

## UNDERTAKING TO THE CLEAN ENERGY REGULATOR

Undertaking to the Clean Energy Regulator given for the purposes of section 154Q  
of the *Renewable Energy (Electricity) Act 2000*

by

Formbay Trading Pty Ltd ('Formbay')

### 1. Glossary

1.1 In this Undertaking, unless the contrary intention appears, the definitions in section 5 of the Act, regulation 3 of the Regulations, and this clause apply:

**Act** means the *Renewable Energy (Electricity) Act 2000*.

**Associated provisions** means sections 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1 and 137.2 of the Criminal Code, in so far as those sections relate to:

- (a) the Act; or
- (b) the Regulations.

**Business day** means a day that is not a Saturday, a Sunday, or a declared public holiday in the state of New South Wales.

**CEC** means the Clean Energy Council Limited (ACN 127 102 443).

**Certificate** means a renewable energy certificate, including a Small-scale Technology Certificate created under Subdivision B or BA of Division 4 of Part 2 or under section 30P of the Act.

**Compliance Program** means the Small-scale Renewable Energy Scheme Compliance Program referred to in clause 3.2(a) of this Undertaking.

**Defect** means a failure to satisfy the requirements listed in regulation 39(a) to (d) of the Regulations. This excludes any damage or alterations a system may have sustained post-installation.

**Formbay** means Formbay Trading Pty Ltd (ACN 146 464 995).

**PV** means photovoltaic.

**REC Registry** means the public registry of information maintained by the Regulator in accordance with Part 13 of the Act and which is published at <http://www.rec-registry.gov.au>.

**Registered person** means an individual or entity under the Act who can create certificates.

**Regulations** means the Renewable Energy (Electricity) Regulations 2001.

**Regulator** means the Clean Energy Regulator.

**SAA** means Solar Accreditation Australia Limited (ACN 666 008 368).

**Sites** means the 23 solar PV system installations listed at Annexure B to this Undertaking.

**Solar PV system** means a small generation unit, including solar panels, solar array, isolator, inverter and wiring.

**SRES** means the Small-scale Renewable Energy Scheme.

## 2. Background

### *Person giving Undertaking*

- 2.1 This Undertaking is given to the Regulator by Formbay for the purposes of section 154Q of the Act.
- 2.2 Formbay is an Australian Company, incorporated on 21 September 2010 and holding ACN 146 464 995.
- 2.3 Formbay has been a registered person under the Act since 21 June 2011. Formbay has been creating Certificates in the REC Registry since 1 July 2011.

### *Improper creation of certificates*

- 2.4 The Regulator is a statutory agency with responsibility for administering and enforcing the Act and Regulations.
- 2.5 Under the Act, registered persons can create certificates for electricity generated from certain renewable energy sources. Regulation 20AC of the Regulations sets out the conditions that must be satisfied before certificates can be created in respect of a solar PV system.
- 2.6 Included in those conditions is the requirement under sub regulation 20AC(5)(a) for the creator of certificates to obtain a written statement from the installer of a solar PV system stating:
  - (a) the name of the installer of the unit;
  - (b) the accreditation scheme type or classification, and accreditation number, of the installer of the unit
  - (c) that the installer complied with all relevant requirements of the accreditation scheme for the installation of the unit.
- 2.7 Prior to February 2024, installers of solar PV systems had to be accredited through the CEC accreditation scheme and had to comply with the CEC's code of conduct.
- 2.8 Formbay improperly created 1,617 certificates between 20 July 2021 and 13 April 2022 in relation to 23 solar PV system installations, in contravention of section 24A(1) of the Act.
- 2.9 Formbay was not entitled to create the certificates as the information contained in the installer's written statement was false or misleading in a material particular, in contravention of section 24B of the Act.
- 2.10 Formbay was unaware that the information in the installer's written statement was false or misleading in a material particular, and its compliance procedures did not enable it to identify that the information provided to it was false or misleading in a material particular.
- 2.11 Formbay has cooperated with the Regulator in the investigation of the contravention and has agreed to a mutually acceptable resolution.

### 3. Terms of the Undertaking

3.1 Under section 154Q of the Act, the Regulator may accept any of the following undertakings:

- (a) a written undertaking given by a person that the person will, in order to comply with the Act, the Regulations or the Associated provisions, take specified action;
- (b) a written undertaking given by a person that the person will, in order to comply with the Act, the Regulations or the Associated provisions, refrain from taking specified action;
- (c) a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not contravene the Act, the Regulations or the Associated provisions, or is unlikely to contravene the Act, the Regulations or the Associated provisions in the future; or
- (d) a written undertaking given by a person that the person will surrender one or more Certificates under section 28A of the Act, to compensate for the creation of one or more Certificates that the person was not entitled to create.

3.2 Formbay hereby undertakes to:

#### ***Compliance Program***

- (a) Develop and implement a Compliance Program, to be approved by the Regulator, that minimises Formbay's risk of future contraventions of the Act and Regulations and outlines compliance procedures in accordance with the requirements set out in Annexure A.
- (b) On or before **16 May 2025**, provide the Regulator with the first draft version of the Compliance Program.
- (c) On or before **16 June 2025**, provide the Regulator with a final copy of the Compliance Program.
- (d) On or before **16 July 2025**, implement and adhere to the Compliance Program.
- (e) Maintain and continue to implement the Compliance Program for a period of 18 months from the date the Compliance Program was first implemented; and
- (f) Provide a copy of any document requested by the Regulator for the purpose of ensuring the Compliance Program is being executed in accordance with this Undertaking. Formbay must provide any document to the Regulator within 10 business days of any request.

#### ***Inspection and rectification of Sites***

- (g) Arrange for an SAA accredited installer to inspect all Sites listed in Annexure B.
- (h) On or before **24 January 2025**, provide to the Regulator the name of the SAA accredited installer/s Formbay intends to use to inspect the Sites.

The accredited installer/s must be agreed by the Regulator prior to any inspections or rectifications taking place.

- (i) On or before **25 July 2025**, Formbay will ensure the SAA accredited installer/s agreed by the Regulator in clause 3.2(h), has inspected each of the solar PV systems at the Sites.
- (j) If any of the inspections identify defects with the installation, Formbay will ensure that on or before **25 July 2025**, an SAA accredited installer/s agreed by the Regulator will install a new solar PV system, or remedy any defective part of the installation, ensuring the new system or rectification complies with the Regulations.
- (k) If Formbay requires changing the SAA accredited installer/s agreed to by the Regulator in clause 3.2(h) for the purpose of undertaking clause 3.2(i) or 3.2(j), Formbay will notify the Regulator immediately to seek approval of a different SAA accredited installer prior to any inspection or rectification work taking place.

#### ***Surrender of certificates***

- (l) On or before **26 September 2025**, surrender certificates equal to the number of certificates created for those solar PV system installations that are unable to be inspected as required by clause 3.2(i) of this Undertaking due to consent being unable to be obtained from the owners of the Sites (and where relevant, the occupiers of the Sites).

#### ***Report in writing***

- (m) To report twice to the Regulator, with the first report due on or before **28 April 2025**, and the second report due on or before **26 September 2025**, with the report not to be provided any earlier than five business days prior to those dates.
- (n) Provide a written report, in a form approved by the Regulator, with respect to the progress made in completing the undertakings at clause 3.2(i) and 3.2(j). Attached to this report must be copies of the following documents for each solar PV system inspected and/or rectified as part of the undertaking at clause 3.2(i) and 3.2(j):
  - (i) evidence of the inspection of the Sites completed by the SAA accredited installer/s
  - (ii) results of the inspection(s) carried out by the SAA accredited installer/s, outlining the particulars of what was inspected on each solar PV system at the Sites, whether it has a defect, and if it does have a defect, the nature of that defect
  - (iii) evidence of any rectification work completed by the approved SAA accredited solar installer/s, as required by clause 3.2(j) of this Undertaking, including resubmission of all relevant State of Territory certificates of compliance for electrical work
  - (iv) for any rectification work completed under clause 3.2(j) of this Undertaking, a statutory declaration from the approved SAA accredited installer/s who carried out the rectification, containing written statements of compliance, in accordance with regulation 20AC(5) of the Regulations

- (v) if any Sites are not able to be inspected or rectified as required by clause 3.2(i) and 3.2(j) of this Undertaking due to consent being unable to be obtained from the owners of the Sites (and where relevant, the occupiers of the Sites), Formbay will provide a statutory declaration outlining the:
  - (A) full address of the Site
  - (B) steps taken to contact the owner/occupier of the Site
  - (C) method of that contact
  - (D) date/s of that contact; and
  - (E) any other relevant details of that contact.
  
- (vi) if any Sites are not able to be inspected or rectified as required by clause 3.2(i) and 3.2(j) of this Undertaking for any reason other than consent not being able to be obtained as outlined in 3.2(n)(v), Formbay will provide a statutory declaration including:
  - (A) the full address of the Site
  - (B) details of any contact with the owner/occupier of the Site, and/or the SAA accredited installer/s responsible for the inspection/rectification of the Site
  - (C) the method of that contact
  - (D) the date/s of that contact; and
  - (E) any other relevant information regarding why the Site could not be inspected and/or rectified.

#### ***Copies of documents***

- (o) Provide a copy of any document requested by the Regulator for the purpose of ensuring the terms of clause 3.2 of this Undertaking are being met. Formbay must provide any document to the Regulator within 10 business days of any request.

#### ***Ownership and directorship***

- (p) In the event of a change in ownership or change to the majority of directors of Formbay, bring the existence of this Undertaking to the attention of the new owners/directors and provide them a copy of this Undertaking or direct them to the website of the Regulator where a copy will be published.
- (q) Notify the Regulator no later than 10 business days after a change in ownership or change of directors of Formbay and provide the contact details of the new owners or directors.

### **4. Acknowledgements**

#### **4.1 Formbay acknowledges that:**

- (a) the basis on which the Regulator has formed its conclusion in clause 2 is valid and that the matter requires immediate attention;

- (b) the Regulator will make this Undertaking publicly available, including by publishing it on the Regulator's website;
- (c) the Regulator and Officials of the Regulator may, from time to time, make public reference to this Undertaking and the circumstances giving rise to this Undertaking;
- (d) this Undertaking in no way derogates from the rights and remedies available to any other person arising from any conduct of Formbay;
- (e) they bear all costs associated with their compliance with this Undertaking;
- (f) they cannot create, or receive any payment for certificates in relation to any act commenced or completed in compliance with this Undertaking;
- (g) no person is entitled to create certificates with respect to any work commenced or completed at the Sites related to this Undertaking;
- (h) where an event or issue occurs that may prevent the fulfillment of clause 3.2 of the Undertaking, the Regulator will not consent to vary the dates specified in clause 3.2 unless a request that outlines the event or issue and reasons why the variation is required is submitted in writing as soon as reasonably practicable after the event or issue occurs, but no later than seven calendar days prior to the specified date; and
- (i) breaching this Undertaking may result in the Regulator enforcing this Undertaking through the Federal Court.

## 5. Commencement of Undertaking

5.1 This Undertaking comes into effect when:

- (a) the Undertaking is executed by Formbay; and
- (b) the Regulator accepts the Undertaking so executed.

5.2 This Undertaking ceases to have effect once the requirements of clause 3.2 have been completed.

**EXECUTED BY**

**Formbay Trading Pty Ltd** (ACN 146 464 995) pursuant to section 127(1) of the *Corporations Act 2001*



.....  
Daniel Joseph Sullivan

CEO & Founder

This.....9th day of December, 2024

**ACCEPTED BY**

**The Regulator** pursuant to section 154Q of the *Renewable Energy (Electricity) Act 2000* by:

*Powell*  
.....

Name: *Pier POWELL*  
.....

Delegate of the Regulator

This.....*16*..... day of *December* 2024

## Annexure A

### Small-scale Renewable Energy Scheme

#### Compliance Program

Formbay Trading Pty Ltd (**Formbay**) will implement a Small-scale Renewable Energy Scheme Compliance Program (**Compliance Program**) that will meet the following requirements:

#### Appointments

1. On or before **24 January 2025**, Formbay will appoint a person to be responsible for the development, implementation, and maintenance of the Compliance Program (**Compliance Officer**). Formbay will notify the Clean Energy Regulator (**the Regulator**) once they have appointed the Compliance Officer.

#### Compliance Procedures

2. On or before **16 July 2025**, the Compliance Officer will develop and implement new compliance procedures that ensure, prior to any creation of a Small-scale Technology Certificate (**certificate**) in the Renewable Energy Certificate (**REC**) Registry, all requirements for certificate creation under the *Renewable Energy (Electricity) Act 2001* (**Act**) and the Renewable Energy (Electricity) Regulations 2001 (**Regulations**) are met (**Compliance Procedures**).
3. Formbay will follow these Compliance Procedures for a period of **18 months** unless otherwise agreed with the Regulator.
4. The Compliance Procedures will be set out in a written document, to include:
  - 4.1 Processes that will prevent the improper creation of certificates, including:
    - (a) Locking all Formbay data once a certificate assignment form has been signed and submitted, including any location metadata associated with the relevant solar photovoltaic (PV) system installation so it cannot be altered by a user.
    - (b) Continuous staff development and training measures to ensure Formbay's staff can meet their obligations as a registered person under the Act.
    - (c) A record of Installer On-site Verification evidence (**IOV**) to be held on Formbay's servers, including the date and time IOV has been submitted.
    - (d) For all applications for certificates made by Formbay, requirements for evidence of the attendance of accredited installers at the site and at key stages of each installation.
    - (e) Using Artificial Intelligence (**AI**) to assist with monitoring risks associated with fraudulent certificate application.
  - 4.2 Implemented new processes that further prevent the improper creation of certificates, including:
    - (a) Analysis and flagging of geolocation data associated with system installations submitted to Formbay.



- (b) Analysis of installer patterns and behaviours to reduce risk of non-compliance.
- (c) A time lock between IOV provided for separate key stages of a system installation.
- (d) All installers, new or existing, that update their accreditation information with Formbay are required to:
  - (i) Capture and creation of Two-Factor Authentication (2FA) via mobile and email.
  - (ii) Confirm first and last name
  - (iii) Take a front-facing profile photo
  - (iv) Upload an identification document for additional verification.
- (e) Periodically requesting that retailers verify the identity of the installers of a PV system (Know Your Customer program).
- (f) Telephone audits of installers onsite at an installation. Note taking for every audit will take place, and records will be stored should they be required for compliance purposes.
- (g) Conducting random site inspections for applications submitted through Formbay's application.
- (h) Updated terms and conditions for the use of the Formbay application/services, including further information around acceptable use, responsibilities, physical and digital inspection or monitoring and stronger consequences for misuse of the application/services.

### **SRES Smart**

5. On or before **31 January 2025**, Formbay will ensure that any person authorised within the REC Registry to create certificates through Formbay's account has completed the SRES Smart program.
6. Formbay will require all future persons authorised within the REC Registry to create certificates to complete the SRES Smart program within 1 month of becoming authorised to create certificates.
7. Formbay will require all persons authorised within the REC Registry to create certificates to complete the SRES Smart program at least once every 12 months.

### **Compliance Review**

8. Formbay will, at its own expense, arrange a review of the Compliance Program (**Compliance Review**) to be carried out by a suitable qualified, independent compliance professional (**Reviewer**), to be agreed with the Regulator.

8.1 The Compliance Review will be undertaken twice;

- (a) commencing no earlier than **9 April 2026**; and completed on or before **23 April 2026**, and;

- (b) commencing no earlier than **9 November 2026**; and completed on or before **23 November 2026**.

8.2 Formbay will ensure that during each Compliance Review, the Reviewer has access to all relevant sources of information in Formbay's possession or control, including without limitation:

- (a) The ability to make enquiries of any officers, employees, representatives, and agents of Formbay; and
- (b) Documents relating to Formbay's Compliance Program.

### **Compliance Reports**

9. Formbay will take all reasonable steps to ensure that after a Compliance Review has been completed, the Reviewer includes the following findings in a report to the Regulator (**Compliance Report**), to be received by the Regulator on or before **24 June 2026** for the first Compliance Review, and on or before **3 February 2027** for the second Compliance Review:

9.1 Whether the Compliance Program includes all the element detailed in clauses 1 to 7 above, and if not, which elements need to be included or further developed.

9.2 Whether there are any material deficiencies in Formbay's Compliance Program, or whether there are or have been instances of material non-compliance with the Compliance Program (**Material Failure**), and if so, recommendations for rectifying these Material Failures.

10. Formbay will implement promptly and with due diligence any recommendations made by the Reviewer in the Compliance Report to address a Material Failure.

11. Where a Material Failure has been identified by the Reviewer in the Compliance Report, Formbay will inform the Regulator of any steps that have been taken, or are proposed to be taken, to implement the recommendations made by the Reviewer in the Compliance Report.

### **Provision of Compliance Program to the Regulator**

12. Formbay will maintain a record of and store all documents relating to the Compliance Program until such a time as this Enforceable Undertaking ceases to have effect.

13. Formbay will, at its own expense, comply with a request made by the Regulator, to produce and provide to the Regulator copies of all documents constituting the Compliance Program, including all Compliance Reports.

### **Regulator Recommendations**

14. Formbay will implement promptly and with due diligence any recommendations that the Regulator may make to ensure that Formbay maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.

## Annexure B

### Sites

Ref.	Accreditation code	Installation State	Certificate creation date	Number of certificates created
1	PVD4245917	VIC	27-Jul-21	78
2	PVD4245844	VIC	27-Jul-21	63
3	PVD4268194	VIC	12-Aug-21	78
4	PVD4237572	VIC	20-Jul-21	118
5	PVD4249177	VIC	29-Jul-21	78
6	PVD4270815	VIC	16-Aug-21	74
7	PVD4268608	VIC	13-Aug-21	56
8	PVD4243508	VIC	26-Jul-21	61
9	PVD4315545	VIC	17-Sep-21	91
10	PVD4252902	VIC	02-Aug-21	78
11	PVD4268705	VIC	13-Aug-21	78
12	PVD4268743	VIC	13-Aug-21	78
13	PVD4269763	VIC	13-Aug-21	61
14	PVD4269759	VIC	13-Aug-21	61
15	PVD4299224	VIC	07-Sep-21	52
16	PVD4597527	VIC	05-May-22	70
17	PVD4553089	VIC	25-Mar-22	70
18	PVD4554941	VIC	25-Mar-22	31
19	PVD4554942	VIC	25-Mar-22	55
20	PVD4576449	VIC	14-Apr-22	108
21	PVD4575061	VIC	13-Apr-22	71
22	PVD4575070	VIC	13-Apr-22	66
23	PVD4576180	VIC	13-Apr-22	41
<b>Total</b>				<b>1,617</b>

