



DEPARTMENT OF INDUSTRY, SCIENCE, ENERGY AND RESOURCES

Independent Review of the Clean Energy Finance Corporation decisions in relation to RateSetter

July 2020

Disclaimer

This review has been conducted as an independent assessment of the facts in relation to the allegations of favouritism made around the Clean Energy Finance Corporation's (CEFC's) conduct towards RateSetter. Our review work was limited to that described in this report. It did not constitute an 'audit' or 'review' in accordance with the standards issued by the Auditing and Assurance Standards Board, and accordingly no such assurance under those standards is provided in this report.

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GLOSSARY

Term	Definition
BNPL	“Buy Now Pay Later” business/financial product
CEFC	Clean Energy Finance Corporation The CEFC is established under the <i>Clean Energy Finance Corporation Act 2012</i> . The role of the CEFC is to facilitate increased flows of finance into the clean energy sector. The CEFC performs this role by making investments which attract private sector finance, as well as through working with its strategic co-financing partners to catalyse flows of money into the sector.
DEM	NSW Department of Energy and Mining
DPIE	NSW Department of Planning, Industry & Environment
EIC	Executive Investment Committee An advisory committee established under the CEFC Board.
FOI	Freedom of Information
SA HBS	South Australian Home Battery Scheme The SA HBS gives all grid-connected South Australians access to state government subsidies and low-interest loans - provided by the Clean Energy Finance Corporation - to help pay for a home battery system and new solar if required.

1. INTRODUCTION

On 2 March 2020, the Minister for Energy and Emissions Reduction requested the Secretary of the Department of Industry, Science, Energy and Resources (department) to lead an independent review of the Clean Energy Finance Corporation's (CEFC) project and investment decisions relating to peer to peer lender RateSetter following media coverage of allegations of favouritism and anti-competitive behaviour.

RSM Australia was then engaged by the department to undertake an independent assessment of the facts in relation to the allegations of favouritism made around the CEFC's conduct towards RateSetter.

Specifically, some industry participants have alleged that the CEFC partnered with RateSetter to secure RateSetter as the sole loan provider under the South Australian (SA) Home Battery Scheme (HBS) and the New South Wales (NSW) Empowering Homes Pilot Program, for amounts up to \$100 million and \$7 million respectively.

Industry participants also alleged that the CEFC provided seed funding of \$20 million to RateSetter in 2017 to assist it to expand its business into green lending and consider that this gave RateSetter a competitive advantage as other industry participants who have subsequently applied to the CEFC for similar opportunities that have been unsuccessful.

The CEFC is established under the *Clean Energy Finance Corporation Act 2012* (CEFC Act), which defines how they operate and invest. The CEFC is a corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

Section 9 of the CEFC Act states:

1. *“the Corporation has the following functions:*
 - a) *its investment function (see subsection 58(1));*
 - b) *to liaise with relevant persons and bodies, including ARENA, the Clean Energy Regulator, other Commonwealth agencies and State and Territory governments, for the purposes of facilitating its investment function;*
 - c) *any other functions conferred on the Corporation by this Act or any other Commonwealth law;*
 - d) *to do anything incidental or conducive to the performance of the above functions.*
2. *In performing its functions, the Corporation must act in a proper, efficient and effective manner.”*

2. SCOPE

The scope of the engagement included:

1. Consideration on whether CEFC complied with the *Clean Energy Finance Corporations Act 2012* (CEFC Act) when it awarded seed¹ funding to RateSetter in 2016-17;
2. Consideration on whether there is any evidence that the CEFC facilitated improper preferential treatment for RateSetter in its appointment as project partner in the SA Home Battery Program and the pilot NSW Empowering Homes Program;
3. Consideration of the appropriateness of the arrangements in place for other current and future planned projects between CEFC and RateSetter; and

¹ Seed funding is a term usually associated with equity raises (which is not what CEFC provided), therefore references made relating to CEFC's investment being considered as seed funding are not an accurate representation of the investment made. The correct term in this instance is considered to be an initial investment. References made in this report to “initial seed funding” correspond to the original terms of reference for this review has been conducted under.

4. Having regard to the findings of these considerations, make recommendations to improve the transparency and accountability of CEFC decision making and any other processes, as appropriate.

This engagement did not include:

- An assessment of the appropriateness of policy decisions made or overall governance structures in place at CEFC;
- An assessment of whether recent project and investment decisions are having anti-competitive effects;
- Broader consideration of market perception of CEFC decisions in relation to RateSetter and/or other partners; or
- A review of state government decision making and program delivery processes in relation to the SA Home Battery Program and the NSW Empowering Homes Program pilot.

3. TERMS OF REFERENCE

The engagement considered the following elements as they relate to the CEFC:

1. What processes were undertaken in relation to the provision of the \$20 million seed funding provided to RateSetter in 2016-17?
 - a. Was this provided as part of a broader program?
 - b. How was the decision to provide seed funding to RateSetter arrived at, and what was the process that underpinned the decision?
 - c. In the circumstances, was formal evaluation of all options and participants required? Was a formal evaluation of all options and participants considered?
 - d. What communication was provided to the market and unsuccessful applicants (if any)?
 - e. Were any perceived or actual conflicts of interest appropriately identified and managed in relation to the provision of seed funding to RateSetter?
2. What processes were applied to subsequent industry requests to CEFC for similar funding arrangements? Were these processes required in the circumstances? If yes, were the processes used consistent with those used to award seed funding to RateSetter?
3. What is CEFC's role in the SA Government \$100 million Home Battery Program? In particular, what was CEFC's role (if any) in RateSetter's appointment as the successful partner for this program?
 - a. What is the timeline of events/decisions made under this program?
 - b. How and at what point was the Memorandum of Understanding arrangement between CEFC and SA Government made?
 - c. In the circumstances, was a competitive process required to appoint a CEFC delivery partner? If so, was there a competitive process undertaken to appoint RateSetter as the delivery partner?
4. What is the CEFC's role in the NSW Government \$7 million pilot Empowering Homes Program? In particular, what was CEFC's role (if any) in RateSetter's appointment as the successful partner for this program?
 - a. What is the timeline of events/decisions made under this program?
 - b. Is there a formal arrangement between CEFC and NSW Government?
 - c. In the circumstances, was a competitive process required to appoint a CEFC delivery partner? If so, was there a competitive process undertaken to appoint RateSetter as the delivery partner?
 - d. What processes were followed to secure other current and planned future projects between CEFC and RateSetter?
 - e. What decision making processes were applied?
 - f. Have any perceived or actual conflicts of interest been appropriately managed?

4. APPROACH

The approach taken to this engagement included:

- Gained an understanding of the arrangements in place between CEFC and RateSetter through engaging with relevant stakeholders from:
 - CEFC representatives who are involved with the arrangements with RateSetter
 - SA and NSW State Government representatives involved in the appointment of RateSetter in the Home Battery Program and Empowering Homes Pilot Program (respectively)
 - RateSetter representatives (involved in the application and administration of the programs)
 - Brighte, FlexiGroup Community First Credit Union representatives
 - Clean Energy Council representatives
- Reviewed relevant documentation provided by all stakeholders engaged throughout the process demonstrating the relevant processes followed in each of the CEFC arrangements with RateSetter.
- Prepared a report for the Secretary outlining responses to the questions raised in the scope and terms of reference. Specifically addressing whether CEFC's initial investment in RateSetter was appropriately awarded, and whether CEFC influenced state government decisions relating to their appointments of RateSetter.

This report has been prepared to address the major findings provided to the Secretary, however, references to commercially sensitive information have been excluded.

5. ROLE OF CEFC

The role of CEFC is to facilitate increased flows of finance into the clean energy sector. The CEFC performs this role by making investments which attract private sector finance, as well as through working with its strategic co-financing partners to catalyse flows of money into the sector.

In order to achieve the objectives, set out in their investment mandate, the CEFC are constantly looking for and considering various opportunities across a range of clean energy initiatives. They do not have formal programs of funding (similar to grants) where open market participants are asked to apply for funding opportunities. Market participants engage directly with the CEFC to develop an investment opportunity that meets the CEFC's objectives and mandate, can benefit the participant and stimulate private sector finance.

6. OUTCOMES OF THE REVIEW

In relation to the scope of this engagement, the following outcomes are outlined below:

6.1 Consider whether CEFC complied with the *Clean Energy Finance Corporations Act 2012 (CEFC Act)* when it awarded seed funding to RateSetter in 2016-17

Overall the review has found that all decisions made in relation to the CEFC's relationship with RateSetter are compliant with the CEFC's governance frameworks and legislative obligations.

There is evidence there was an assessment of the maturity of the peer to peer lending market (through a Marketplace Lending Paper) at the time, and consideration of investment options that would generate positive externalities in line with CEFC's investment mandate, and which presented the lowest financial and reputational risks to CEFC. Other providers were considered at the time, but were less mature, did not offer regulated loan products, and were not licensed to raise funds from retail investors.

The investment offered the opportunity to create a peer to peer lending platform, allowing small investors to participate as lenders in the carbon-reduction market for the first time, thereby catalysing the flow of money into the sector, in line with CEFC's mandate.

Since that time, there is evidence that when CEFC has been approached by maturing industry participants, it has provided comprehensive feedback regarding the need for opportunities to generate new sources of capital, or offer new business models or product differentiation which would otherwise not occurred and that will further increase flows of finance into the market.

6.2 Consider whether there is any evidence that the CEFC facilitated improper preferential treatment for RateSetter in its appointment as project partner in the SA Home Battery Program and the NSW Empowering Homes Pilot Program.

There is no evidence to suggest that CEFC have facilitated improper preferential treatment for RateSetter in its appointment as finance partner in the SA Home Battery Program and the NSW Empowering Homes Pilot Program.

6.2.1 SA HBS

On 11 May 2018, CEFC were requested by the SA Government to provide a proposal on how the Home Building Scheme (HBS) could work. Given CEFC's existing work with RateSetter mentioned above, due diligence procedures already undertaken, experience in working with RateSetter and the timeframes in place, CEFC and RateSetter worked on a combined approach based on the initial green marketplace lending platform (Roper) which was submitted on 22 May 2018 (11 calendar days after it was requested).

In this instance, CEFC put forward RateSetter as their preferred partner in administering the finance component of the program. However, CEFC advised SA Government at the time, that this was due to RateSetter having already met the CEFC's due diligence processes; an assessment of the financial and reputational risks; and CEFC's proven experience and confidence in the RateSetter platform. There is evidence that CEFC at the time indicated that it was willing to work with alternative providers, however they would need to satisfy relevant due diligence requirements, introducing potential delays/risks to the program.

6.2.2 NSW Empowering Homes

There was a presentation made by CEFC and RateSetter to the NSW Government. This presentation was at the request of NSW State Government representatives on the announcement of the SA HBS, specifically for CEFC and RateSetter to present on the approach to program delivery of the subsidy and finance component. CEFC and RateSetter working together on the SA HBS scheme was publicly announced, with the request for a presentation made relating to the operational nature of the SA HBS. Not a presentation on how the CEFC and RateSetter proposed to work with NSW.

This presentation was for information purposes only and conducted five months before the NSW State election and associated commitments to NSW Empowering Homes Program.

6.2.3 Overall

In our review of the evidence provided throughout this engagement, CEFC's conduct is considered appropriate to the circumstances and their legislative mandate. It is only when references to CEFC's partnership with RateSetter in relation to the SA and NSW programs are taken out of context, that they can appear improper. Proper context must be provided for an accurate assessment.

In both the SA and NSW programs, there were significant time pressures imposed by the state governments to roll out the home battery schemes. In both instances the state government representatives were in discussions with other potential delivery partners and had made independent decisions on the appointment of RateSetter.

In particular, in the case of the NSW Empowering Homes Program, the design of the program changed and evolved over a short period, as a result a decision was made by the NSW Government to trial a small pilot program to test the effectiveness of a larger program. It has been reiterated across various communications that the delivery partners (CEFC and RateSetter) for the NSW Empowering Homes Pilot Program have been appointed for the pilot program only and that the NSW government intends to approach the open market once the pilot learnings have been gathered. In discussions with some market participants, there remains concerns about whether the NSW government will proceed with an open market approach following the pilot.

It can be understood where market pre-conceptions and misunderstandings can occur, particularly when the perception of whether appropriate open and transparent procurement activities have taken place for government programs.

There are also differences in the products and platforms offered by each of the potential delivery partners at the time which has also impacted on decisions made by the relevant state government representatives. Particularly regarding the SA Home Battery Scheme, a key consideration of which was the regulated loan product platform that RateSetter were offering with some competitors in the market offering unregulated loan products at the time such as Buy Now Pay Later (BNPL).

At all points in the process of CEFC's engagement with State and Territory Government representatives, CEFC have reiterated that whilst they have experience working with RateSetter and their associated product platform, the provision of finance for the program was not exclusive to the use of RateSetter, and they are willing to work with any market provider selected by the State and Territory government representatives pending a positive outcome from the CEFC due diligence process in relation to the provider. This has also been confirmed emphatically by both SA and NSW State Government representatives throughout this review.

6.3 Consider the appropriateness of the arrangements in place for other current and future planned projects between CEFC and RateSetter.

There is no evidence to support any assertions that the current and future planned arrangements (at the time of this review) between CEFC and RateSetter are not appropriate. There is also no evidence of inappropriate conduct or behaviour by the CEFC in exploring these opportunities.

Some of the frustrations raised in this review by other market players relate to RateSetter's approach to program delivery in its capacity as an administrator or service provider to the State governments under the schemes. Consideration of RateSetter's behaviour in conducting their obligations under the State Government programs is outside the scope of this review and should be considered through the assurance processes conducted by the relevant State Governments.

6.4 Having regard to the findings of these considerations, make recommendations to improve the transparency and accountability of CEFC decision making and any other processes, as appropriate.

Given the commercial nature of the transactions to which the CEFC is a party, it is not appropriate that details of the commercial arrangements of the transactions should be made public or provided to third parties. However, it is appropriate that feedback is provided to those parties who are not successful in their approaches to the CEFC and for CEFC's investment policies and decision-making frameworks to be made publicly available. We have seen evidence where unsuccessful parties have been provided with detailed feedback commensurate with their approach to the CEFC and note that CEFC's investment policies (which include CEFC's decision-making frameworks) are publicly available on their website.

Some of the perceptions and allegations raised in this review have been created by combining the circumstances surrounding a number of decisions made by different stakeholders including the independent decisions made by State Governments, for which the CEFC cannot be held accountable.

When each decision is assessed in isolation with the full facts of the matter, there is no evidence to suggest that the CEFC have acted improperly.

Based on the information uncovered in the process of this review we do not have any specific recommendations to improve the transparency and accountability of CEFC decision making and any related processes.

7. CONCLUSION

In order to achieve the objectives set out in their Act and investment mandate, the CEFC are constantly looking for and considering various opportunities across a range of clean energy initiatives. They do not have formal programs of funding (similar to grants) where open market participants are asked to apply for funding opportunities. Market participants engage directly with the CEFC to develop an investment opportunity that meets the CEFC's objectives and mandate, benefits the participant and stimulates private sector finance.

While assessments and analysis of investment opportunities undertaken are commercial in confidence, the types of factors the CEFC considers to operationalise its objectives and investment mandate are outlined in further detail in their Investment Policies which are readily available on their website.

Overall, the review has found that all decisions made in relation to the CEFC's relationship with RateSetter are compliant with the CEFC's governance frameworks and legislative obligations. There is no evidence to suggest that CEFC have facilitated improper preferential treatment for RateSetter in its appointment as finance partner in the SA Home Battery Program and the NSW Empowering Homes Pilot Program and we have not identified any specific recommendations to improve the transparency and accountability of CEFC's decision making.

We encourage the CEFC to continue to:

- actively engage with all willing market participants in exploring opportunities for investment.
- comply with their legislative obligations and broader policy impact considerations.
- be accountable to stakeholders by thoroughly considering the opportunities, risks and impacts that their decisions will have on relevant market participants.
- be transparent in their engagement with potential market participants through provision of considered feedback throughout all phases of the investment lifecycle.



Tony Grieves

Director

RSM Australia Pty Ltd

2 July 2020

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