eligible person or entity does not need to apply or register with the AER. The eligible person will still need to abide by the conditions of the relevant class of exemption. The Retailer Exempt Selling Guidelines identifies obligations that a person may need to meet as a condition of the exemption (some conditions do not apply to certain exemption classes).
Registrable exemptions	<ul style="list-style-type: none"> Registrable exemptions apply to certain classes of people, and will only apply to a particular individual for a particular site (usually applicable to on-selling activities). Due to the scale of the on-selling activities and the nature of the customers involved, these classes require greater transparency and regulatory oversight through registration with the AER. The eligible person or entity does not need to apply for the exemption, but must submit an online registration form to the AER. The AER places details of the eligible person or entity on the public register and the exemption applies from that date. Conditions are also attached to registrable exemption classes.
Individual exemptions	<ul style="list-style-type: none"> Individual exemptions are applicable where the sale of energy is not covered by a class exemption. These exemptions are tailored to specific circumstances or businesses. Conditions are generally attached with the view to balancing the needs and rights of customers and the regulatory burden imposed on the exemption holder.

The AER must give regard to the policy principles and factors outlined in the Retail Law in deciding whether a business needs to be authorised or whether an exemption is more suitable.³⁸ These policy principles and factors also inform the AER's decision on the need for particular classes and the exemption conditions themselves.

³⁷ The Australian Energy Regulator, *Retail exempt selling Guideline – July 2013*. (<http://www.aer.gov.au/node/18677>)

³⁸ Section 114 of the Retail Law.

Alternative energy sellers

The AER recognises there are approaches to selling energy that were not originally envisaged by the Retail Law, and accordingly, there may be justification for a different regulatory approach to these business models. The sale of electricity through solar PPAs is a case in point.

During 2013 and 2014, the AER undertook consultation to determine the optimal approach for regulating the sale of electricity through solar PPAs. The choice was to either require authorisation under the Retail Law, or allow for an exemption from the authorisation requirement. The AER released its Statement of Approach in July 2014 indicating that it will adopt the exemption approach for solar PPA providers.³⁹ The AER has also released Industry Guidance on solar power purchase agreements, outlining the AER's approach on this matter.⁴⁰

Under the AER's exempt selling framework, most retail exemptions have conditions attached (this applies to both class exemptions, as well as individual exemptions). These conditions must be met for the provider to be covered by the exemption. They are designed to provide protections for customers without overburdening the seller, and are modelled on protections that authorised sellers must provide to their customers.

An important consideration for regulators to bear in mind is that conditions should not be overly burdensome, as this could discourage sellers from providing this service. This in turn will also disadvantage consumers in the long-term, as it reduces competition and hinders access to new solar options.

Individual exemptions for solar PPA providers

Individual exemptions are assessed on a case-by-case basis, and the AER granted its first exemption for a solar PPA provider in December 2013. To date, the AER has granted and approved over 100 individual exemptions for businesses selling electricity through solar PPAs.

The application for an individual exemption requires a person to submit certain information about the nature of the service provided, and fundamental aspects of the solar PPA contract. The particulars relating to the nature and scope of the proposed operations need to be provided to the AER. These include:

- The nature of the service and whether the electricity is sold as an ancillary supply to the customer.
- The types of meters that will be used, and accuracy standards.
- The dispute resolution procedures in place to deal with complaints.
- Pricing structure and disclosure of fees and charges.

³⁹ The Australian Energy Regulator, *AER Statement of Approach: Regulation of alternative energy sellers under the National Energy Retail Law – June 2014*. (<http://www.aer.gov.au/node/22188>)

⁴⁰ The Australian Energy Regulator, *AER's Final Exempt Selling Guideline*. (<http://www.aer.gov.au/node/2388>)

- The person responsible for the maintenance and repair of the solar panel systems.
- The length of the contract.
- In what form and how often customers will be billed.
- The circumstances in which a customer can terminate the contract.
- The options available to customers at the end of the contractual period.

As noted above, most exemptions have conditions attached to them. The AER's approach is to attach the following two conditions on individual exemptions for solar PPA providers:

- The exempt seller must provide the customer with a notice explaining that the solar PPA is covered by Australian consumer protection laws, and is separate from the customer's contract with their retailer, which is covered by the Retail Law.
- The exempt seller must refrain from registering in the wholesale market for the purposes of purchasing energy, and must not be the financially responsible retailer for the premises.

The first condition is intended to ensure customers understand the nature of the service they are buying, and the protections they are entitled to (and from whom). The second is intended to ensure solar PPA providers only sell electricity generated through the solar panel system. The condition limits the exempt seller from retailing more broadly. A solar PPA provider wishing to expand energy sales activities will be required to apply for a retailer authorisation, or another individual exemption.

On 18 November 2014, the AER published an issues paper in relation to regulating innovative energy selling business models under the Retail Law. The paper builds on the AER's initial consultation and final statement of approach in July 2014. Public consultation on the issues paper closed on 15 February 2015; stakeholder submissions have been published on the AER's website.⁴¹ The AER has not published any further information since its issues paper in November 2014.

⁴¹ The Australian Energy Regulator, *Regulating innovative energy selling business models under the National Energy Retail Law*. (<http://www.aer.gov.au/node/28403>)

Appendix B – Australian Consumer Law

Customers have recourse to existing broad protections under the ACL. The ACL framework covers:

- Misleading and deceptive conduct.
- Unconscionable conduct.
- Unfair contract terms in standard form consumer contracts.
- Guarantees of consumer rights when buying goods and services.
- A product safety law and enforcement system.
- Penalties, enforcement powers and consumer redress options.

Australian courts and tribunals can enforce the ACL, and prosecute any breaches of its provisions. The Consumer Conciliation Service within the Consumer Protection Division of the Department of Commerce is also available to consumers.

The general consumer protections available under the ACL relevant to solar PPA arrangements are protections in relation to misleading and deceptive conduct, unconscionable conduct and unfair contract terms.

Misleading or deceptive conduct refers to any behaviour that misleads, or is likely to mislead. Businesses can potentially breach this law by making express statements that mislead or by failing to disclose relevant information.

Unconscionable conduct includes failing to disclose primary contractual terms, not properly explaining the conditions of a contract, or not allowing enough time to read an agreement or obtain advice.

Residential customers of solar PPA providers will have recourse to all these protections under the ACL. However, the unfair contract term provisions of the ACL do not apply to business to business contracts. This means solar PPAs with commercial customers, including small businesses, are not subject to the provisions relating to unfair contract terms.

The unfair contract term protection establishes general standards of business conduct, and provides that unfair terms in standard form consumer contracts are void. Terms may be declared 'unfair' if:

- it would cause a serious imbalance in the parties' rights and obligations;
- it is not reasonably necessary to protect the legitimate interests of the party that would be advantaged by the term; or
- it would cause detriment to a party if it was relied on.

The ACL includes enforcement powers, penalties and remedies which will apply for breaches or suspected breaches of the legislation. The Consumer Protection Division of the Department of Commerce can take steps to address a breach by taking action such as seeking monetary penalties for contraventions of the ACL, disqualification orders or applying for an adverse publicity order against a solar PPA provider.

The consumer law remedies that are available to a consumer of a solar PPA arrangement are:

- injunctions – an affected person can seek an injunction to stop a business from engaging in the conduct that is in breach of the ACL, or force the business to take specific action;
- damages – an affected person can seek damages to recover any loss or damage suffered; and
- compensation orders – an affected person can seek compensatory orders for loss or damage suffered as a result of a breach of the ACL.