

Proposed changes to the minimum co-payment clauses of the ESS Rule

To Whom it may concern;

Energy Efficiency Certificate Creators Association (**EECCA**) makes this submission to the current consultation on the NSW Energy Savings Scheme Rule 2009.

<https://www.resourcesandenergy.nsw.gov.au/energy-consumers/sustainable-energy/efficiency/scheme/energy-savings-scheme-rule-change-2017-18>

This submission proposes changes to the co-payment requirements of the Home Energy Efficiency Retrofit (HEER clause 9.8.1(g)) and Commercial Lighting Energy Savings Formula (CLF clause 9.4.1(e)) to align them to broader industry practices around financing. Specifically, we propose that co-payments be recognised as satisfying the above clauses where a contract is in place with an Australian Credit Licence holder.

We propose that this change come into effect before 1 July 2018 (e.g. commencing on 1 April 2018), prior to the vintage year closing for 2017 implementations. This would allow the creation of ESCs prior to 30th June 2018 for installations representing genuine energy savings where the decision to implement the project was legitimately made considering ESC revenue, but where payments made under contracts for the implementation are yet to reach the minimum requirement, though will reach the minimum during the contract period.

Feedback from EECCA members representing around 50% of commercial lighting ESC registrations in 2017 is also provided as an appendix.

Proposal

The proposed changes to the ESS Rule clauses are shown in red below:

9.8 Home Energy Efficiency Retrofits

9.8.1 The Energy Savings for an Implementation may be calculated using Equation 16, provided that:

(a) ...

(g) the Purchaser has paid **or is bound through a Credit Contract to an Australian Credit Licensee through to pay**, a net amount of at least \$30 (excluding GST) which must not be reimbursed, for the Implementation, assessment and other associated works carried out at the Site, and which payment is evidenced to the satisfaction of the Scheme Administrator, unless delivered through a Low-income Energy Program.

9.4 Commercial Lighting Energy Savings Formula

9.4.1 The Energy Savings for an Implementation may be calculated using Equations 6 and 9 and either 7 or 8, provided that:

(a) ...

(e) the Purchaser has paid **or is bound through a Credit Contract to an Australian Credit Licensee to pay** a net amount of at least \$5 (excluding GST) per MWh of Electricity Savings, which must not be reimbursed, for the goods or services making up the Implementation, and which payment is evidenced to the satisfaction of the Scheme Administrator;

The proposed changes would also require these additional definitions added to the ESS Rule:

Definitions:

Australian Credit Licensee is, as defined in the *National Consumer Credit Protection Act 2009*, the Licensee holding a current Australian Credit Licence or is a Credit Representative of the Licensee.

Credit contract has the same meaning as that defined in the *National Consumer Credit Protection Act 2009*.

Credit Representative has the same meaning as that defined in the *National Consumer Credit Protection Act 2009*.

The proposed aim to allow financing where the contract obligations will be met by the Energy Saver, and so the minimum co-payment requirements will be met, because the credit provider:

- A. Holds a regulated Australian Credit Licence
- B. Had its suitability to be an Australian Credit Licensee assessed by a government regulator
- C. Has ongoing compliance obligations
- D. Has the threat of penalties, including loss of licence, for non-compliance
- E. Has its licence details publicly available in an up-to-date register

The below information and links are provided to illustrate the above points.

As the licensing process is a point in time assessment, it is proposed that ACPs be required to support an ESC claim that includes a credit contract by providing **evidence** both:

- 1) the **signed contract** between the Australian Credit Licensee and the Energy Saver, and
- 2) the **results of a (free) search of the ASIC Professional Register of Credit Licensees** showing the Credit Licensee's (sample search **attached**):
 - a. Licence Number
 - b. status to be 'current' (not 'suspended' or 'ceased') by ensuring the date of the signed contract is between the date of commencement of the Credit Licence and the date of installation ,
 - c. the details of the licence, showing that the licensee is authorised to engage in the credit activity subject to the contract e.g. being a credit provider under a credit contract

Refer to: <https://connectonline.asic.gov.au/HLP/SearchRegisters/sch-using-this-service/sch-whatyoucansearch/professional-registers/index.htm>

- 3) if relevant, **written notice authorising the credit representative** to engage in specified credit activities on behalf of the licensee

Refer to section 64 of the *National Consumer Credit Protection Act 2009*

To engage in credit activities, a business must have a credit licence or an authorisation from a credit licensee. (Refer to: <http://asic.gov.au/regulatory-resources/credit/>)

ASIC is the national regulator for consumer credit and consumer leases under the national credit legislation. This legislation includes:

- A. the National Credit Code (which is in Schedule 1 to the *National Consumer Credit Protection Act 2009* (National Credit Act)) – which contains requirements in relation to the entry into, terms and enforcement of credit contracts and consumer leases
- B. the National Credit Act – which contains requirements for persons who are involved in consumers obtaining credit contracts or consumer leases (including both the credit providers and lessors, and other persons such as finance brokers) to be licensed and to comply with responsible lending requirements.

From 1 January 2011 all entities wanting to engage in credit activities must be:

- 1) an Australian Credit Licence holder, or
- 2) otherwise permitted to engage in credit activities (e.g. an authorised representative of either of the above).

as assessed and issued by ASIC in its role as regulator of the consumer credit industry. (Refer to: <http://asic.gov.au/for-finance-professionals/credit-licensees/>)

Australian Credit Licensees are required to engage in credit activities efficiently, honestly and fairly, maintain organisational competence and manage conflicts of interest. (Refer to: <http://asic.gov.au/regulatory-resources/credit/credit-general-conduct-obligations/>)

Credit Licensees must:

- 1) maintain their organisation's training and competence.
- 2) have adequate financial resources to engage in credit activities (if they are not also regulated by APRA)
- 3) have an adequate process for appointing and supervising credit representatives
- 4) have in place dispute resolution procedures
- 5) have adequate consumer compensation and insurance arrangements

In determine whether to grant an Australian Credit Licence ASIC assesses, among other things, whether the person is fit and proper and whether the person meets the requirements prescribed by the regulations. (ASIC must not grant a licence to a person contrary to a banning order or disqualification order, or if a prescribed State or Territory order is in force against the person or certain representatives of the person). (Refer to Section 37 of the *National Consumer and Credit Protection Act 2009*)

In making its decision ASIC must have regard to, among other things, whether the person has ever been disqualified from managing corporations, has any criminal convictions within 10 years before the application was made, any other matter ASIC considers relevant.

ASIC has a range of powers – compliance and enforcement. (Refer to Chapter 6 of the *National Consumer Credit Protection Act 2009*), including but not limited to:

- A. the power to investigate
- B. the power to conduct an examination of a person, including the power to require their attendance
- C. inspection powers, including audit information-gathering powers and the power to require a person to provide information or to state who last had possession of the information
- D. the power to hold hearings
- E. the power to make restraining and directing orders

Where a person contravenes a requirement made under Chapter 6 of the *National Consumer Credit Protection Act 2009* there are criminal penalties.

Complaints about an Australian Credit Licensee can be made to ASIC or to the Australian Competition and Consumer Commission (ACCC).

Appendix A - EECCA member feedback on the minimum co-payment clauses of the ESS Rule

	ACPs that represent around 50% of commercial lighting ESC registrations in 2017							
	ACP 1	ACP 2	ACP 3	ACP 4	ACP 5	ACP 6	ACP 7	ACP 8
1. Prior to the Rule change did your organisation (or if you are an aggregator, your customers' organisations) ever use financing options for commercial lighting activities? YES/NO	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
2. In terms of projects lost due to the "has paid" finance Rule change, how significant has it been? None/Minor/Moderate/Significant	Significant	Moderate	Significant	Minor	Moderate	Moderate	Minor	Minor
3. Are you able to indicate approx. quantum of sales losses as a result of ineligibility of finance not representing "has paid" : <\$200k. / \$201k - \$500k / \$501k - \$1m / \$1m+	\$1m+	\$201K to \$500K	\$1m+	<\$200K	>\$500k to \$1m	>\$500k to \$1m	<\$200K	NA
4. What business or industries types has this impacting the most?	Unsure	All	Schools, Uni, Smaller businesses	Unknown	Educational and Industrial	Industrial	Varied	NA
5. How important do you feel financing options are to increasing commercial lighting project uptake? None/Minor/Moderate/Significant	Significant	Significant	Significant	Moderate	Moderate	Significant	Significant	Significant
6. If financing options were limited to Australian Financial Services Licence holders (i.e. no vendor financing) would you use these companies for financing options? YES/NO	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Scale: minor, moderate, significant.