

# Solar leasing - current issues

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- Set the scene
- Main legal/commercial issues
  - Site access
  - Protecting the panel owner's interests
  - Licensing
  - Grid connection issues
- Not in detail today:
  - Grid access
  - Lease versus licence
  - Security options



## IMPORTANT NOTICE

### IMPORTANT NOTICE

This slide deck is not legal advice. It was designed to be accompanied by a spoken presentation, so is incomplete. The treatment of licensing requirements and exemptions, in particular, is oversimplified.

Your circumstances may differ. Seek specific advice.

We accept no liability for anything you do, or don't do, in reliance on anything in, or not in, this deck.

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### FREE\* LEGAL ADVICE OFFER

However, the good news is that the JacMac team is always happy to meet with industry players over coffee\* to discuss these matters, so give Helen, Katie or Matt a call on 08 9426 6888 or email:

- Helen Weatherley on [hweatherley@jacmac.com.au](mailto:hweatherley@jacmac.com.au)
- Katharine McKenzie on [KMckenzie@jacmac.com.au](mailto:KMckenzie@jacmac.com.au)
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*\* You pay for the coffee*



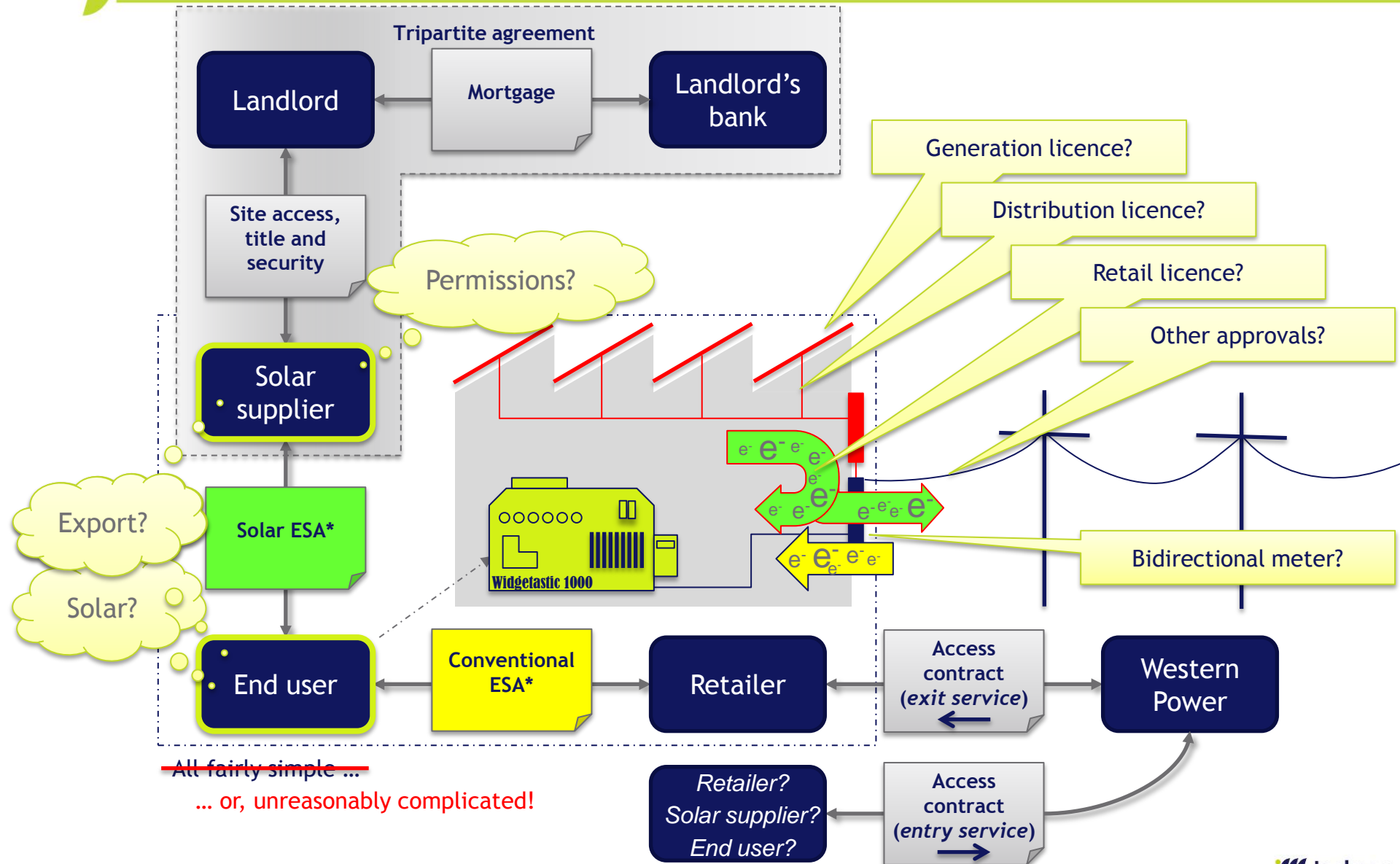
Three basic business models for a panel provider:

- Sell the panels and walk away
- Lease the panels, receive rental payments but otherwise walk away until the lease expires
- ***Retain the panels*** and either
  - (usually) sell the electricity; or
  - sell benefits associated with the supply of electricity

This talk is about the third option.



## Setting the scene - How hard can it be?



\*ESA = Electricity Supply Agreement. (aka PPA = Power Purchase Agreement)

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- Need rights to install
  - panels on roofspace
  - cabling, inverter, etc throughout building
- Need rights to access
  - for installation
  - for maintenance and inspection
  - for removal - including when things go wrong (next slide)
- Who are you dealing with?
  - Is end user the owner?
  - Landlord
  - Strata company



- Panel owner wants to ensure its ownership is protected
  - Law of fixtures
  - Sale of premises
  - Mortgagee rights
- Panel owner wants to be able to reclaim panels
  - When Solar PPA terminated
  - When end user's premises lease is terminated
  - When mortgagee is in possession
- Solar supplier wants to secure payment
  - Need to “charge” the land
  - Lodge a caveat (cost)
- Banks's rights will conflict
  - Tripartite Agreement (if bank willing)
- Generally not PPSA



- Must not, without a licence
  - construct or operate “generating works”
    - includes solar panels
  - construct or operate a “distribution system”
    - broadly defined - basically any wires
  - sell electricity
- Various exemptions
  - Small generators (<30MW)
  - Supply on same premises (complicated - next slides)
  - Other exemptions, eg. shopping centres, specific projects
  - Get advice or talk to the ERA or PUO
  - There is scope for reform





## Do you need a licence? - Commercial premises

COMMERCIAL PREMISES [Note 1]	Consuming only on premises	Exporting from premises
Generation	No [cl. 4A(1A)]	No if <30 MW [cl. 3(2)] <i>and</i> for SWIN, properly metered [cl. 3(3)]
Distribution (any wires)	No [cl. 4A(1)]	Yes? [Note 2]
Retail (selling electrons)	No [cl. 4A(2)]	Yes

Citations are to *Electricity Industry Exemption Order 2005*

**Note 1:** Be careful with Government premises - are they “commercial”?

- Possible reform: Could clarify this

**Note 2:** If connected to SWIS, don’t need a distribution licence *if* have generation licence. [cl. 17(2)] But most solar suppliers will *not* have generation licence.

- Possible reform? Could clarify this, but arguably it’s correct.



## Do you need a licence? - Residential premises

RESIDENTIAL PREMISES	Consuming only on premises	Exporting from premises
Generation	No because <30 MW [cl. 3(2)]	No because <30 MW [cl. 3(2)]
Distribution (any wires)	Probably no? [Note 3]	Yes? [see Note 2 on previous slide]
Retail (selling electrons)	Yes (unless a generation licensee [s 7(6) EI Act])	Yes

"EI Act" is *Electricity Industry Act 2004*

Other citations are to *Electricity Industry Exemption Order 2005*.

**Note 3:** Don't need a distribution licence if wires are "operated" by the person who manages or controls the residential premises, ie the homeowner. If the solar supplier is "operating" the wires, it arguably needs a distribution licence.

- Possible reform: Could clarify this.
- Discuss with ERA



### Bidirectional meters

- Metering Code
  - Must have a bidirectional meter *if* there are to be bidirectional flows
  - But alternatively can block bidirectional flow
    - Is this commercially viable or attractive?
- Western Power policy
  - Must cite a **Retailer Reference Number** for all panels
  - Defacto retailer *consent*
  - Query legal basis
  - WP policy seems to stray beyond pure operational
- *Technical Rules* bind users (retailers)
  - Rule 3.6 connection requirements
  - Users usually pass this obligation to customers



There are genuine operational issues here:

The issues addressed by this clause 3.6 are:

1. the possibility that *generating units* embedded in *distribution systems* may affect the *quality of supply* to other *Users*, cause *reverse power transfer*, use up *distribution system capacity*, create a *distribution system switching hazard* and increase *risks for operational personnel*, and
2. the possibility that a small *power station* or a number of *small generating units* connected to the *distribution system* could become *islanded* on to a part of the distribution system that has become *disconnected* from the *power system*, resulting in *safety and quality of supply concerns*.

Source: Western Power Technical Rules 2011, clause 3.6

- This is about more than just commercial issues
  - bidirectional revenue metering
  - profitability implications for incumbent retailers
  - commercial implications for Western Power
- But it's about those too!



Legal Depth | Breadth | Presence

End

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