

Explanatory Memorandum

Behind the Meter Distributed Energy Resources Provider Code

1. Executive Summary

The COAG Energy Council has requested industry, consumer groups and other stakeholders to develop an industry-wide Code of Conduct for sellers of distributed energy resource products, systems and services including solar and storage technologies. The Behind-the-Meter Working Group (BTMWG) was formed to deliver on this request. The attached draft Code has been prepared.

Comments are now invited from all stakeholders including industry, the general public and government and regulators. The draft Code will then be revised and submitted to the Australian Competition and Consumer Commission for authorisation.

This Note explains the approach that has been taken to drafting the Code and sets out some questions stakeholders are asked to address.

2. Drafting principles

Drafting of the Code has been guided by the following principles:

- 1) Balancing consumer protections with market efficiency and promotion of innovation

The Code should add to legislative protections with the aim of minimising customer harm from poor outcomes, encouraging customers to have confidence in distributed energy resource products, systems and services and thereby encourage participation in the market. A balance must be struck so as to not burden suppliers of distributed energy resource products, systems and services to such an extent that those committed to good practice are nevertheless deterred from participation in the Code.

- 2) Technologically neutral and future proof

The Code must be flexible enough to accommodate all distributed energy resource products, systems and services including new products, systems and services as they enter the market.

- 3) Plain English and accessible

The Code needs to express key commitments in plain English, using principles language, so that these commitments are readily understandable by both industry and their customers.

- 4) Customer journey

The Code commitments are structured in line with the customer journey, beginning with pre-sale information and marketing, then contracting, payment and finance, installation and other post sale obligations.

- 5) Practical guidance and enforceability

To help industry understand how the key commitments, the Code needs to also include practice requirements that are more specific and detailed and can be readily enforced by the Code Administrator.

6) Sound administration

To achieve the confidence of consumers, the Code needs to be administered and enforced fairly and independently. This requires a skilled and sufficiently resourced Code Administrator. As a further layer of protection, the Code provides for an independent panel to overview the Code Administrator and operate as an appeal body.

3. Structure

The draft Code takes a modular structure with the document divided into a number of Parts.

Part A sets out the key commitments. Part B sets out the practice obligations consistent with those key commitments. Part C specifies Code administration. Part D sets out definitions.

The Code provides for the possibility of schedules that set out requirements that are technology-specific. This approach accommodates the fast-changing innovation that is currently occurring.

Structure of Code

Topics	Part A	Part B	Part C	Part D
Aims of Code	Key commitments	Specific practice requirements for all providers of products, systems and services		Definitions
Pre-sale				
Sale				
Payment & finance				
Post-sale & installation				
Complaint-handling & warranty				
Business management				
Administration			Powers of Code Administrator and Code Review Panel and obligations of Signatories to them	

4. Governance

The BTMWG is separately working to develop governance arrangements. It is envisaged that there will be a body (called the Industry Advisory Council in previous documents) responsible for strategically developing and promoting the Code, setting fees/ resourcing of the Code, branding issues and appointment of the Code Administrator. This body must be structured in a way that achieves confidence in the Code and is inclusive of all industry associations that wish to participate.

5. Consultation issues

To assist stakeholders in their review of the Code, we have set out some questions that they might like to consider and respond to – but this is not intended to limit feedback.

General issues

1. Do the key commitments address the goal of good standards of consumer protection? Are there any known poor market practices that would not be sufficiently addressed by the key commitments?
2. Are there any Code obligations that industry consider are overly restrictive and that would deter them from becoming a signatory to the Code, even if the majority of industry participants sign up?
3. Does the Code provide sufficient certainty to industry as to the practices required of them? If there are any areas of uncertainty, would this be sufficiently addressed by the Code Administrator exercising its right under the Code to prepare guidelines for industry?
4. Do the Code Administrator powers and the role of the Code Review Panel provide confidence that the Code will be administered fairly and effectively?
5. Are the dispute resolution processes for consumers under the Code sufficient?
6. What role could the Code play in providing information to consumers? What types of information and in what format?

Specific issues – also marked as “Consultation Question *n*.” in the Draft Code

1. Does the Code, eg paragraph B.1.4, deal sufficiently with all avenues for unsolicited marketing of behind-the-meter products eg door to door, telemarketing, targeted internet marketing etc?

2. The Code recognises that the purchase of products or systems may result in a consumer's electricity tariff changing. To alert consumers to this, paragraph B.2.2d) of the Code requires the product or system provider to tell consumers this and that it is their responsibility to contact the electricity supplier before purchasing the product or system to see what tariffs will apply. Is this sufficient to protect consumers? Note that the provision of electricity – and hence electricity providers – are not within the ambit of the Code and so the Code cannot place obligations on them. Also for privacy reasons it is not possible for the product or system provider to undertake these enquiries on behalf of the consumer.
3. Paragraph B.3.1.a) of the Code requires a product or system structured payment plan to be through a licensed credit provider (ie where the consumer is not required to make payment in full upon installation). This means that the consumer has the benefit of the National Credit Code protections including interest rate requirements, fee disclosures, hardship provisions and external dispute resolution access. Do these benefits outweigh the restrictions for industry?
4. Paragraphs B.2.6 and B.4.2.b) contemplate that the consumer may want themselves to organise connection to the grid eg where a solar system is purchased (rather than delegating this task to the system provider). These paragraphs place obligations on the system provider to assist the consumer with information through the process. Does this achieve the right balance between consumer protection and consumer autonomy, recognising that the multi-party nature of the task of connecting to the grid creates potential for miscommunications and delays that adversely affect the consumer?
5. Paragraph B.8.a) is an undertaking by product, system or service providers that they will comply with standards and guidelines set by the Code Administrator. Paragraph C.1.3) gives power to the Code Administrator to develop standards and guidelines to support the key commitments in Part A of the Code (3 months' notice must be given via the Code website). This is a mechanism for ensuring that the Code keeps up with market developments. Is this appropriately balanced with fairness and certainty for industry?