VCOSS is the peak body for Victoria's social and community sector, and the state's premier social advocacy body. Please visit vcoss.org.au

We welcome the opportunity to provide this input.

VCOSS submission to *Getting to Fair: Advancing Equity* - draft strategy consultation

Executive Summary

VCOSS strongly supports the themes, values and goals laid out in the *Advancing Equity* draft strategy. In particular, VCOSS welcomes the ESC's focus on systemic and structural barriers that consumers experiencing vulnerability face.

We note that the ESC has chosen to take a flexible approach to the regulatory activities that will be informed by the strategy, to be laid out yearly rather than in a multi-year plan. This approach is appropriate but does mean that, for the time being, VCOSS will need to await the yearly action plans to further comment on activities that will fall under the draft strategy.

The draft strategy suggests exploring outcomes and principles-based regulations such as a consumer duty. VCOSS supports the development of this type of regulation, especially in newer markets such as for Consumer Energy Resources (CER), where there are fewer existing protections. However, we wish to stress the importance of maintaining existing prescriptive consumer protections in regulatory frameworks, such as those that come under the Energy Retail Code of Practice in the general energy market, as a baseline.

VCOSS strongly supports the establishment of a First Nations self-determination framework and an Energy Justice framework. These frameworks would have the potential to inform regulatory decisions that tackle structural barriers and address historic wrongs. Development of these frameworks will rely on effective and inclusive consultation with community and consumer representatives. Ideally, this development should incorporate co-design processes

with communities and their representatives. In the case of all systemic reforms related to First Nations communities, these should be completely self-determined, including process design.

VCOSS supports the themes, values and objectives expressed in the draft strategy

VCOSS strongly supports the inclusion of social and environmental equity and justice in the draft strategy. We believe these systemic factors are central to considering the costs and benefits for consumers over time of the economic regulation of essential services. VCOSS has long argued that people experiencing hardship and vulnerabilities are facing primarily structural barriers and inequalities, and the *Advancing Equity* draft strategy incorporates this understanding.

VCOSS also supports the continued use of the ESC's consumer vulnerability definition, which centres the role of these structural barriers in causing harms, rather than any individual behaviours or characteristics.

We believe that the draft strategy appropriately centres responsibility with service providers and the regulator to design and operate fairer systems, rather than expecting consumers to navigate complex markets.

The efficacy of the strategy will rely on activities in future work programs

VCOSS notes that the ESC has decided on a flexible approach whereby actions under the draft strategy will be decided on yearly, rather than in four-year action plans. We are supportive of this approach, given that it will provide the ESC greater ability to make decisions on direction as events and emerging trends occur. This does mean that, for the time being, stakeholders such as VCOSS will need to await the release of the yearly work programs to make further comment on the potential efficacy of planned activities.

If outcomes and principles-based regulations such as a consumer duty are to be explored, existing prescriptive consumer protections should not be rolled back as a result

VCOSS notes that a suggested action under the systems level priority theme is "Exploring principles-based, outcomes-focused regulation to drive better consumer outcomes and reduce reliance on unnecessary prescription (for example, a consumer duty of care)."

VCOSS supports the exploration of regulatory frameworks such as consumer duties, especially in the context of newer energy contracts and products such as CER. In this relatively new and fast developing part of the market, policymakers and regulators are responding to new trends and consumer harms without existing regulations or long-term experience with this market. Thus, in the interim at least, an overarching duty could work to protect consumers purchasing CER products and services that fall outside existing regulatory frameworks. At least until further rules can be established.

However, we would stress the need to maintain existing protections for consumers in the general energy retail market as a baseline when exploring a consumer duty in that context. VCOSS recommends against rolling back any existing prescriptive regulations if outcomes and principles-based duties are to be enacted, as this would lead to an unintentional weakening of consumer rights. The prescriptive rules in place under the Codes of Practice that the ESC manages have been built up over time through the experience of the real-world operation of markets for essentials, and VCOSS believes that these regulations are as necessary as ever.

VCOSS supports the establishment of a First Nations self-determination framework

VCOSS strongly supports the ESC's decision to develop a First Nations Self-Determination Framework. First Nations people are often more likely to experience intersectional vulnerabilities and structural barriers than other cohorts. This inequity stems from historic and continuing systemic racism and abuses perpetrated by Australian governments and institutions since colonisation. Alongside treaty and truth telling, embedding First Nations self-determination in the regulation of essentials will help progress reconciliation and address structural inequities.

It is important that the process of developing the framework and its priority actions is completely self-determined.

VCOSS supports the establishment of an Energy Justice Framework

VCOSS strongly supports the development of an Energy Justice Framework to provide a common regulatory approach that supports equitable regulatory outcomes for consumers as the energy sector adapts to long term change.

Energy is an essential service, one that people cannot live a healthy and dignified life without, even if they cannot afford it. As such, affordable access should be treated as a basic right. Reflecting this, goal seven of the United Nations Sustainable Development Goals states: "Ensure access to affordable, reliable, sustainable and modern energy for all."

As an essential service that is sold for profit, people's ability to afford energy ends up being subject to market forces. Despite improvements made to market fairness through regulations in Victoria, the fundamental logic of a for-profit system remains the same, and the interests of corporations are often put before consumers experiencing vulnerability.

Household capacity to participate in energy markets is influenced by factors including available time; trust in information provided; language, literacy and numeracy; internet access; and awareness of energy price variability.[1] Low-income households, those with limited internet access and those with limited English proficiency are found to pay above-average prices per unit of energy.[2] Renters face systemic barriers to improving their energy efficiency, and those on embedded networks cannot shop around for better energy offers.

Among consumers facing payment difficulty and receiving assistance from their retailer, those with energy debt are usually forced to stay with that retailer even if there are cheaper offers elsewhere. This is to avoid arrears being transferred to debt collectors or losing the assistance they are receiving in paying off arrears.

These are all barriers to energy justice. Effective and innovative regulation of prices, better practice by energy businesses when supporting customers with payment difficulty, and improved dispute resolution, will contribute to greater energy justice. For example, we welcome the Energy Retail Code of Practice reforms that include a requirement for an automatic best offer switch for customers experiencing payment difficulty, meaning that for these consumers, they will not need to take proactive action to reduce unnecessary costs.

Ideally, regulation should foster a culture among service providers of proactive and constructive engagement with those who are experiencing, or are at risk of experiencing, payment difficulty. By allowing people to pay what they can and receive the support they need to find stability and long-term ability to pay, consumers and businesses alike will benefit from avoided harms, reduced levels of debt, and reduced debt collection activity.

While VCOSS recognises the crucial role that an economic regulator can play in fostering energy justice, we also recognise that some measures to tackle structural barriers and build energy justice will need to be the work of policymakers. Specifically, these must include measures to improve the energy efficiency of homes, exploring new support structures such as a stable and affordable social tariff, and other market reforms that lie outside the ESC's remit. Nonetheless we welcome the ESC's intention to create this framework as a crucial step towards building energy justice in Victoria.

---

[1] Bryant D., Porter, E., Rama, I. and Sullivan, D. (2022) *Power pain: An investigation of energy stress in Australia*, p9.

[2] Ibid.

Development of the frameworks flagged in the draft strategy will rely on effective and inclusive consultation with community and consumer representatives

VCOSS supports the ESC's approach to consider consumer voices. As such, we are strongly supportive of a continuing commitment to building relationships with stakeholders such as through community sector roundtables. It is crucial that these developmental processes involve genuine co-design.

We do note that many community organisations experience high levels of demand while dealing simultaneously with limited resources and insecure funding. In the realm of service delivery, this can often lead to staff being overworked and burnt-out. Similarly, community sector workers who either split their time between service delivery and systemic advocacy, or work fully in policy advocacy, also experience a high level of demand to contribute to consultation processes by governments, industry, and regulators. As such, VCOSS would urge the ESC to consider how best to approach cooperation with the community sector in a manner that makes participation accessible and productive, while making the most efficient use of time commitments.

In closing, VCOSS is supportive of the themes, values and goals captured in Getting to Fair. We look forward to providing more detailed analysis and recommendations following the next iteration of the draft strategy.