



Solar Power Purchase Agreements

Retail Licence Exemptions

Industry and Consumer Guidelines

Department of Treasury | Public Utilities Office

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Table of Contents

| | |
|--|-----------|
| 1. Introduction | 5 |
| 1.1 Retail licence exemptions for solar power purchase agreement suppliers | 5 |
| 1.1.1 Decision to grant individual licence exemptions..... | 5 |
| 1.1.2 Licence exemption application guidelines..... | 5 |
| 1.1.3 Licence exemptions granted to solar PPA suppliers..... | 5 |
| 1.2 Overview of solar power options | 5 |
| 1.2.1 Purchase and installation of a solar power system | 5 |
| 1.2.2 Solar leasing arrangements | 6 |
| 1.2.3 Solar power purchase agreements | 6 |
| 2. Guidelines..... | 7 |
| 2.1 Purpose of the Guidelines | 7 |
| 2.2 Before entering into a solar PPA..... | 7 |
| 2.2.1 Is solar power right for you? | 7 |
| 2.2.2 Benefits and risks of solar PPAs | 8 |
| 2.2.3 What to be aware of | 9 |
| 2.3 Solar PPA supplier's disclosure statement | 9 |
| 2.3.1 Licence exemption conditions | 9 |
| 2.3.2 Applicable fees and charges | 10 |
| 2.3.3 Termination rights and obligations of the customer and supplier..... | 11 |
| 2.3.4 Customer's options at the end of the contractual period..... | 11 |
| 2.3.5 Maintenance and repair of the solar power system | 12 |
| 2.4 Compliance reporting | 12 |
| 2.5 Complaints, disputes and advice | 13 |
| 2.5.1 Department of Commerce – Consumer Protection | 13 |
| 2.5.2 Small Business Development Corporation..... | 14 |
| 2.5.3 Australian Competition and Consumer Commission | 14 |
| 2.5.4 Energy and Water Ombudsman Western Australia | 14 |
| 2.5.5 Public Utilities Office..... | 15 |
| APPENDIX A – Compliance reporting template..... | 16 |

Abbreviations

| Term | Definition |
|-------------------------|---|
| ACCC | Australian Competition and Consumer Commission |
| ACL | Australian Consumer Law |
| Act | <i>Electricity Industry Act 2004</i> |
| AER | Australian Energy Regulator |
| Authority | Economic Regulation Authority |
| Minister | Minister for Energy |
| Ombudsman | Energy and Water Ombudsman Western Australia |
| SBDC | Small Business Development Corporation |
| Small Use Customer Code | Code of Conduct for the Supply of Electricity to Small Use Customers 2016 |
| solar PPA | Solar Power Purchase Agreement |

1. Introduction

1.1 Retail licence exemptions for solar power purchase agreement suppliers

1.1.1 Decision to grant individual licence exemptions

In August 2016 the Minister for Energy (**Minister**) approved a licence exemption framework for suppliers of solar power purchase agreements (**solar PPA**) to apply for individual retail licence exemptions. These licence exemptions will be subject to consumer protection and compliance reporting conditions. The Minister's decision follows the approach recommended by the Public Utilities Office in its Final Recommendations Report, published on 4 August 2016.

An individual licence exemption for a solar PPA supplier to sell electricity to residential and commercial customers under a solar PPA is granted on application if the applicant meets the exemption requirements under the *Electricity Industry Act 2004* (**Act**). Licence exemptions are granted by the Governor under section 8 of the Act.

The consumer protection and compliance reporting conditions associated with the licence exemption framework are explained in more detail in Part 2 of these Guidelines.

Information about the Public Utilities Office's review of licensing arrangements for solar PPA suppliers, including its Draft Recommendations Report and Final Recommendations Report, is available on the Department of Treasury website at www.treasury.wa.gov.au.

1.1.2 Licence exemption application guidelines

In addition to these *Industry and Consumer Guidelines*, the Public Utilities Office has also published *Licence Exemption Application Guidelines: Solar Power Purchase Agreement Suppliers – Retail Licence Exemption*.

The Licence Exemption Application Guidelines are available on the Department of Treasury website and provide information to solar PPA suppliers on how to apply to the Public Utilities Office for a retail licence exemption.

1.1.3 Licence exemptions granted to solar PPA suppliers

On 23 December 2016, the *Electricity Industry (Solar Power Purchase Agreements) Exemption Order 2016* was published in the Government Gazette. It includes details of the retail licence exemptions that have been granted to solar PPA suppliers to date.

The *Electricity Industry (Solar Power Purchase Agreements) Exemption Order 2016* can be downloaded from the State Law Publisher's website at www.slp.wa.gov.au.

Details of licence exemption applications from solar PPA suppliers that the Public Utilities Office has considered are available on the Department of Treasury website.

1.2 Overview of solar power options

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

1.2.1 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.

1.2.2 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 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 interest charged on 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.

1.2.3 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 electricity 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 supplier 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 supplier 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 of the solar power system.

2. Guidelines

2.1 Purpose of the Guidelines

The purpose of the Guidelines is to give:

- industry (solar PPA suppliers) guidance on complying with their licence exemption conditions, in particular the requirement to provide prospective customers with a Disclosure Statement; and
- customers of solar PPA suppliers guidance and information on the licence exemption process and solar PPAs more generally.

While the Guidelines are not legally binding on solar PPA suppliers, the Public Utilities Office strongly encourages solar PPA suppliers to follow the Guidelines wherever possible. This will ensure customers receive the information they need to make an informed decision about entering into a solar PPA and suppliers are compliant with the conditions of their licence exemption.

The Public Utilities Office has committed to reviewing the licence exemption arrangements for solar PPA suppliers three years of the date the first licence exemption came into effect (i.e. this will be December 2019). This review will include assessment of whether there is evidence that solar PPA suppliers have not been following the Guidelines to the detriment of customers. Changes to the licence exemption arrangements may be required to place stricter obligations on solar PPA suppliers if that were proved to be the case.

Compliance with the Guidelines is therefore in the interests of solar PPA suppliers to also ensure customers receive the information required to make an informed decision about entering into a solar PPA.

2.2 Before entering into a solar PPA

2.2.1 Is solar power right for you?

If you are thinking about installing a solar power system in your home or business:

- Review recent electricity bills to see how much electricity you have been using and what it cost. Remember that while a solar power system will reduce the amount of electricity you will need from the grid, you will still have fixed costs (the daily supply charge) to pay to maintain your connection to the grid.
- Investigate the options available to you to purchase solar power to help you choose the right one for your needs. Different options are available to invest in solar power systems, from buying a system outright, to solar leasing and solar PPAs.
- Consider how long you plan to stay in your home or commercial premises. Solar PPAs are normally long-term arrangements lasting many years.
- If you think you might move in that time, find out how installing a solar power system under a solar PPA will affect your ability to move house (it is intended that a condition of the licence exemption to be granted to solar PPA suppliers will be that prospective customers are advised of termination rights and customer obligations under the agreement).

- Solar PPAs usually require the customer to agree to purchase a minimum amount of electricity, or a commitment to purchase the full amount of electricity the system produces, so it is important to choose a suitably-sized system to ensure you do not end up purchasing more electricity than you need (your electricity bills will tell you how much electricity you have been using). It is recommended that you research different solar power system products available in the market to determine the product that is most suitable for you.
- There is a diverse range of products on the market that vary in price and quality. It is therefore advisable to do your homework on the warranties and guarantees that come with the products and service you purchase.

2.2.2 Benefits and risks of solar PPAs

Solar PPAs do offer some benefits over ownership of a solar power system:

- Very low or no up-front costs for the installation of the solar power system.
- You will not be responsible for the cost of maintaining the solar power system.
- You are likely to save money on your electricity bills and the savings should occur quickly, if not immediately.
- With a solar PPA, the rate you will pay per kilowatt hour of electricity is likely to be lower than the price you pay for electricity from the grid.

Some of the disadvantages for solar PPA customers are:

- Higher costs over the long term compared with buying a solar power system outright.
- Solar PPA electricity prices may escalate faster over the life of the contract than for supplies from the grid (the solar PPA should include details of how the price can change, such as annual CPI increases).
- If you do not use all the electricity generated by the solar power system, you will not enjoy the full benefits of the solar PPA.
- Potential administrative burdens as a result of paying, and managing, two separate electricity bills.
- Less consumer protections compared to the supply of electricity from the grid. This is because a solar PPA supplier operates under a licence exemption, not a licence.
 - Electricity retailers who supply you electricity from the grid, such as Synergy, have a retail licence issued by the Economic Regulation Authority (**Authority**), which includes consumer protection conditions on matters like disconnection, financial hardship and billing. A solar PPA supplier operating under a licence exemption does not have to comply with these conditions.

- A solar PPA supplier operating under the licence exemption is not required to have a standard form contract¹ approved by the Authority or become a member of the Energy and Water Ombudsman Western Australia (**Ombudsman**), unlike a licensed retailer.

2.2.3 What to be aware of

It is advisable that you read the contract (PPA) in full before committing to the agreement, taking particular note of the following matters:

- Any exit fees so you know what will happen if you sell your home before the term of the contract expires and the new owners choose not to take on the solar PPA.
- The interest rate on the payments to be made under the solar PPA.
- Your rights and obligations in the contract; for example, what happens if your roof is damaged when the solar power system is installed or removed, or if either party terminates the contract early?
- With a solar PPA, depending on the contract you sign, you may have to pay for some or all of the electricity produced by the system even if you are not using it, such as when you are on holiday.
- If you want to (or are required) to buy the solar power system at the end of the solar PPA, make sure you budget for that payment (commonly referred to as a 'balloon' payment).
- The licence exemption will require solar PPA suppliers to provide customers with a Disclosure Statement before they sign a contract/PPA. You should check it carefully. It must include the information outlined below in section 2.3.
- Under the terms of your electricity supply contract or other contract with your electricity retailer, you may be liable for any damage the solar power system causes to the grid that you are connected to; for example, customers in the Perth metropolitan area are connected to Western Power's South West Interconnected Network.

2.3 Solar PPA supplier's disclosure statement

2.3.1 Licence exemption conditions

It is important that customers understand the nature of the service that they are buying through a solar PPA and the protections they are entitled to. With that in mind, the licence exemption requires solar PPA suppliers to give prospective customers a Disclosure Statement before they enter into a solar PPA. The Disclosure Statement should include the following information:

1. 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,

¹ The Act requires licensed electricity retailers who supply small-use customers to have an Authority-approved standard form contract.

including that the solar PPA is separate to the customer's primary supply contract with the electricity retailer.

2. The solar PPA supplier 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.
3. The supply of electricity services to consumers under the solar PPA is subject to consumer protections under the Australian Consumer Law (**ACL**).
4. The length of the contract.
5. The customer's options at the end of the contractual period.
6. Any applicable fees and charges, including the per unit rate the customer will pay for the generated electricity and how the rate can change over the life of the solar PPA.
7. Billing format and frequency.
8. The type of meter and its accuracy standard that will be used to measure generation output of the solar power system.
9. Estimated generation output and cost of the solar PPA for the first 12 months.
10. A summary of the rights and obligations of the customer and the supplier in relation to the termination of solar PPA.
11. A summary of the obligations of the customer under the solar PPA (in addition to the obligations the customer may have in relation to the termination of the solar PPA).
12. The dispute resolution procedures in place to deal with customer complaints.
13. The name and contact details of the person responsible for the maintenance and/or repair of the system.
14. Any other information that is reasonably necessary to enable the customer to make an informed assessment of the solar PPA.

The information below is intended to expand on some of the items listed above to provide solar PPA suppliers and customers with guidance on what the Disclosure Statement should contain to meet the requirements of the licence exemption.

2.3.2 Applicable fees and charges

The Disclosure Statement should set out all the applicable fees and charges that the customer is potentially liable for over the life of the solar PPA, including how these fees and charges may change. For example:

- Cancellation fees (for example, if the customer terminates the solar PPA before the solar power system is installed).
- Exit fees (for example, if there is a fee for exiting the solar PPA early, or a fee for removing the solar power system at the end of the solar PPA).
- System removal fees (for example, this may be a fee to cover the removal of the solar power system when the solar PPA expires).
- Card payment and payment processing fees.
- Late payment fees.
- Reactivation fees (for example, a fee to reactivate the solar power system if the solar PPA supplier has deactivated it because of a failure by the customer to pay a bill).
- Whether the solar PPA allows the solar PPA supplier to propose new fees during the life of the agreement.

This list of fees and charges is not exhaustive, and it is recognised that a solar PPA supplier may have additional fees and charges in its solar PPA. If this is the case, the licence exemption will likely require all those fees and charges to be identified in the Disclosure Statement.

Under a separate item, the Disclosure Statement must include the per unit rate the customer will pay for the electricity generated by the solar power system and how the rate can change over the life of the solar PPA.

2.3.3 Termination rights and obligations of the customer and supplier

The Disclosure Statement should explain the customer's and the supplier's rights and obligations in relation to terminating the solar PPA, including at least the following information:

- In relation to termination clauses, a customer should be made aware of how the solar PPA can be terminated and any costs associated with terminating early and having the solar power system removed.
- The customer should be made aware of what their options are if they move; for example, what the conditions and costs are if the solar power system is transferred from one property to another (i.e. if the customer takes the solar power system with them).
- The role the customer has in obtaining the necessary approvals to connect the solar power system to the grid and any liabilities the customer has under the solar PPA, such as for network damage caused by the solar power system.

2.3.4 Customer's options at the end of the contractual period

The Disclosure Statement should explain to the customer the available options at the end of the solar PPA contractual period. For example:

- Is the customer required to take ownership of the solar power system at the end of the contractual period?

- If so, is the customer required to pay any outstanding amount/s to complete the purchase of the solar power system?
- Can the customer extend the PPA beyond the initially agreed period without taking ownership of the solar power system?
- Does the customer have the option of having the solar power system removed from their property at the end of the contractual period?

2.3.5 Maintenance and repair of the solar power system

The Disclosure Statement should include what liabilities the solar PPA supplier has under the solar PPA for the performance of the solar power system, including maintenance and repair of the system and if the system damages the network.

The customer should also be provided with information on any product warranties for the solar power system.

The customer's rights to a remedy under the ACL for problems with the solar PPA supplier's service or its solar power system cannot be limited by the solar PPA.

2.4 Compliance reporting

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, it is intended that the licence exemption will require a solar PPA supplier to report annually to the Public Utilities Office² on the:

- number of solar PPAs agreed during the reporting year;
- number of solar PPAs active at 30 June of the reporting year;
- number of solar power systems installed under solar PPAs during the reporting year;
- number of solar power systems covered by solar PPAs that are active at 30 June of the reporting year;
- amount of solar power system capacity installed (kWh) under solar PPAs at 30 June of the reporting year; and
- number and type of customer complaints³ received.

The data should be broken down by residential and commercial (business) customers. This means two sets of data need to be provided, one set for residential customers and one for commercial customers.

When providing data on the type of customer complaints the solar PPA supplier has received during the reporting year, the solar PPA supplier should break the data down by the following high level categories:

² The licence exemption requires the annual data return to be submitted to the Coordinator of Energy, which is a statutory position filled by the Deputy Director General of the Public Utilities Office.

³ The definition of complaint in the *Electricity Industry (Solar Power Purchase Agreements) Exemption Order 2016* is: **complaint** means an expression of dissatisfaction made in writing and given to a supplier where a response or resolution from the supplier is explicitly or implicitly expected or legally required.

- **Billing complaints** – includes complaints about billing errors and late billing.
- **Contract complaints** – includes complaints about unfair contract/PPA terms and contract/PPA terms being applied incorrectly.
- **Customer service complaints** – includes complaints about poor customer service and failure to respond to complaints in a timely manner.
- **Payment complaints** – includes complaints about payment arrangements, debt collection issues and payment difficulties.
- **Solar power system performance complaints** – includes complaints about poor system performance (generation), supply disruptions and installation problems.
- **Other complaints** – Complaints that do not fall in the above categories.

A solar PPA supplier is only required to report on complaints received, not customer enquiries or other communications.

Solar PPA suppliers are required to submit annual data returns to the Public Utilities Office by no later than 31 August of each year.

The Public Utilities Office has made a basic reporting template available in Appendix A of these Guidelines to assist solar PPA suppliers in meeting their reporting obligations.

It is preferred that solar PPA suppliers submit the annual data returns to the Public Utilities Office by email to licence-exemptions@treasury.wa.gov.au.

Annual data returns can also be submitted in writing to:

Licence Exemptions
Markets and Regulation Division
Public Utilities Office
Department of Treasury
Locked Bag 11
Cloisters Square WA 6850

2.5 Complaints, disputes and advice

If you have a dispute or complaint, in the first instance you should try to resolve it with your solar PPA supplier. However, if you cannot resolve the dispute or complaint then someone else may be able to help. Below are details of organisations that may be able to assist you, depending on your circumstances.

2.5.1 Department of Commerce – Consumer Protection

In Western Australia, the Consumer Protection Division of the Department of Commerce provides a conciliation service to consumers with individual complaints about service suppliers.

Information on a consumer's rights is available on the Department of Commerce [website](#).

The Department of Commerce also provides advice on its [website](#) regarding its complaint handling and conciliation services.

The Department of Commerce is also responsible for ensuring that traders in Western Australia comply with the ACL and may take enforcement action against traders who breach the ACL.

Consumer Protection does not normally take complaints or conciliate in matters relating to business-to-business transactions. The Small Business Development Corporation (**SBDC**) provides a dispute resolution service where a business is in dispute with another business (further details are below in section 2.5.2).

2.5.2 Small Business Development Corporation

In Western Australia, the SBDC offers free guidance and access to a low-cost mediation service to assist small businesses in resolving disputes with other businesses or government departments.

If you are a small business that has entered into a solar PPA with a service supplier and require advice or assistance to resolve a dispute, you should contact the SBDC.

Further information about the SBDC's 'Alternative Dispute Resolution' service can be found on the SBDC's [website](#).

2.5.3 Australian Competition and Consumer Commission

Outside the retail licensing framework, consumer protections can be found in the ACL. Compliance and enforcement activities associated with the ACL are undertaken by the Australian Competition and Consumer Commission (ACCC) and State and Territory consumer regulators.⁴

The ACCC's focus is on circumstances that will, or have the potential to, result in widespread consumer detriment or conduct of major public interest or concern. The ACCC does not normally consider individual consumer complaints about service suppliers or provide conciliation services where a dispute arises between a service supplier and a consumer.

The ACCC has published information for consumers on solar PPAs and the consumer rights provided by the ACL. This information can be found on the ACCC website.

2.5.4 Energy and Water Ombudsman Western Australia

The remit of the 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 supplier to the Ombudsman for investigation and determination.⁵

The Ombudsman only considers complaints about holders of distribution, retail or integrated regional⁶ licences who supply electricity to small-use customers (such as Horizon Power, Synergy or Western Power).⁷

⁴ <https://www.accc.gov.au/about-us/australian-competition-consumer-commission/compliance-enforcement-policy>

⁵ The scope of the Electricity Ombudsman Scheme is prescribed by Part 7 of the Act and the *Electricity Industry (Ombudsman Scheme) Regulations 2005*.

⁶ Integrated regional licences that authorise distribution and/or retail supply to small-use customers.

⁷ A 'small-use customer' is a customer who consumes not more than 160 megawatt hours of electricity per year.

A list of current electricity licensees is available on the Authority's website at <https://www.erawa.com.au/electricity/electricity-licensing>. The Authority administers the licensing scheme, including issuing licences.

2.5.5 Public Utilities Office

The Public Utilities Office administers licence exemptions and is responsible for these Guidelines. It is not a complaint handling body like the ACCC or Department of Commerce, which have statutory powers to investigate complaints.

The Public Utilities Office can provide information on licence exemptions and the regulatory framework that exempt persons operate within, but cannot formally investigate complaints about a person operating under a licence exemption, such as a solar PPA supplier.

Requests for information about licence exemptions for solar PPA suppliers can be emailed to licence-exemptions@treasury.wa.gov.au or be made by phone to (08) 6551 1000.

APPENDIX A – Compliance reporting template

A solar PPA supplier is required to complete this form at the end of each financial year that they are operating under a licence exemption. Further information on how to complete the form is in section 2.4 (it is advised that the solar PPA supplier read section 2.4 before completing the form).

Solar PPA suppliers are required to submit their annual data return/s to the Public Utilities Office by no later than 31 August of each year.

| Name of solar PPA supplier: [insert name here] | | | |
|---|-------------|------------|-------|
| Reporting indicator | Residential | Commercial | Total |
| Number of solar PPAs agreed during the reporting year | | | |
| Number of solar PPAs active at 30 June of reporting year | | | |
| Number of solar power systems installed under solar PPAs during the reporting year | | | |
| Number of solar power systems covered by solar PPAs that are active at 30 June of the reporting year | | | |
| Amount of solar power system capacity installed (kWh) under solar PPAs at 30 June of the reporting year | | | |
| Number of customer complaints received | | | |
| Type of customer complaints received: | | | |
| Billing | | | |
| Contract | | | |
| Customer service | | | |
| Payment | | | |
| Solar power system performance | | | |
| Other | | | |