

25 November 2022

Submission on Protections for consumers of Distributed Energy Resources: Consultation paper

The current consumer protection framework is not fit for purpose to support consumers with distributed energy resources (DER). The regulatory framework should center consumer outcomes to ensure that as novel products and services are introduced consumers have strong protections in place.

CPRC has conducted research across energy, sustainable consumption, and the digital economy which is relevant to the issues canvassed in the issues paper. CPRC consider the following issues as critical to address as part of this reform.

We recommend:

1. Extending the ban on door-to-door sales or, at minimum, ban door-to-door sales for all providers of energy products and services regardless of if they are participants of the Solar Homes program.
2. The Victorian Government should develop an approach to collect and publish data about DER provider service quality and complaints handling practices. This data should be regularly released and provided to consumers at point of sale.
3. Establishing one-stop shops for consumers to seek tailored and independent advice about energy, from concessions and hardship support through to energy efficiency upgrades and smart home devices.
4. Prohibit the use of unregulated credit products such as Buy Now Pay Later (BNPL) for use on solar or batteries while regulatory reform is underway to improve consumer protections under the *National Consumer Credit Protection Act 2009*.
5. That the Victorian Minister responsible for consumer affairs work with state and territory counterparts to strengthen consumer guarantees. This should include introducing penalties for non-compliance with this section of the ACL and a specific requirement for software updates to be provided for a reasonable time for internet connected devices as recommended by the Productivity Commission Right to Repair
6. Industry to provide improved information and support for consumers to recycle products including batteries and solar panels
7. Consumer Affairs Victoria should prioritise enforcement cases against companies using unfair contract terms in the sale and provision of DER.
8. Adopt the outstanding recommendation from the 2017 Independent Review of the Electricity & Gas Retail Markets in Victoria to expand the scope of the Energy and Water Ombudsman Victoria scheme to cover emerging energy businesses, products, and services.

CPRC is an independent, not-for-profit consumer research organisation. Our mission is to improve the lives and welfare of consumers by producing evidence-based research that drives policy and practice change.

CPRC would welcome the opportunity to work with the Government to provide further insights from our consumer research as the strategy is finalised. If you have any queries about this submission or would like more information on our research, please contact Kristal Burry, Policy and Program Director at kristal.burry@cprc.org.au

Yours sincerely



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Barriers preventing consumer engagement with EVs and other DER technologies

While this consultation is about consumer protections, our research shows that for many consumers they are unable to even access DER products.

CPRC undertook a nationally representative survey of 2,000 Australians.¹ This research identified several barriers to consumers adopting DER, with our research on electric vehicles (EV) adoption revealing that 85% of Australians have one or more barriers to them purchasing an EV.

CPRC identified four types of barriers that consumers face that prevent them from purchasing an EV. These are performance, cost, market issues and specific concerns related to charging.

- Half of Australians (49%) sighted the upfront cost of an EV as a barrier.
- 1 in 3 (34%) identified potential limitations in travel distance.
- Almost 1 in 3 (32%) said lack of access to charging infrastructure, both at home and on a trip.
- 1 in 4 identified charging time (27%) and running costs (25%).
- 1 in 5 (21%) identified journeys becoming more difficult to plan and/or stressful due to uncertainty around charging infrastructure on the trip.
- Almost 1 in 5 (19%) identified the performance and reliability of an EV and not knowing enough information to make a purchase.²

DER products and services are positioned to support consumers to adopt new technology and services that will lower their energy bills or allow them to participate in the energy market. Access to these benefits needs to be equitable, and the Victorian Government should consider how to address barriers. The Government should also identify specific protections or supports for consumers who face additional hurdles such as:

- Aboriginal and Torres Strait Islander peoples
- Victorians living in regional and remote areas
- People who rent and who live in apartments
- Older Victorians
- Public and Community housing tenants
- People from CALD communities

1. What do you see as being the key risks for households and businesses when they are seeking out information about DER products and services and dealing with marketers?

The Victorian Government's legislation to strengthen consumer protections by banning door-to-door sales by businesses participating in Solar Homes program is an important step to enhancing consumer protections.

The ban only applies to participating suppliers and eligible systems³ and as the Solar Victoria website states, *It's not illegal to sell door-to-door or over the phone, but consumers have 10 full business days to reconsider agreements made as a result of uninvited telemarketing or door-to-door sales.*⁴ Solar Victoria administers rebates for heating and cooling systems and zero emissions vehicles. In addition, as other new models of providing demand response or virtual power plant (VPP) services are introduced these may also be marketed and sold via high pressure tactics and door-to-door sales.

¹ Between 28 September to 04 October 2022 CPRC asked two questions – 'What factors make it hard for you to switch to an electric car?' and 'What would make it easier for you to purchase an electric vehicle?' We presented a range of options for participants to select those most relevant to them, including whether they already had an EV or did not want to own a car at all. This submission outlines the key results from this survey.

² Consumer Policy Research Centre, *The barriers and potential enablers of electric vehicle (EV) uptake in Australia CPRC Working Paper*, November 2022

³ Solar panels and batteries as part of the Solar Homes Program.

⁴ Solar Victoria, *Consumer protection* <https://www.solar.vic.gov.au/consumer-protection> last reviewed 12 April 2022

These protections must go further and introduce an outright ban on door-to-door sales or at minimum a ban on door-to-door sales for any energy related product.

Where consumer protections are tied to specific programs or products it risks creating exploitable gaps in the framework resulting in regulatory whack-a-mole trying to close these gaps after consumer harm has occurred. The problem of poor business conduct especially with regards to door-to-door sales is not new and it is time to deal with this issue.⁵

Moreover, there is contradictory information about the legality of door-to-door sales of DER products and services on government websites. Information differs between the Solar Vic website and Government media releases announcing new legislation about the ban of door-to-door sales - which may create confusion for consumers.

Recommendation 1

Extending the ban on door-to-door sales or, at minimum, ban door-to-door sales for all providers of energy products and services regardless of if they are participants of the Solar Homes program.

2. What kind of information do you think potential consumers of new energy services need to be provided with to make the most out of the DER products and services they are investing in?

Information disclosure alone is not sufficient to ensure good consumer decision making or ensure a well-functioning market. It is already challenging to provide consumers with information as part of the traditional energy system. CPRC has previously recommended the need for public facing measures of service quality in energy and complex markets.⁶ In the financial services sector, ASIC is moving away from a disclosure as a primary consumer protection given the complexity of providing information to consumers and the ineffectiveness of disclosure and warnings. The lessons ASIC has brought together about the limits of notification and disclosure may be informative during this reform⁷

For disclosure to be effective it needs to be focused on the key information and in a format that allows for clear comparisons.⁸ Given the nature of DER products and services, an ability to easily compare the costs and likely return on investment is essential. Consumers need tools to draw in different tariff overlays to better understand the consequences of their purchases. The solar sector has seen numerous issues with service quality - CPRC's behavioural research has demonstrated that consumers respond to service quality measures when this information is made available.⁹

This is even more important in a rapidly evolving market to support consumers to compare across features of different plans, assets and services. These measures need to be available at the point of purchase or decision point. Given the more complex consumer journey and the variety of touch points where a consumer will interact with a service or asset, service quality metrics and information will need to be updated with the best available data and information about the market. It is important that regulators and government departments are collecting performance data including consumer protection breaches and dispute resolution performance to capture emerging or systemic trends.

'Access' remains a key precondition to consumer engagement¹⁰ - CPRC considers there is a growing need for independent tailored advice for consumers across a range of energy issues, this would include but not be limited to:

- Support for consumers to access concessions, hardship arrangements and emergency support payments
- Energy efficiency upgrades
- Access to solar, batteries and other DER services

⁵ CALC, 2022, Submission Retailer authorisation and exemption review: Issues Paper

⁶ Consumer Policy Research Centre, 2020, *Picking peaches Service Quality in the Victorian Energy Market a summary report*. August 2020

⁷ Australian Securities and Investments Commission (ASIC) and the Dutch Authority for Financial Markets (AFM), 2019, *Disclosure: Why it shouldn't be the default*

⁸ Consumer Policy Research Centre, 2018, *Five Preconditions of Effective Consumer Engagement*, April 2018

⁹ Consumer Policy Research Centre, 2020, *The experiences of older consumers: towards markets that work for people*, July 2020

¹⁰ Consumer Policy Research Centre, 2018, *Five Preconditions of Effective Consumer Engagement*, April 2018

This could be delivered through local community organisations or Services Victoria and will need to be available both online and in person.

Recommendation 2

The Victorian Government should develop an approach to collect and publish data about DER provider service quality and complaints handling practices. This data should be regularly released and provided to consumers at point of sale.

Recommendation 3

Establishing one-stop shop for consumers to seek tailored and independent advice about energy, from concessions and hardship support through to energy efficiency upgrades and smart home devices.

3. What do you see as being the key risks for households and businesses when purchasing and financing DER products and services?

There are gaps between existing legislative frameworks such as, the Victorian energy legislative arrangements that cover consumers and energy supply, the Australian Consumer Law (ACL), finance related legislation such as *National Consumer Credit Protection Act 2009* as well as the various industry voluntary codes both within and external to energy (such as the Buy Now Pay Later (BNPL) industry code).

Financing new energy products is a key area where these gaps are likely to result in consumer harms. BNPL products are not currently subject to the same regulatory oversight as traditional credit models such as bank loans or credit cards.¹¹ Consumers who use a BNPL to purchase DER products and services are not subject to credit checks. In addition, late fees from BNPL products can be higher than a credit card¹² which when applied to a solar or battery can result in significant financial harm. Recent research from Good Shepherd highlights the harms BNPL products can have for consumers, especially women or victim-survivors of domestic and family violence (DFV).¹³

The other risk consumers face is unfair contract terms or unfair business practices from DER providers. Contracts between consumers for market services, such as demand response or VPP, are likely to be complex and unfair contract terms and unfair practices need to be prevented. While unfair contract terms reforms have strengthened consumer protections, these new protections need to be the focus of enforcement action from Consumer Affairs Victoria.¹⁴

Recommendation 4

We support other consumer organisations¹⁵ who call for the prohibition of the use of unregulated credit products such as Buy Now Pay Later (BNPL) for use on solar or batteries while regulatory reform is underway to improve consumer protections under the *National Consumer Credit Protection Act 2009*.

4. What do you see as being the key risks for households and businesses when installing and connecting DER products and services?

Consumer protections have not adequately kept pace with the rapid expansion of digital products and services. Many existing consumer issues - information asymmetries, lack of accessible remedies and redress and inadequate consumer protections - are heightened in these emerging sectors that do not

¹¹ On 21 November 2022 the Federal Government released a consultation paper on regulating BNPL.

¹² Duong L., Taylo G., Eulaiwi B., 2022, *Comparative analysis of credit card interest rates vs bnpl fees in the consumer credit market*, commissioned by Financial Counselling Australia

¹³ Good Shepherd Australia New Zealand, 2022, *Safety net for sale: The role of Buy Now Pay Later in exploiting financial vulnerability* November 2022

¹⁴ Consumer Policy Research Centre, 2021, *Submission to The Treasury – Strengthening protections against unfair contract terms*

¹⁵ VCOSS, 2022, *VCOSS submission on the Protecting consumers of distributed energy resources consultation paper*, November 2022

neatly fit within existing frameworks. Further to this, digital products have the potential to cause both physical or digital harms and DER products such as smart home energy devices or smart invertors, could fall into this category.¹⁶

As the Productivity Commission identified in its Right to Repair inquiry, consumer protections need updating to support the right to repair.¹⁷ They recommended changes to the ACL to ensure that consumer guarantees require software updates for a reasonable period. This is an important measure to enhance consumer protections more broadly, and to ensure that internet connected devices have critical software updates that ensure they remain secure and reduce the potential for consumer harm. This recommendation is particularly relevant to the DER market, where consumers will rely on software updates for security and to continue to access services.

Another key risk is the safety of these products, Australia does not have a general safety provision which means that when products are found to be unsafe, we are reliant on a recall process that alerts consumers to take action if they have a product that has been found to be unsafe. The ACCC has indicated it will be communicating directly with consumers who have an LG solar battery which has recently been recalled to ensure they have the battery replaced.¹⁸ Consumer protections for DER products must ensure that consumers are given timely information and support to act when there is a safety issue.

Recommendation 5

That the Victorian Minister responsible for consumer affairs work with state and territory counterparts to strengthen consumer guarantees. This should include introducing penalties for non-compliance with this section of the ACL and a specific requirement for software updates to be provided for a reasonable time for internet connected devices as recommended by the Productivity Commission.

5. What do you see as being the key consumer protection issues that households and businesses encounter when operating DER products and services, resolving faults, and disposing of products at end-of-life?

Qualitative data captured in our research on EVs highlights the perception that the battery on an EV does not have a long-life span. There were also concerns about warranties, costs of replacement and recyclability of the batteries as barriers to uptake.

“Upfront cost of ownership information, especially in relation to cost of replacement batteries” – CPRC survey respondent

“More information about recycling of battery, conditions of mining and exploitation and how long the car lasts as well as cost of a new battery and it may not be affordable” – CPRC survey respondent

Better information on the full lifecycle of an EV could help alleviate concerns about additional costs that might come from owning an EV or concerns about the environmental impact of the batteries.

“Most electric cars have battery warranties of up to 8 years, what happens after the 8 years? Will this require a battery replacement, will the battery be recycled, or new replacement required. A lot of the information is around the start up and running information, however very little information is found on end-of-life cycle.” – CPRC survey respondent

¹⁶ Consumer Policy Research Centre, 2021, *Submission to the Department Home Affairs – Strengthening Australia’s cyber security regulations and incentives*

¹⁷ Productivity Commission 2021, *Right to Repair*, Inquiry Report no. 97, Canberra

¹⁸ ACCC, 2022, *ACCC warns consumers about potentially deadly solar batteries*. 21 November 2022

Understanding the full life cycle of these products and the consumer journey through to the disposal of these products is necessary to ensure consumer protections are robust up and until they dispose of a product.

Recommendation 6

Industry to provide improved information and support for consumers to recycle products including batteries and solar panels

6. Do you believe there are adequate avenues available for households and businesses to resolve disputes with DER sector participants?

Consumers are increasingly participating in multiple complex markets at once. DER creates the potential for distributed responsibility for problems as well as the energy resources making it challenging for consumers to seek redress.

As CPRC has identified in its digital economy work program, the ACL takes a narrow view of the supply chain which can result in difficulties determining where an incident or issue has occurred. This is also likely to be the case with DER where multiple parties may be providing services to a household through a single meter or where a home and a third party are both using energy generated from household solar and batteries at different times, that use might degrade to reduce the life span of the product, making it difficult for consumers to be able to either identify where the fault is or prove it wasn't their use of the product that caused the fault.¹⁹

Consumers need a single point to contact where they need information or support to seek redress. Where an issue may fall outside of the energy and water ombudsman, they should work with other relevant ombudsman to refer and support consumers to access redress through other schemes.

CPRC supports expanding EWOV's remit to include DER sector participants as recommended in the 2017 Independent Review of the Electricity & Gas Retail Markets in Victoria. Where possible regulator reforms should consider outlining requirements for DER service providers to be members of EWOV scheme. As noted by EWOV in their submission this process should include iterative steps to test how the scheme is responding to complaints and dispute resolution with DER products and services.²⁰

Recommendation 7

Consumer Affairs Victoria should prioritise enforcement cases against companies using unfair contract terms in DER.

Recommendation 8

Adopt the outstanding recommendation from the 2017 Independent Review of the Electricity & Gas Retail Markets in Victoria to expand the scope of the Energy and Water Ombudsman Victoria scheme to cover emerging energy businesses, products, and services.

7. Is a new regulatory framework needed to protect consumers of DER in Victoria? [Yes / No / Unsure]

- If you answered Yes, what form do you think such a framework should take?
- Furthermore, to which types of DER products and services should a regulatory framework apply?

Yes, however regulatory reform will require deliberative and consultative consideration from the Victorian Government to determine what is required. The provision of DER products and services forms a part of the supply of consumers energy and as such should be regulated as an essential

¹⁹ Consumer Policy Research Centre, 2021, *Submission to the Department Home Affairs – Strengthening Australia's cyber security regulations and incentives*

²⁰ Energy and Water Ombudsman Victoria, 2022, *Protecting Consumers of Distributed Energy Resources (DER)*, November 2022.

service. Careful consideration should be given to clearly articulating the purpose for regulation and the key consumer outcomes that framework and businesses should ensure.

A starting point for this reform is to consider a regulatory regime that places the onus on businesses to ensure they are providing services and products that have clear benefits for consumers, and consumer outcomes are prioritised. Regulators in the UK and in Australia are moving towards implementing a consumer duty in the sectors they regulate with the UK Financial Conduct Authority introducing a consumer duty that includes a Consumer Principle that requires firms to act to deliver good outcomes for retail customers and a series of updated rules to guide the implementation.²¹ The Australian Energy Regulator is considering moving to an outcomes based framework to update consumer protection framework for DER in the National Energy Customer Framework in states they regulate. The Victorian Government should consider aligning these reforms where possible or even leading the way by exploring a consumer duty at a state level.

There is a patch work of regulations that cover or are related to the sale and provision of distributed energy resources, including voluntary industry codes such as Clean Energy Council (CEC) Solar Retailer Code of Conduct. A review of these current industry codes and their performance is also required to ensure they are effective in providing consumer protections.

The Government should undertake a mapping exercise to clearly articulate and identify gaps between regulations both in energy and overlapping industries such as finance and identify solutions. Reform may require strengthening existing frameworks, such as regulating BNPL products or more detailed reforms like those proposed by the Australian Energy Regulator (AER). Greater collaboration between regulators across energy, finance and fair trading is necessary to ensure these different regulatory frameworks create a sufficient set of consumer protections.

CPRC considers it important to introduce licensing for DER suppliers, this is particularly important in an emerging market that the regulator has visibility about how new market entrants are complying with consumer protections, the potential for consumer harm is significant and goes unchecked until the issue is highlighted by community legal centre case studies, often after widespread harm. The embedded network review recommended changes to the licensing framework under the Electricity Industry Act (EIA) to enable licensing of 'Local Energy Service' (LES) providers for local energy networks.²² The introduction of a licensing framework also supports the collection of data and enforcement activities which are critical to support enhanced service quality information for consumers.

The Government should also progress recommendations from the Victorian Embedded Network Review. CPRC considers the following recommendations as the most urgent: enhancing information disclosure for those occupants who live in local energy networks, amending planning building and strata laws that require local energy networks to include renewable energy and market services with those benefits passed to consumers, and implementing regulation, monitoring and enforcement to unregulated bundled services (bulk heating/cooling, bulk hot-water).²³

14. Do you believe there are opportunities for linkages with other frameworks, such as Victoria's energy consumer protections framework for conventional energy supply? a. If yes, what are the potential benefits or risks of these linkages?

Wherever possible, consumer protections across energy and other products should be aligned or harmonised to reduce the potential for gaps to be exploited, especially in an evolving market and to reduce the complexity for consumers to seek redress. While we acknowledge the need for reform in the DER space, the current consumer protection framework for energy supply is not wholly effective in

²¹ UK FCA, *New Consumer Duty*, <https://www.fca.org.uk/publications/policy-statements/ps22-9-new-consumer-duty>

²² Department of Environment, Land, Water and Planning, 2022, *Embedded Networks Review Final Recommendations Report*, January 2022, prepared by Embedded Networks Review Expert Panel

²³ Department of Environment, Land, Water and Planning, 2022, *Embedded Networks Review Final Recommendations Report*, January 2022, prepared by Embedded Networks Review Expert Panel

delivering its intended aims, with consumers not receiving support or access to concessions they are currently entitled to.²⁴

As noted in our submission to the ESCs draft vulnerability strategy, the Payment Difficulty Framework is not consistently applied across retailers who participate in the main energy market, with payment plans that don't reflect what consumers can pay, or retailers not supporting consumers to be on the best available offer.²⁵

15. Are there any other considerations about issues for consumers of DER not covered in this paper that you would like to raise?

The development of new regulatory framework will take time and require significant consultation with consumer groups to ensure it is designed effectively. The Victorian Government should fund further initiatives to engage consumers from diverse communities to understand their needs, including research into the barriers vulnerable groups are facing now and as further DER are available.

²⁴ Consumer Policy Research Centre, *Mind the Gap - Identifying the gap between energy concession eligibility and concessions received*, November 2022

²⁵ Consumer Policy Research Centre, 2021, *Submission on the Essential Service Commission's Draft Vulnerability Strategy*