



**Submission to the Government of Western Australia
Department of Finance | Public Utilities Office**

**Consultation on 'Retail licence exemptions for Solar Power Purchase
Agreement Providers: Draft Recommendations Report'**

Executive Summary

Clean Energy Council (CEC) welcomes the Public Utilities Office (PUO) recommendation for a class exemption for solar PPA (SPPA) providers with the requirements that SPPA providers must provide a product disclosure statement to the customer and must register with the PUO upon commencing its business and submit an annual summary report of its operations.

Key recommendations

Endorse the draft recommendation for a class exemption for solar PPA (SPPA) providers.

Endorse the draft recommendation that SPPA providers must provide a product disclosure statement to the customer.

Endorse the draft recommendation that SPPA providers must register with the Public Utilities Office (PUO) upon commencing its business and submit an annual summary report of its operations.

Endorse the draft recommendation to include solar leases within the scope of the class exemption.

Note that the solar PV industry has developed an ACCC-approved Code of Conduct to address consumer protection issues in relation to standards of service and product quality and that CEC is seeking ACCC authorisation to extend the scope of the Code to SPPA providers.

Consider the requirements for disclosure proposed for solar retailers under the Code of Conduct and whether any of these requirements should be incorporated into the product disclosure statement proposed for SPPA providers in Western Australia.

Best practice standards for disclosure by SPPA providers

To improve customer service and industry standards, the CEC established the Solar PV Retailer Code of Conduct in 2013. CEC's Solar PV Retailer Code of Conduct is a voluntary scheme for retail businesses selling solar PV systems to households and businesses. It is authorised by the Australian Competition and Consumer Commission (ACCC). The Code aims to lift the bar higher than the minimum requirements set by government and regulations and bring about a better standard of service within the solar industry. When authorising the code in 2013, ACCC Commissioner Dr Jill Walker said:

"The Code will allow for the regulation of retailers of solar PV systems to ensure that retailers maintain a standard that will benefit consumers and the industry. The Code will promote confidence in the PV sector by giving information to consumers to assist in purchasing decisions. The Code will also promote compliance by PV retailers through sanctions and public reporting mechanisms."

The CEC manages the code of conduct and ensures that signatories comply with its strict requirements. To obtain approval, retailers must demonstrate compliance with all relevant consumer protection laws. There are a number of additional requirements including the demonstration of best practice pre- and post-sale activities; documentation; general business practices; and provision of a five-year, whole-of-system warranty.

Further information about the Solar PV Retailer Code of Conduct is available from the CEC web site at <http://www.solaraccreditation.com.au/retailers.html>. Currently the Code applies only to the sale of solar PV systems. However, the independent Code Review Panel, which is headed by the CEO of the Consumer Action Law Centre, Gerard Brody, recently decided to extend the application of the Code to solar PPAs and leases. In late February 2015 CEC submitted amendments to the Code to the Australian Competition & Consumer Commission (ACCC). The amendments would affect providers of solar PPAs and solar leases and, for the purposes of consumer protections, no significant distinctions are made between the two.

Approved Retailers (ie, signatories to the Code of Conduct) will be required to clearly provide accurate information about the total cost over the financing term of solar PV systems sold under finance arrangements including, without limitation, leases and power purchase agreements (PPAs).

When advertising, or offering to a consumer, a finance arrangement that provides an alternative to initial outright purchase, Approved Retailers will be required to provide the following information in their contracts of sale:

- the name of the credit provider to whom the consumer will be contracted;
- a clear statement regarding the nature of the arrangement being entered into (for example, whether it involves a credit contract or other financial product within the meaning of the *Australian Securities and Investments Commission Act* (2001) or a non-regulated credit arrangement);
- a clear statement that the periodic payments are available only if the consumer wishes to take advantage of the finance or alternative purchasing arrangement;

- the comparative cost of that same product if the consumer was to purchase it outright on that day;
- a clear statement that fees and charges apply in relation to the finance arrangement, including:
 - the dollar amount of fees and charges applied under the finance arrangement and what each fee and charge represents;
 - whether the fees are fixed and, if not, details of escalation rates; and
 - where and in what form the consumer can expect the fees and charges to appear in the finance contract;
- under a solar leasing agreement, the aggregate amount payable over the life of the agreement's term;
- under a PPA, the aggregate amount payable over the agreement's term based on a reasonable and stated estimate of the solar-generated electricity consumed by the consumer;
- details of any exit payments or penalties associated with the finance or alternative purchasing arrangement;
- a statement as to whether the consumer owns the system at the conclusion of any plan or agreement under the terms of the finance arrangement and/or details, including any associated costs and/or fees, of any option or options available to the consumer to purchase the system at the end of the term; and
- a statement that questions and complaints about the finance arrangement should be directed to the lender with whom the consumer is or will be contracted and:
 - if the lender is a member of such a scheme, to the relevant external dispute resolution scheme;
 - if the arrangement involves a credit or other financial product, the Australian Securities and Investments Commission; or
 - if the arrangement does not involve regulated credit or other financial product, to the relevant state-based authority which has responsibility

It is our understanding that credit providers operating in Australia are governed by the National Consumer Credit Protection Act 2009 (Cth) ("the NCCP Act"). Under proposed amendments to the Code of Conduct, Approved Retailers must make reasonable enquiries as to whether the arrangement that is to be offered to a consumer (whether by the Approved Retailer or by another business introduced to the consumer by the Approved Retailer) is regulated by the NCCP Act, such that the provider of the arrangement would need to hold an Australian Credit Licence. If as a result of those enquiries the Approved Retailer believes that the arrangements will not be regulated by the NCCP Act, the Approved Retailer must ensure that the relevant contract includes a provision substantially in the following form:

"The consumer acknowledges that the lender is not, or may not be, subject to the *National Consumer Credit Protection Act 2009* (Cth) ("the NCCP Act") and accordingly the consumer may not have the benefit of the statutory protections afforded to consumers under the NCCP Act including, without limitation:

- access to the services of the Financial Services Ombudsman;
- access to dispute resolution services;
- access to a streamlined court procedure for small claims;
- a right to seek compensation;
- applications for hardship variations or stays of enforcement; and
- receiving information from the Credit Provider when a consumer defaults on their contract or a debit is dishonoured.”

This clause would need to be signed by the consumer as an acknowledgment that the consumer is or may be waiving certain statutory rights.