

18 November 2022

Attention: The Manager, Policy  
Energy Consumer Policy Branch  
Energy Sector Reform  
Department of Environment, Land, Water and Planning (Victoria)  
By email: [RetailMarket.Reform@delwp.vic.gov.au](mailto:RetailMarket.Reform@delwp.vic.gov.au)

## Protecting Consumers of Distributed Energy Resources (DER)

Thank you for the opportunity to respond to the Department of Environment, Land, Water and Planning's consultation on *Protecting Consumers of Distributed Energy Resources* (DER) (the consultation). We welcome the continued focus on this important issue alongside the opportunities that the fast-paced energy transition offers Victorian consumers, businesses and the broader community.

The Energy and Water Ombudsman Victoria (EWOV) provides free, independent redress to Victorian consumers by receiving and resolving energy and water complaints. We work to ensure fair and reasonable outcomes when energy and water problems arise.<sup>1</sup> We use our unique data insights about consumers' experiences of the Victorian energy and water markets to improve consumer and market outcomes, through our engagement with businesses, government, regulators and the wider community. Our work is guided by the principles in the Commonwealth Government's Benchmarks for Industry-based Customer Dispute Resolution.<sup>2</sup>

EWOV is well-positioned to provide an experienced, fair and independent dispute resolution pathway for Victorian DER consumers. Although our jurisdiction to handle cases related to DER is currently limited to complaints about energy businesses who are members of our scheme, our decades-long experience as the Victorian energy ombudsman scheme means EWOV can play an important role in ensuring consumers have trust and confidence in the evolving market, and that fair and reasonable outcomes are reached when problems arise. Ensuring that consumers have free access to an experienced, independent complaints and dispute resolution body like EWOV is increasingly important in the transitioning energy market, with more people than ever taking up consumer energy resources like solar panels, batteries and electric vehicles.

In this submission, we outline:

- Our current data insights about key market developments and consumer outcomes in the absence of clear redress pathways;
- Why redress plays an important role in ensuring consumers have trust and confidence in the markets, and reducing overall costs currently borne by consumers, businesses and others; and
- A set of feasible options for expanding EWOV's current jurisdiction, for further exploration and consideration.

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<sup>1</sup> See Clause 5.1 of EWOV's Charter: <https://www.ewov.com.au/files/ewov-charter.pdf>

<sup>2</sup> See EWOV's website: <https://www.ewov.com.au/about/who-we-are/our-principles>



## 1. Current market insights and consumer outcomes

The energy market in Australia and internationally is undergoing a rapid transition, alongside increased cost of living pressures and rising energy costs. Many consumers are looking for ways to save money and reduce their household energy expenses by moving to DER options and away from traditional electricity and gas supply. Our data insights are already showing consumers are more price sensitive, and during July-September 2022, we saw rising complaints including:

- 645 complaints about unexplained high bills (up 48% compared to last financial year); and
- 144 complaints about price increases (up 75% compared to last financial year).

In Victoria, the take-up of DER is rapid. As the consultation notes, rollout of solar PV systems has increased each year since 2010, and at mid-2022 there had been approximately 628,596 residential solar PV installations, meaning approximately 1 in 5 Victorian homes now have a small-scale solar PV system.<sup>3</sup>

As the Victorian energy ombudsman, we analyse and share unique insights about emerging consumer experiences of the energy market and broader sectoral challenges. Where consumers raise issues with us that are inside our jurisdiction, we are able to help provide redress and to share our market insights with organisations to improve outcomes and reduce complaints over time. Through our systemic issues and engagement focus, we are able raise emerging issues for direct action by energy businesses, and with government and regulators where broader measures may be needed to resolve issues.

### Current insights: opportunities to address consumer and market harms

Since 2017, EWOV has received just under 8000 complaints about DER products and services. Between 2017-2022, tracking in line with DER rollout and take-up, consumers have tended to mostly complain to EWOV about issues that are within our jurisdiction (we note that we generally receive higher complaints relating to solar products and services due to the much higher take-up and penetration of this type of DER, compared to for example home batteries or electric vehicles).

Our top three DER-related complaint issues have generally been about:

- solar billing (approximately 22% of all DER complaints);
- solar feed-in (approximately 21% of all DER complaints); and
- general solar provision (approximately 24% of all DER complaints).

As a proportion of EWOV's overall cases, the number of DER-related complaints has tended to remain between 600-1300 each year, lowering during the 2020-2021 pandemic years. DER-related complaints peaked during 2019 at over 1200 cases during the pre-pandemic era where more DER installations and purchases were possible.

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<sup>3</sup> Department of Environment, Land, Water and Planning, Consultation paper - *Protecting Consumers of Distributed Energy Resources (DER)*, 2022, p. 7 (the consultation).



As the consultation notes, during 2020-21, EWOV registered 1,296 cases about solar PV alone.<sup>4</sup> This included complaints about billing and connections.

In light of our current jurisdiction, we were able to handle approximately 981 (76 per cent) of the complaints we received during 2020-21.<sup>5</sup> We estimate this is a smaller proportion of a potentially larger group of consumers who do not contact EWOV, as we do not have jurisdiction over DER and therefore do not promote our services in this space. It is also likely other consumers do not pursue a complaint further after being cross-referred, due to friction costs.

In 2021-2022, we therefore referred over 30 consumer complaints (approximately 38% of all of our referrals that year) to a regulator – we referred many of these mostly solar-related complaints to Consumer Affairs Victoria (CAV) so that consumers could receive advice or information about their rights and responsibilities under the Australian Consumer Law and other Victorian laws and regulations. Figure 2, below, shows how solar-related DER complaints have tracked over the last five years.<sup>6</sup>

In a recent thematic review of 20 sample DER-related complaints consumers raised with us during 2021-2022, we identified the following key issues which highlight current concerns and opportunities for improvement:

- **Smooth coordination and communication is key** – At key ‘handshake’ moments that require communication and coordination between consumers and different businesses in the DER supply chain, harms arise when communication falls down (this was also identified in our VOICES project).<sup>7</sup> We identified a number of issues where the DER installation took longer than consumers had expected or been advised by a business, and where some businesses stopped communicating with consumers altogether when problems arose.
- **There is a heightened need for clear and fair redress pathways** – The relatively new and technical nature of DER purchases, installation and operation means it is often difficult for consumers to know how to fix a problem, who is responsible and where to raise a complaint or concern. While EWOV is currently able to, for example, handle a complaint about a solar feed-in tariff offered by one of EWOV’s scheme participants (usually an energy retailer), our current jurisdiction prevents us from, for example, handling a complaint about solar installation by a non-energy retailer who is not an EWOV scheme participant. Similarly, when consumers experience problems with a grid connection or household electrical system, it will often be difficult for consumers to know who is responsible for fixing the problem and where to get help. Of the 20 cases reviewed in October 2022, EWOV referred all but two to Consumer Affairs Victoria due to our current jurisdiction (and in one of the two cases, the consumer had already sought advice from CAV who were unable to assist in that instance, so they were referred to another regulator). In the absence of clear and workable pathways, consumers currently fall back on a complex matrix of proxies

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<sup>4</sup> Noting there was likely a decline in overall cases that year due to the impacts of the COVID-19 pandemic, which prevented some DER activities like new installations during part of that financial year, and parts of the following financial year.

<sup>5</sup> EWOV, *EWOV Annual Report 2021*, p. 46.

<sup>6</sup> EWOV, *Annual Report 2022*, p. 22.

<sup>7</sup> Mr Hugo Temby and Dr Hedda Ransan-Cooper, *We want it to work: understanding household experiences with new energy technologies in Australia – Final report of the VOICES project (Victorian Energy and Water Ombudsman’s Investigations of Consumer Experiences, 2021 (the VOICES report))*.

that are either not free or readily accessible, or are not designed or resourced to provide individual redress (e.g. lodging individual complaints with regulators or seeking paid legal advice).

- **A combination of DER experiences** – Some consumers who contact EWOV seeking redress have had a combination of poor experiences. When we are unable to take on their case because all or part of their experience is outside of our jurisdiction, this adds to a poor overall experience of the DER and energy markets, can result in consumers wasting time and money, and undermines trust and confidence. Our complaints data shows many consumers are keen to bring DER online at the earliest opportunity, usually with significant cost outlay, deposits paid and anticipation of reduced energy bills. Our cases show where businesses are not meeting consumer expectations when these factors combine, and there is currently no clear pathway to resolve issues fairly and reasonably. We have seen a number of complaints where faults arise and consumers are advised by a DER business to resolve the issue with a third-party electrician, only to be informed by an electrician that the system is not safe for them to fix.
- **Informational and other asymmetries** – Our complaints show there can be a lack of clarity about what DER products and services entail, and what to expect from overall DER performance. Due to the nature of the products and services, DER businesses hold the balance of the technical knowledge and information relevant to the consumer transaction. This information asymmetry can lead to poor outcomes when DER outcomes fail to match consumer expectations. However, increasing information or disclosure-led protections is unlikely to fix deeper problems (and may in fact compound current problems).<sup>8</sup> Our cases highlight where there are opportunities to improve DER protections, systems and business practices to address this gap. Important protections such as the Australian Consumer Law (ACL) play a key role in raising standards of overall business conduct, offering incentives to comply, opportunities to address systemic or entrenched harms, and work to create a level playing field for businesses. However, the ACL and other existing protections and bodies are not designed to provide immediate and individual consumer redress. The role of ombudsman schemes in providing more direct dispute resolution and engagement is therefore key.

Alongside the pace of the DER rollout, a patchwork – rather than a clear pathway – for consumer and small business redress has emerged. It is currently challenging for consumers to know where to complain and how to resolve DER problems.

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<sup>8</sup> Discussed in Australian Energy Regulator, *Draft Consumer Vulnerability Strategy*, December 2021, p. 44. Also relevant to the discussion of ‘safe defaults’ below.



**Figure 1 – Current patchwork of redress pathways**

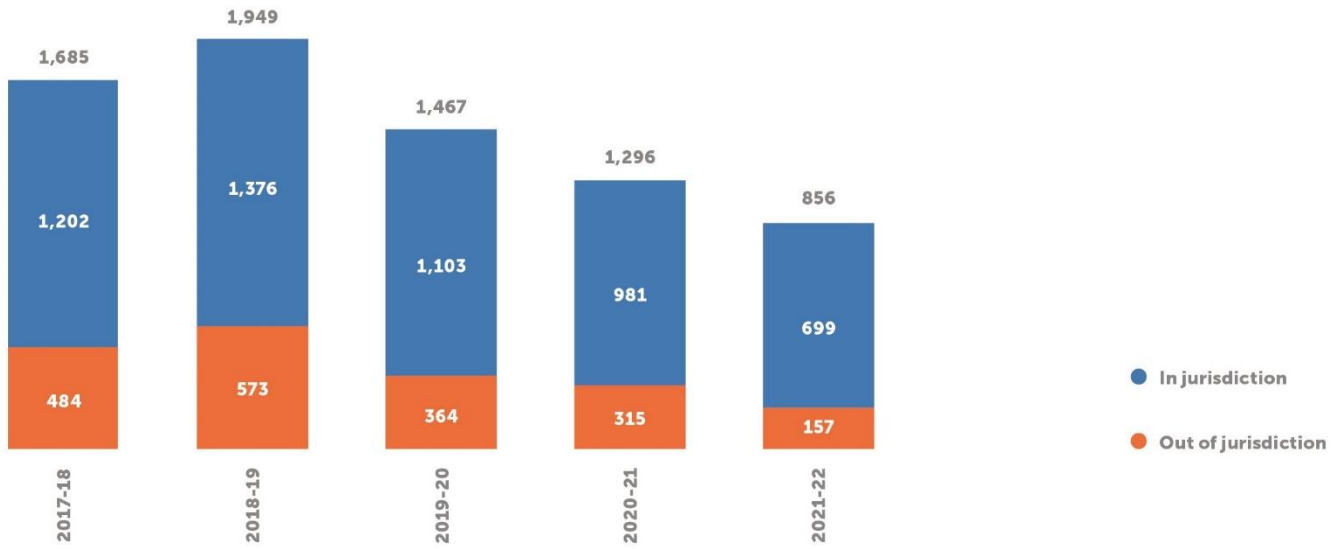
<b>Energy and Water Ombudsman Victoria (EWOV)</b> – dispute resolution scheme	<b>Consumer Affairs Victoria (CAV)</b> – state-based consumer law regulator	<b>Australian Competition and Consumer Commission (ACCC)</b> – national consumer law regulator
Victorian Essential Services Commission – <b>Victoria’s energy regulator</b>	<b>Department of Environment, Land, Water and Planning (DELWP)</b> – Victorian Government department	<b>Solar Victoria</b> – delivers the Victorian Government’s Solar Homes Program (part of DELWP).
<b>Clean Energy Council (CEC)</b> – member-based organisation representing renewable energy businesses	<b>Clean Energy Regulator (CER)</b> – federal Government economic regulator responsible for programs to manage, reduce or offset carbon emissions	<b>Australian Securities and Investments Commission (ASIC)</b> – national financial services regulator
<b>Australia Financial Complaints Authority (AFCA)</b> – provides financial complaints dispute resolution	<b>Victorian Civil and Administrative Tribunal (VCAT)</b> – can hear disputes about fair trading and other matters	<b>Advice</b> – private legal advice, community legal centre or financial counselling advice
<b>Self-represented civil action in a court</b>	<b>Member of Parliament</b> – state or federal	<b>The media</b>

When considering the types of consumer protections and regulatory arrangements needed, it is important to note that redress does not only benefit consumers. The advantages and benefits of sound redress also include opportunities to provide valuable expert insight and feedback to businesses about regulatory standards, good industry practice and community expectations, which can be especially valuable in a developing market. If EWOV’s jurisdiction is expanded to match the rollout and take-up of DER, we would be well-positioned to work constructively and comprehensively across the sector to reduce the types of problems that result in DER-related complaints.

We note that, among the patchwork of individual pathways described above, only EWOV (with an expanded jurisdiction) would be able to offer to DER consumers free redress by leveraging existing scale and systems. In addition to dispute resolution and individual complaints handling, there are opportunities for EWOV, government, regulators and businesses to work together to improve broader consumer and market outcomes, by proactively addressing current and emerging problems and systemic issues. We consider EWOV can play an important role in this, by raising emerging trends and issues so businesses can made improvements early and before deeper or entrenched consumer and market harm arises, and to support fair and reasonable outcomes.

**Figure 2: Trends in consumer insights – solar-related products and services<sup>9</sup>**

**5 YEAR HISTORY**



<sup>9</sup> EWOV, 2022 Annual Report, p. 46.

## 2. Redress is important for trust and confidence

As consumers juggle expenses and conventional energy price rises, there is an increased focus on DER and electrification, with more consumers exploring how DER can reduce ongoing household energy costs and bring about other individual and community benefits. With a heightened reliance on and expectations of DER among consumers, it is important that clear pathways are developed to resolve and prevent problems. As consumers can experience increased concerns about new products and services during times of rapid market transition, having consumer protections and redress in place will play a vital role in supporting trust and confidence in the market.

### Consumers in vulnerable circumstances

As the consultation notes, accessing pathways such as courts and tribunals can be time consuming and difficult to navigate, particularly for consumers that may be experiencing vulnerability or for consumers from culturally or linguistically diverse backgrounds. As a number of recent reviews and initiatives have noted, it is important to consider the types of harms consumers in vulnerable circumstances may be exposed to in transitioning energy markets and the role that redress can play in preventing or reducing these harms. There is currently an opportunity to build on leading initiatives to address these harms in the transitioning energy market in Victoria, including the Victorian Essential Services Commission's current *Getting to fair: breaking down barriers to essential services* strategy.<sup>10</sup>

As developments in other markets have demonstrated, a poor experience in one sector or one part of a market can cause harms in other areas, including financial vulnerability. Where this occurs, this can undermine consumer trust and confidence in the energy market, DER and other markets. There is currently an opportunity to ensure that the market does not cause or compound experiences of vulnerability in this market or others, including through sound consumer protections and redress pathways.

### Fair and reasonable outcomes: pathways not patchwork

Ombudsman schemes like EWOV play a unique role in ensuring consumers and businesses can access direct and effective redress when things go wrong. In complex and evolving markets, clear pathways can help consumers stay engaged in, derive benefits from and have trust and confidence in the market.

Ombudsman schemes are an accessible and cost-effective way to resolve individual disputes compared to formal legal or regulatory avenues. As the Productivity Commission has observed, approximately 80 per cent of matters

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<sup>10</sup> The ESC has developed and is implementing a three-year strategy *Getting to fair: breaking down barriers to essential services*, 12 August 2021. The strategy aims to break down barriers to essential services including energy that some consumers experience, looking at how event-based circumstances, systemic factors and market-based factors contribute to this. As part of its *Consumer Vulnerability Strategy 2020-2025*, UK energy regulator Ofgem has highlighted the need to 'make sure the most vulnerable are adequately protected in this future market' and to consider the 'big questions about how costs are distributed across different groups of consumers and the emergence of potential new consumer risks where these did not previously exist'. The Australian Energy Regulator considered similar issues in its draft Consumer Vulnerability Strategy (December 2021, p. 24). These issues were highlighted in Emma O'Neill, *Exploring regulatory approaches to consumer vulnerability – A report for the Australian Energy Regulator*, 1 November 2019, see especially p. 39.





raised with ombudsman schemes are generally resolved within one month and 97 per cent within six months.<sup>11</sup> Alongside this, it has been noted that disadvantaged people in particular face a number of barriers when seeking to access formal resolution pathways, meaning consumers in vulnerable circumstances are both more susceptible to, and less well equipped to deal with, legal disputes.<sup>12</sup> In its *Access to Justice Inquiry*, the Australian Productivity Commission concluded that, when governments assess regulatory and other frameworks to enable appropriate pathways for dispute resolution, consideration should be given to subsuming new roles within existing ombudsman schemes rather than creating new bodies.<sup>13</sup>

## Current distribution of costs

When ‘things go wrong’, fixing problems can result in significant costs to consumers, businesses, government and other groups. As the Consumer Policy Research Centre has noted, it costs consumers more than \$16.31 billion (total out-of-pocket costs and time spent) to resolve problems with products and services in all consumer markets nationally. Combined, problems with residential energy, banking and finance, internet and telecommunications sector costs account for around \$6.26 billion of these costs. In 2016, EY Sweeny estimated the total average cost per person per year of resolving problems across these sectors was \$366.39. Of this, the average individual cost per person per year of resolving water, gas and/or electricity problems was \$75.99.<sup>14</sup>

Relatedly, PwC Australia has observed that consumers waste \$1.29 billion trying to solve problems arising from poor service design relating to energy and water utilities.<sup>15</sup> Conversely, well-designed products, services and redress can help reduce the time, money and effort consumers, businesses and government spend resolving problems in a number of markets, and increasing innovation, access and competition.

In the context of the current cost of living and cost of business pressures, it is important to consider how the consumer protections framework can be improved to support fair and reasonable outcomes by reducing costs when things go wrong. Modernising EWOV’s jurisdiction can play an important role in reducing these overall market costs, by providing free a pathway for consumers to resolve disputes, and a cost-effective complaints and dispute resolution scheme for a variety of DER businesses. This represents cost savings for consumers, businesses, government and others, as well as an opportunity to reduce other detriments including time and stress. Sound consumer protections and a clear redress pathway can also help facilitate a level playing field for DER and other businesses, by ensuring businesses are required to meet the same minimum consumer protection, safety and other standards.

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<sup>11</sup> Productivity Commission, *Access to Justice Inquiry Report*, 2014, p. 11. As the national Inquiry noted in 2014, at that time, ombudsman schemes had capacity to consider approximately 542,000 cases nationally requiring approximately \$481 million combined government and industry funding across all ombudsman schemes. Tribunals had capacity to consider approximately 395,000 matters, required parties to pay registry and legal fees if represented and required approximately \$508 million in government funding support. Civil courts had capacity to consider approximately 673,393 matters, required payment of registry, costs and other legal fees and required approximately \$836 million government funding.

<sup>12</sup> *Ibid*, p. 11.

<sup>13</sup> *Ibid*, p. 50.

<sup>14</sup> CPRC, *But are they any good?* p. 3. Citing EY Sweeney, *Australian Consumer Survey 2016* (The Treasury, on behalf of Consumer Affairs Australia and New Zealand, 2016), p. 63-66.

<sup>15</sup> Report prepared by PwC Australia for the Centre for Inclusive Design, *The Benefits of Designing for Everyone*, May 2019.



### 3. An expanded EWOV jurisdiction for DER

EWOV is well-positioned to expand its jurisdiction to deliver redress for Victorian DER consumers. We are open to exploring the different ways this can work in practice, including funding models for this important service.

Currently, energy and water businesses that fall within our jurisdiction must become a member of EWOV. Consumers of the services provided by these businesses can come to us for free with enquiries or complaints about those businesses. The business is then charged a fee by us for dealing with those enquiries or complaints. As noted in our joint VOICES research, consumers are looking for certainty, well-timed, low-stress DER purchasing decisions and ways to access redress when things go wrong.<sup>16</sup>

We have outlined below options for further consideration and exploration, drawing on the regulatory options in the consultation. We look forward to exploring these further with the Department and our stakeholders. Overall, we consider consumer and market outcomes will be most effective where there is a regulatory body in place to ensure compliance with a licensing and/or legislative scheme.

- Alongside the **licencing** arrangements outlined in the consultation, whereby some or all DER products and services would be required to obtain a licence to participate in the sector, a condition of a licence could include joining the EWOV scheme. This could either occur across DER product and service types, or could be expanded over time in line with rollout, demand and take-up;
- As part of the **basic legislative scheme** outlined in the consultation, some DER sector participants would be required to join EWOV through legal requirements (we note that overall industry standards and safety are likely to be well-managed through a licensing scheme rather than basic legislative scheme);
- Using either of the models above, or preceding them, test the application of principles over time through **a pilot program**. This would enable designated DER businesses to join EWOV's scheme over time, and for EWOV to work with stakeholders to design and implement systems to handle complaints and resolve disputes related to DER. The pilot would provide an effective proof of concept of the benefits and role of the scheme in supporting trust and confidence in the DER and broader energy market, and could involve a phased rollout over time e.g. starting with residential and small business solar and battery products and services, expanding over a fixed time period to cover other DER products and services including electric vehicles and other products and services as they emerge or increase scale.

In a many of ways, proof of concept of EWOV's capacity and capability to provide redress for DER is already in place, as EWOV currently has jurisdiction to handle DER-related cases relating to energy businesses who are part of the EWOV scheme. We are also managing a number of cases about the Western Renewables Link project, where EWOV has also been able to gain insights into the effective engagement with impacted

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<sup>16</sup> VOICES report. As Dean, from a new energy technology consumer group, told the researchers, many technology users are not even aware of their existing consumer rights, let alone how enforce them: *'Look, the average person doesn't really know that consumer protection rights generally, right? If you buy, I don't know, something from The Good Guys, and it doesn't work, and you take it back, and they tell you to get lost, a lot of people don't know that they have a right to a refund and that there's all these rules. And actually going and getting that remedy through the consumer law framework, in Victoria that's Consumer Affairs Victoria, it's not easy. You have to really—it's not really designed to make resolving disputes easy,'* p. 60.

landowners and communities. In these cases, we were able to quickly expand our land access and customer service jurisdiction to cover a new area where there was demand for redress services.

In addition to considering effective redress pathways and drawing on EWOV's consumer and market insights, we recommend the Department consider the case for regulatory updates through the lens of community expectations and guided by clear, evidence-based goals and outcomes that will foster trust and confidence in DER and the broader energy market. As part of this, we consider it will be important to examine the ways in which updates to consumer protections can improve consumer and market outcomes with a focus on:

- **Trust and confidence** in the transitioning market and the energy market more broadly.
- **Technology-agnostic** – as technological developments are moving quickly, it is important to consider developing regulatory measures that will not become quickly out of date, noting this results in costs to consumers, businesses, government and others.
- As many parts of the DER are consumer-driven, it is important to focus on listening to **lived consumer experiences**. The joint VOICES research provides important insights in this area.
- **Safe defaults** – the Department may wish to consider the relative benefits of a market intervention power (similar to ASIC) and/or a 'consumer duty' (similar to that being implemented by the UK Financial Conduct Authority). While it is sometimes tempting to fall back on information/disclosure led-requirements that 'push' more information to consumers and/or rely on consumers responding rationally to signals, these measures are costly and have been shown not to work.<sup>17</sup>
- Facilitating a **level playing field** for the vast majority of DER businesses who provide high-quality, fit for purpose products and services that meet evolving consumer needs.

In addition to the insights shared in this submission, EWOV regularly publishes data, reports and case studies about the Victorian energy market. We would be pleased to share with the Department further case studies and insights in addition to our data and reports published on our website and shared regularly with stakeholders.

We trust this submission will assist the Department in the important task of considering how best to support trust and confidence in the transitioning energy market. If you would like to discuss any aspect of our submission, please do not hesitate to contact me or Bronwen Jennings, Head of Policy & Communications, at [Bronwen.jennings@ewov.com.au](mailto:Bronwen.jennings@ewov.com.au). We would welcome the opportunity to discuss this submission, the consultation and the Department's next steps.

Yours sincerely



**Catherine Wolthuizen**  
Ombudsman and CEO  
Energy and Water Ombudsman (Victoria)

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<sup>17</sup> AER, *Draft Consumer Vulnerability Strategy*, cited above.