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Victorian Energy Upgrades Program

Department of Energy, Environment and Climate Action

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## EWOV SUBMISSION TO THE VICTORIAN ENERGY UPGRADES STRATEGIC REVIEW

The Energy and Water Ombudsman Victoria (EWOV) is pleased to provide a response to DEECA's request for feedback on the Victorian Energy Upgrades (VEU) program's performance to date, the suitability of its current objectives and metrics, and opportunities for improvement.

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>

### ***Building consumer trust and confidence***

Building consumer confidence and trust is essential to driving wholesale adoption of CER and achieving Net Zero targets.

Consumer research about energy efficiency retrofits in the UK has identified 'fear of getting something wrong means that even those who may have the ability to fund [energy efficiency] retrofit works are not currently doing so'.<sup>3</sup> In Australia, research has identified consumers feeling 'ripped-off' by costs associated with transitioning off gas and to all electric appliances.<sup>4</sup> This elevates the importance of establishing consumer confidence in these markets for emerging products and services, and the need for clear Internal Dispute Resolution (IDR) and External Dispute Resolution (EDR) processes where things go wrong or providers fail to install and/or configure VEU products as expected.

Support and social licence for energy efficiency schemes can be fragile, and consumers and small business are likely to require a high level of reassurance that promised benefits from their individual transition to

<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>

<sup>3</sup> Citizens Advice, *Demand Net Zero: Tackling the barriers to increased homeowner demand for retrofit measures*, May 2023, p. 14, available online [https://www.citizensadvice.org.uk/Global/CitizensAdvice/Energy/Demand\\_%20Net%20Zero.pdf](https://www.citizensadvice.org.uk/Global/CitizensAdvice/Energy/Demand_%20Net%20Zero.pdf)

<sup>4</sup> Grattan, *Getting off gas: why, how, and who should pay?*, June 2023, p. 47, available online <https://grattan.edu.au/report/getting-off-gas/>

renewables will transpire. The recent experience of Germany in relation to its household energy efficiency upgrade program is one example of how this support and social licence cannot be taken for granted.<sup>5</sup>

The experience of consumers with the earlier phase of the VEU program, especially in relation to marketing practices and sale of lower-value products by some accredited and non-accredited suppliers, does indicate the program involves inherent risks regarding provider conduct. EWOV has previously provided insights from its casework highlighting these risks to good consumer outcomes.<sup>6</sup> This is not unusual in subsidy schemes, and underscores the need for robust controls and protections to mitigate those risks – for example the recent introduction of a ban on telemarketing and doorknocking for VEU providers.

As more Victorians seek to improve the energy efficiency of their homes, through upgrading inefficient heating, cooling or cooking appliances, or switching from gas to electric appliances, ensuring that consumers have a clear pathway and free access to an experienced, independent complaints and dispute resolution body is increasingly important in the transitioning energy market. This is especially important as the energy efficiency upgrade program expands to incorporate higher-value products which are likely to require more upfront costs to consumers, and which have the potential to more significantly impact household supply. While supporting widespread uptake through subsidisation is a central part of wider policy efforts to reduce household emissions, this approach brings with it additional risks regarding quality and safety.

EWOV sees issues arising from current take-up of new energy technology, including heat pumps, indicating the potential for issues and poor outcomes to be experienced more widely as the scheme promotes and supports more widespread adoption. Examples from our casework are available on request. This experience, and that of historic home energy efficiency subsidy and incentive schemes operated in other jurisdictions and sectors, underscores the critical importance of robust and fit-for-purpose consumer protection frameworks so that consumers can have trust and confidence and are protected from harm as they engage with the transition to renewables.

For these reasons it is important for the review to consider how policymakers can help de-risk these decisions for consumers to encourage take-up, especially where consumers need to make a financial contribution to an upgrade to their home. Alongside a range of information and communication-based initiatives (outlined elsewhere),<sup>7</sup> access to free and independent dispute resolution is a key part of the solution to these barriers. Access to an effective EDR service can help to facilitate consumer confidence to participate in a market and build trust in new providers of goods and services to do the right thing when something goes wrong, or that IDR or EDR can resolve disputes quickly and efficiently.

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<sup>5</sup> Kate Connolly, “German heat pump rollout at risk as government suspends climate subsidies”, *The Guardian*, 6 December 2023 <https://www.theguardian.com/world/2023/dec/06/german-heat-pump-rollout-at-risk-as-government-ends-climate-subsidies>; Dirk Kaufmann, “Heat pumps: Why Germany's heating revolution is stalling”, *Deutsche Welle*, 20 September 2024, available online <https://www.dw.com/en/heat-pumps-why-germanys-heating-revolution-is-stalling/a-70192621>

<sup>6</sup> Energy and Water Ombudsman Victoria, *Submission to Department of Energy, Environment and Climate Action Consultation paper on banning telemarketing under the Victorian Energy Upgrades program*, July 2023; EWOV, *Submission to Department of Energy, Environment and Climate Action's Regulatory Impact Statement on Regulatory Impact Statement*, March 2024.

<sup>7</sup> Grattan, *Getting off Gas*, p 37; Energy Consumers Australia, *Stepping Up: A smoother pathway to decarbonising homes*, August 2023, p 7 available online <https://energyconsumersaustralia.com.au/wp-content/uploads/Stepping-Up-Report-Final.pdf>; Citizens Advice, *Demand Net Zero*, p. 14.

## ***The current patchwork of dispute resolution pathways***

Under current program settings, consumers can make a complaint about conduct of their VEU installer to the Essential Services Commission (the Commission), complaints about VEU product defects to CAV, safety issues with installations to ESV and complaints about the rebate itself to the Victorian Ombudsman. This patchwork of dispute resolution pathways can be difficult to understand and complicated to navigate.

In the case of the Commission, as its primary function is regulation rather complaint handling, it is not resourced or set up to handle complaints in any material volume. While complaints made to the Commission may inform its compliance and enforcement activities, it does not provide a dispute resolution service and will not address complaints or resolving disputes in the same manner that EWOV would be able to.

In the case of other regulatory bodies (e.g. CAV), consumers may be provided information about the business's obligations and then referred back to the business. They may be told that if they are unable to resolve the matter directly with the business, they can seek legal advice and apply to Victorian Civil and Administrative Tribunal (VCAT). If they do proceed to VCAT, they may need to obtain evidence of fault, which can entail commissioning of an expert report to demonstrate the provide was at fault or breached an obligation or duty. Complainants seeking to take a matter to VCAT are currently advised they should generally expect to wait 52 weeks from the time of application until the date of a mediation or hearing.<sup>8</sup>

Access to external, independent, free and fair redress provided by a single authorised EDR scheme is fundamental to fair, efficient operation of markets. Overseas markets, including the UK, have recognised the importance of external dispute resolution for government-funded energy efficiency programs and our international counterparts have operated equivalent jurisdictions for many years.<sup>9</sup>

EWOV therefore considers that the current lack of clear dispute resolution requirements, both on businesses in the VEU scheme to deliver fair and efficient IDR, and a clear pathway to independent, accessible EDR, is not consistent with the policy objectives of the VEU program. In order to support the success of the scheme, consumers will require assurance that problems with their upgrade can be easily raised and addressed by an independent, expert forum where the business has failed to put matters right. This then raises the question of the most appropriate provider of that effective EDR.

EWOV's decades-long experience as the Victorian energy ombudsman scheme means we can play an important role in ensuring consumers have trust and confidence in the evolving market, that fair and reasonable outcomes are reached when problems arise and systemic issues can be identified and insight and analysis provided to regulators and policy makers to ensure the continued good operation of the scheme. Our independence, expertise and trusted status among Victorian consumers stand us in good stead to provide valuable assurance to the expansion of the VEU program.

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<sup>8</sup> Victorian Civil and Administrative Tribunal, *How long a VCAT case takes*, available online: <https://www.vcat.vic.gov.au/the-vcat-process/when-vcat-starts-a-case/how-long-vcat-case-takes>, accessed 3 October 2024.

<sup>9</sup> See for example, UK Energy Ombudsman, *Terms of reference - Green Deal*, <https://www.energyombudsman.org/terms-of-reference/terms-of-reference-green-deal>

## ***Benefits of Ombudsman as an external redress mechanism***

Ombudsman schemes are trusted sources of independent, fair and efficient dispute resolution, and generating and retaining public trust in the sectors they operate in is one of their key functions.<sup>10</sup>

Drawing on existing schemes can be a simpler and more cost effective than setting up new EDR services. In its Access to Justice Inquiry, the 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>11</sup> EWOV is well-positioned to provide dispute resolution for VEU complaints, alongside retail energy related complaints.

Using EWOV as the dispute resolution body for VEU installation and product issues has the benefits of:

- **Accountability** – Our work is guided by and accountable to the principles in the Commonwealth *Government’s Benchmarks for Industry-based Customer Dispute Resolution* and performance against these benchmarks is independently assessed every five years. This provides a significant, ongoing and established mechanism of assurance that Ombudsman schemes operate in a way that is accessible, independent, fair, accountable, efficient and effective.
- **Cost and time effective dispute resolution services** – EWOV is a cost and time-effective way of resolving individual complaints compared to formal legal or regulatory avenues. As the Australian Productivity Commission (Productivity Commission) has observed, Ombudsmen mediate outcomes between parties and conduct investigations where necessary, obviating the need for legal representation.<sup>12</sup> Complainants face no, or very low costs and matters can be resolved more efficiently.<sup>13</sup> The benefits are particularly pronounced for vulnerable consumers who face a number of barriers when seeking to access formal resolution pathways, meaning they are both more susceptible, and less well equipped, to deal with legal disputes.<sup>14</sup> The Productivity Commission also notes that industry Ombudsmen can create cost incentives for providers to resolve disputes in the most efficient manner possible, by requiring providers to pay case fees when Ombudsmen assist in resolving complaints.<sup>15</sup> EWOV is an industry-based scheme that charges providers for the complaints we handle, with costs increasing as the complaint escalate.

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<sup>10</sup> Creutzfeldt, N and Gill, C “The Impact and Legitimacy of Ombudsman and ADR Schemes in the UK”, *The Foundation for Law, Justice and Society*, 2014; Gill, C and Hirst, C, *Defining Consumer Ombudsman: A Report for Ombudsman Services*, 2016. <https://eresearch.qmu.ac.uk/handle/20.500.12289/4556>

<sup>11</sup> Productivity Commission, *Access to Justice Inquiry Report*, 2014, p. 50.

<sup>12</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>13</sup> *Ibid*, p.11.

<sup>14</sup> *Ibid*, p.8.

<sup>15</sup> *Ibid*, p.11.

- **Informal process with binding powers** – EWOV operates an informal process with flexibility to cater for the individual complaint. This enhances EWOV’s accessibility and suitability to all types of complainants, from those that are sophisticated business operators to the most vulnerable individuals. While EWOV will try and resolve complaints by agreement, it has the ability to make orders binding where outcomes are accepted by consumers. This clear pathway to a determination can assist keeping the parties to a dispute focused and ensure the complaint can move expeditiously through to resolution.
- **Systemic issues identification and response** – EWOV’s approach to complaint handling and data insights enables more effective identification and response to systemic issues, with all complaints in relation to the issue being heard in the same dispute resolution forum. This mean EWOV can identify and escalate issues to providers for redress, prior to them causing significant harm across a large cohort.

Responding to systemic issues is important for addressing underlying policies or approaches that are driving complaints and for assisting consumers who have not raised a complaint or dispute but may, nonetheless, have been impacted by a systemic issue.

The importance of identifying and responding to systemic issues is recognised as an important function of dispute resolution. For example, a 2020 journal article published in the *Harvard Negotiation Law Review* which conducted a 10-year review of the Australian Financial Ombudsman Service, highlights how systemic issues approaches can be effective in identifying and resolving the root cause of issues that lay both within and outside a provider’s system and provide benefits to a large number of consumers.<sup>16</sup>

- **Ability to engage necessary expertise** - EWOV has engaged an in-house energy technical expert to assist investigators address more complex, technical complaints, and has well established processes to engage further expertise where required. This approach is both cost effective and alleviates the need for consumers and (potentially) industry to engage their own expert advice about a matter, which itself can create a barrier to dispute resolution.

### ***Developing a fit-for-purpose jurisdiction***

Ombudsman schemes have a history of an evolving jurisdiction. Since its original electricity jurisdiction, EWOV has expanded to include gas, water and more recently, embedded networks. This has brought hundreds of additional members and complaints into EWOV’s jurisdiction. We anticipate this to continue as the market for renewables evolves. It also demonstrates how the ombudsman model is sufficiently flexible to account for different sized providers, and apply a proportionate cost-recovery model to different scheme participants which is reflective of the degree of complexity they and their complaints present. EWOV engages closely with its members in the development of new jurisdictions and in their operation to ensure it understands the circumstances and needs of those businesses. Benefits of scheme participation go

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<sup>16</sup> Nuannuan Lin, & Weijun Hu. (2020). “Systemic Issue Resolution in Two Dimensions: A Reflection Based on a Ten-Year Review of the Australian Financial Ombudsman Service”, *Harvard Negotiation Law Review*, 26, 113–151.

beyond dispute resolution, to include insight and analysis to support continuous improvement, training in dispute resolution and access to member events.

If you would like to discuss any aspect of our submission, please do not hesitate to contact Nicole McCutcheon, General Manager - Legal, Regulatory and Public Affairs at [Nicole.McCutcheon@ewov.com.au](mailto:Nicole.McCutcheon@ewov.com.au) or 0474 361 222 or Ben Martin Hobbs, Policy Insights and Engagement Manager at [Ben.MartinHobbs@ewov.com.au](mailto:Ben.MartinHobbs@ewov.com.au) or (03) 8672 4239.

We welcome the opportunity to further discuss this submission, the consultation and next steps.

Yours sincerely



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