



Getting to fair

Breaking down barriers to essential services

6 May 2021



An appropriate citation for this paper is: Getting to fair: breaking down barriers to essential services - strategy draft, Essential Services Commission, May 2021.

Copyright notice

© Essential Services Commission, 2021



This work, 'Getting to fair', is licensed under a Creative Commons Attribution 4.0 licence [creativecommons.org/licenses/by/4.0]. You are free to re-use the work under that licence, on the condition that you credit the Essential Services Commission as author, indicate if changes were made and comply with the other licence terms.

The licence does not apply to any brand logo, images or photographs within the publication.

A message from our chairperson

Our 'getting to fair' strategy will, at its core, ensure the commission's work supports access to essential services for consumers experiencing vulnerability.

This draft strategy has been a year in the making. In December 2019, myself and the senior leadership team identified two key priorities: consumer vulnerability and climate change. This reflected a growing awareness of the need to address real world problems, while using methods of research and engagement beyond those typically employed by an economic regulator.



Only a few weeks later the bushfires of late 2019 and early 2020, and the emergence of the coronavirus pandemic brought forward the need to focus on the issue.

We were warned about a 'tsunami of harm threatening to swamp help services' as entire groups who had never been unemployed were suddenly without work. We were told already marginalised people were at risk of being pushed aside as those 'newly vulnerable' in the community sought help.

The pandemic and the bushfires gave this work a focus and urgency, but also elevated its relevance for us as a regulator committed to putting consumers at the heart of what we do.

This draft strategy aims to ensure the voices of consumers are reflected in our work, and that we are supporting consumers who are at risk or experiencing vulnerability to access essential services.

Focusing on the experiences of consumers is not new for the commission or the sectors we regulate

Our work in family violence reforms in energy and water, our nation-leading payment difficulty framework in energy, our water pricing reforms mean we have a solid foundation and track record of creating consumer-centred approaches to regulation.

Working with our regulated sectors on this strategy gave us great insight into what they're already doing to support consumers experiencing vulnerability - but also highlighted areas for improvement.

The work of our deliberative community panel added depth and meaning – and their recommendations reflected throughout the draft strategy provided greater understanding of how vulnerability manifests in our communities.

I want to extend my sincere thanks to all members of our panel for their efforts throughout the process. I hope you feel this draft strategy honours your commitment to the process.

This work sits very close to my heart, and I am excited for the next step in its development

As we move onto the next stage in the project, we want to invite more voices into the conversation. This is a draft strategy and we are open to the ideas, the recommendations, the priorities being tested and challenged as we refine and move on to a final strategy.

We are not just looking at creating new projects or goals for the commission. We want the delivery of the strategy to be part of a cultural shift – for us and the sectors we regulate.

We want this strategy to change not just what we do, but how we do it.

It's been a pleasure to be involved in and watch, along with fellow commissioner and lead on this project, Simon Corden, and the executive sponsor, CEO John Hamill as this work took shape over the past year.

And now, it's over to you, to test what the initiatives mean – for sectors, businesses, and consumers.

There are many ways to contribute to 'Getting to fair' so please take this opportunity and invitation to have your say (see page 15).



Kate Symons

Chairperson

Contents

A message from our chairperson	ii
Executive summary	6
Background to the strategy	6
Purpose of our strategy	7
Structuring our draft strategy	8
What this means for consumers	14
A three-year outlook	15
Next steps	15
We want your feedback on this draft strategy	17
How we developed our draft strategy	18
Our approach	18
Definitions and terminology	18
Our hybrid approach to communicating on vulnerability	20
Consultation questions on the definition and terminology used in the draft strategy	22
Identifying the problem: Understanding the changing nature of consumer vulnerability	23
Theme one: Consumers require appropriate, consistent and accessible communications	23
Theme two: Consumer engagement is not always universal or inclusive, leading to less accessible services	28
Theme three: Consumer trust of their service provider is low, with many not empowered to make choices or seek support	32
Theme four: Consumers who need support are not always identified and supported effectively	37
Theme five: Support offered to consumers is inconsistent, which means it is not always appropriate or flexible	39
Theme six: First Nations consumers require additional support and engagement to help reduce the rate of supply disconnection	43
Theme seven: Government, industry and community organisations could coordinate more effectively to address issues across the system	47
Theme eight: Sudden, acute and unexpected challenges can have significant impact on consumers in the short, medium and long term	51
Our goals and possible initiatives: how we plan to address consumer vulnerability	56
Strategy timeframes	56
Consultation questions on the themes, goals and possible initiatives	56
Appendix 1: Possible initiatives by sector	57
Energy	57
Local government	58
Transport	58
Victorian Energy Upgrades	59

Water	60
Whole of organisation	61
Possible governance and capability building initiatives (enabling mechanisms)	64
Appendix 2: Understanding the context around the term ‘vulnerable’	66
Identifying best practice terminology and communication	66
Appendix 3: Terminology used by other regulators	70
How other regulators are approaching the terminology	70
Breakdown of the experiences of other regulators	72
Appendix 4: Compiling research to identify our themes and goals	76
Appendix 5: Research and engagement activities	77
Key engagement activities	77
Cross-industry workshops on access and inclusion	78
Webinar on universal and inclusive engagement	78
Key research activities	78
External reports	79
Key capability building activities	79

Executive summary

Every Victorian relies on essential services. From having clean drinking water, to affordable lighting and heating, sustainable council rates, or accessing energy efficiency products, Victorians across our state use the services we oversee and are affected by our work.

Sometimes, consumers can experience barriers to accessing these essential services. This creates unnecessary stress, and often worsens the difficulties they are already facing. Not effectively addressing these obstacles can also reduce consumer trust that essential service providers can meet community needs

Addressing these barriers to accessing essential services matters. We are dedicated to promoting the long-term interests of all Victorians and have already implemented innovative reforms across the energy and water sectors to promote greater support for those in the community experiencing family violence. In the energy sector we created a payment difficulty framework which strengthened the support available to consumers having trouble paying their bills.

But we recognise we must do more. With the businesses we regulate and administer, the community sector, and other parts of government, we are seeking to better address issues around consumer access to essential services. To do this effectively, we have developed this draft strategy to help improve the experiences of all Victorians who use essential services.

The final strategy is set for release in mid-2021 and will involve a three-year workplan for implementation, monitoring, evaluation, and review.

This strategy will ensure consumer voices are reflected in our work and will provide the commission with a consistent and long-term approach for addressing consumer vulnerability across the essential services we regulate and administer.

Background to the strategy

In 2019, the commission identified consumer vulnerability as a strategic priority for further examination. Legislation requires us to consider vulnerable and low-income consumers in our decision-making.¹

¹ Essential Services Commission Act 2001, s 8A(e)(i).

The unprecedented events of 2020 highlighted the importance of having a comprehensive and coherent strategy for the longer-term. The bushfires and coronavirus pandemic made it necessary for us to urgently adopt a comprehensive approach across our regulatory and administrative functions. And this experience also brought home that, working with others, we can, and must do more.

What we've heard from consumers

Through the development of this draft strategy, we have benefited from the opportunity to hear from a broad range of stakeholders - many of whom have engaged with the commission for the first time – to better understand the diverse challenges people face. While we heard that the various industries we regulate have made strides in addressing barriers to accessing essential services, there is still room for further improvement.

Through our research and direct engagement with consumers, we've been told that there are still significant barriers to accessing essential services which cause stress and harm. Key concerns raised include:

- inconsistent or inaccessible communication from essential services providers
- an inability for consumers to effectively engage in competitive markets
- a lack of consumer trust in essential services providers
- little support from essential services providers for those consumers who need it
- poor coordination between government, community sector and the industry.

Purpose of our strategy

Our strategy will address barriers to accessing essential services in all our regulatory and administrative functions. Its intention is to give a consistent, coordinated, and long-term approach to address these barriers through our communication activities, our engagement across the community and our regulatory processes. By working to better support those who are experiencing exclusion, our strategy will help support the interests of all Victorians.

Hearing and reflecting the consumer voice

Our strategy will better embed the full spectrum of consumers' voices as an essential part of all our work, including our regulatory processes. Listening to consumers and responding to their concerns is critical to achieving the anticipated outcomes from this work. We see improving our consumer engagement as integral to us remaining an effective, empathetic, and relevant regulator.

While addressing barriers to accessing essential services is the main purpose of this draft strategy, we have also defined 'consumer vulnerability' in the context of our legislative

functions. This definition focuses on vulnerability as an experience caused by barriers to access, rather than as a personal characteristic. Stakeholders and community groups can refer to this definition for insight into how we intend to approach our current and future work. The definition also informs the expectations Victorians have on how we perform.

Developing our draft strategy through engagement and research

To develop this draft strategy we engaged with stakeholders through roundtables, a stakeholder reference group and industry cross-sector workshops. We also ran a deliberative panel that represented a cross-section of our Victorian community.

Along with this, we undertook research with other organisations, and reviewed external reports. Through this research we aimed to build a comprehensive understanding of barriers to effective participation in essential services in a changing world and used systems-thinking to ensure our goals meet the changing needs of consumers.

Through this research and engagement program we received specific recommendations on how to facilitate equitable access to essential services for all consumers. We have incorporated these recommendations into this draft strategy.

See appendix 5 for more information on our research and engagement activities.

Structuring our draft strategy

Definitions and terminology

In developing our draft strategy, we repeatedly heard that terms like ‘vulnerability’ or ‘vulnerable’ are not well accepted, particularly by the people they are used to describe. The use of these terms when communicating directly to consumers, by us, or those we regulate, can discourage people from accessing the support they need and deserve. This is not the outcome any of us are seeking.

We are alert to this sensitive issue on language, so when we communicate with the community, we will use language they have suggested such as resilience, wellbeing, equity, accessibility, inclusion, and fairness.

However, as our legislative framework refers to ‘vulnerable consumers’, we need a clear working definition to outline what being ‘vulnerable’ means. We have developed the following definition:

A person experiencing vulnerability is someone who experiences barriers to participating in the essential services we regulate or administer. As a result of those barriers that person experiences economic and social exclusion or harm.

Barriers to participation in essential services

In our definition of ‘consumer vulnerability’ we took the approach that ‘vulnerability’ is not a characteristic of the individual, but an experience. ‘Vulnerability’ is not inherent to a consumer, but is a product of barriers to participating in essential services. We heard that these barriers can be caused by:

- event-based circumstances such as illness, job loss, financial stress, death of a loved one, natural disaster, global pandemic
- systemic factors such as ageing, poor mental health, social isolation, disability, language barriers, regional limitations, digital and financial literacy, siloed services
- market-based factors such as inadequate or overly complex documentation, pricing strategies, misleading marketing and targeted exploitation.

Ultimately, our aim is to ensure all consumers, regardless of their circumstances, have equitable access to the essential service we regulate and administer, and do not experience barriers to access that cause or exacerbate harm.

The themes and goals of our draft strategy

Through our research and engagement program we identified eight key themes that reflect how consumers are experiencing barriers to access:

- **Theme one:** Consumers require appropriate, consistent, and accessible communications.
- **Theme two:** Consumer engagement is not always universal or inclusive, leading to less accessible services.
- **Theme three:** Consumer trust of their service provider is low, with many not empowered to make choices or seek support.
- **Theme four:** Consumers who need support are not always identified and supported effectively.
- **Theme five:** Support offered to consumers is inconsistent, which means it is not always appropriate or flexible.
- **Theme six:** First Nations consumers receive limited support and engagement and face increased rates of disconnection.
- **Theme seven:** Government, industry and community organisations could coordinate more effectively to address issues across the system.
- **Theme eight:** Sudden, acute and unexpected challenges can have significant impact on consumers in the short, medium and long term.

From these key themes we developed goals to guide our areas of focus as we set a long-term pathway to inform the commission’s future priorities.

Possible initiatives to operationalise our work

To operationalise these themes and goals, teams across the commission used their knowledge of our regulatory and administrative functions to identify initiatives for action consistent with the long-term goals of the draft strategy.

Goal	Possible initiatives (actions for the commission to deliver on the strategy)
<p>Goal one: We aim to improve the accessibility of the communications consumers receive, so they are consistent, accessible and meet their needs.²</p>	<ul style="list-style-type: none"> • We will develop and improve consumer facing information to better meet the diverse needs of consumers, including improving information about consumer rights.
<p>Goal two: We aim to take a universal and inclusive approach to our own engagement practices with consumers and support our regulated sectors to do the same.³</p>	<ul style="list-style-type: none"> • We will work collaboratively with local government sector to promote better practice in direct engagement with consumers. • We will work more proactively with community groups to support more effective and targeted engagement with the full spectrum of consumer groups. • We will include direct engagement with consumers and community groups in the Victorian Energy Upgrades engagement program. • We will ensure engagement practices by water businesses are universal and inclusive, enabling the participation of hard-to-reach consumers. • We will review of the effectiveness of the payment difficulty framework, incorporating the voices of consumers

² This goal broadly aligns with recommendations 1, 3 and 8 from the community deliberative panel report

³ This goal broadly aligns with recommendations 4 and 8 from the community deliberative panel report

experiencing vulnerability. This relates to goals three and five.

Goal three: We aim to improve consumer trust and support them to feel empowered, make choices and seek support.⁴

- We will review of the effectiveness of the payment difficulty framework, incorporating the voices of consumers experiencing vulnerability. This relates to goals two and five.
- We will hear the voices of consumers experiencing vulnerability to better informs our reforms and monitoring of the energy market.
- We will develop options to include the voice of the consumer experience in enforcement processes.
- We will bring together qualitative and quantitative data to better understand how consumers experiencing vulnerability interact in the sectors we regulate. This also relates to goal eight.
- The review of the effectiveness of family violence provisions currently in place across our regulated sectors, work in collaboration with the community and government stakeholders to promote better industry practice. This also relates to goal four and five.

Goal four: We aim to improve practices so consumers who need support are identified effectively and in a timely manner.⁵

- We will incorporate the voices of consumers and reflect the barriers to access and inclusion in the outcomes of the review of the water customer service codes.
- We will continue to highlight business innovation and better practice in identifying and responding to consumer vulnerability across our regulated sectors.
- We will use industry education to support better practice approaches for retailers and distributors to have a consistent understanding of vulnerability.
- We will support a consistent understanding of vulnerability across the local government sector.

⁴ This goal broadly aligns with recommendations 5, 7 and 8 from the community deliberative panel report

⁵ This goal broadly aligns with recommendations 2 and 7 from the community deliberative panel report

- We will work with Accredited Providers of the Victorian Energy Upgrades program to support better practice in identifying and understanding consumer vulnerability.
- The review of the effectiveness of family violence provisions currently in place across our regulated sectors, work in collaboration with the community and government stakeholders to promote better industry practice. This also relates to goal three and five.

Goal five: We aim to ensure support offered to consumers is flexible and suited to their needs.⁶

- We will consider the needs of consumers experiencing vulnerability as part of our role in setting commercial passenger vehicles fares
- We will review existing reporting and explore options for improved reporting on coronavirus support mechanisms by the water sector (including qualitative methods of reporting) where there are low numbers of consumers accessing support
- The review of the effectiveness of family violence provisions currently in place across our regulated sectors, work in collaboration with the community and government stakeholders to promote better industry practice. This also relates to goal three and four.
- We will review of the effectiveness of the payment difficulty framework, incorporating the voices of consumers experiencing vulnerability. This relates to goals two and three.

Goal six: We recognise the specific barriers faced by First Nations consumers and will build partnerships and lasting relationships to improve outcomes for First

- We will develop a Reconciliation Action Plan to improve outcomes for First Nations consumers and communities.
- Better understand the relationship First Nations people have with lands and water and identify ways to support appropriate levels of engagement between water businesses and their First Nations consumers and community.

⁶ This goal broadly aligns with recommendation 6 from the community deliberative panel report

Nations consumers and communities.⁷

Goal seven: We will build and improve partnerships with government, industry and community organisations to identify and respond to issues across the system.⁸

- We will reflect the needs of consumers based on our research and engagement through our role in assisting the Department of Environment, Land, Water and Planning with the expansion of the Victorian Energy Upgrades program.
- We will work with relevant agencies to understand where eligibility for the Victorian Energy Upgrades program interacts with other policy initiatives (e.g., community housing upgrades).
- Work with relevant agencies to address systemic issues affecting consumers access to essential services. As well as the impact of large scale sudden and acute events. This also relates to goal eight.

Goal eight: We aim to be well-equipped to respond to sudden, acute and unexpected challenges, including the economic impacts of events (e.g. natural disasters and global pandemics), and will support our regulated sectors to do the same.

- We will work collaboratively with local government to identify and promote best practice approaches to consumer outcomes.
- Examine the intersection between consumer vulnerability and climate change and how this interacts in our regulated sectors, to ensure our approach is well informed.
- We will bring together qualitative and quantitative data to better understand how consumers experiencing vulnerability interact in the sectors we regulate. This also relates to goal three.

Recommendations from our community panel

Our community panel's recommendations were key to the development of our draft strategy. Held over five weeks with 37 members of the Victorian community, the discussion between

⁷ This goal broadly aligns with recommendations 4 and 7 from the community deliberative panel report

⁸ This goal broadly aligns with recommendations 5 and 6 from the community deliberative panel report

panel members and the commission leadership and staff, helped us to better understand the consumer experience. The panel's recommendations shaped the themes that reflect how consumers are experiencing barriers to access in our regulated sectors. The themes formed the basis of the long-term goals of the strategy which in turn led to the initiative that will operationalise the strategy.

The recommendations from the panel are below.

- The commission must work with providers to ensure bills, forms and communications are understandable, inclusive and accessible for all Victorian consumers, and are tested with a diverse group of people experiencing hardship.
- The commission works with providers to ensure that when people are facing hardship, it triggers being contacted by an empathetic and trained person who will help them.
- The commission works with providers to improve consumer communication and engagement, ensuring better outcomes for those facing hardship. The commission should regularly monitor providers and issues penalties for poor performance.
- The commission to develop minimum standards to ensure providers respond in an appropriate way when dealing with people from diverse cultures, backgrounds and needs. This is monitored to ensure compliance.
- The commission to work directly with consumers, and in partnership with other organisations, to help and educate consumers to become more aware of their rights, entitlements and obligations so that they are confident and empowered to understand, act and navigate the system with positive outcomes.
- The commission to form active partnerships with relevant government, community groups and industry entities to take collective responsibility for consumers experiencing hardship.
- Investigate the meaning of 'vulnerability' further.
- The commission to maintain regular engagement with the community to gain insights about consumers who are facing hardship, their concerns and circumstances.

What this means for consumers

Ultimately, we aim to improve consumer access to the essential services we regulate. Consumers should be able to better understand their choices and get better support that meets their specific needs. Some of these consumers will be facing payment difficulties, while others will face language difficulties when they contact their provider. Some consumers will need the support of trusted third parties in the community, and these agencies should be able to work more effectively with more responsive service providers.

This will be a substantial challenge, and to give some sense of scale, currently in Victoria there are:

- Nearly 700,000 water concession customers receiving more than \$170 million in benefits
- Nearly 50,000 electricity consumers asked for, and received assistance from, their energy retailer to help stay on top of their bills
- More than 35,000 gas consumers asked for, and received assistance from, their energy retailer to help stay on top of their bills
- More than 50,000 energy and nearly 16,000 water applications for utility relief grants were approved in 2019–20.⁹

While providing an indication of those that accessed financial assistance, these numbers do not include consumers encountering barriers to accessing essential services or the support on offer. By implementing this strategy, we hope to see an increase in consumer engagement with businesses and an increase in access to support.

A three-year outlook

This draft strategy has a three-year outlook but will evolve over time to accommodate changes in our operating environment, and as we and those we work with gain a better understanding of what works. An initial three-year period provides certainty for our stakeholders, and an opportunity for us to monitor and rate the effectiveness of our goals and initiatives.

Next steps

We are keen to receive feedback on this draft strategy. Input from our regulated and administered sectors, the community sector, government partners, and other regulators is key to its success. Through this process we will continue to work together, explore innovative responses to consumer need, and ultimately create opportunities for equitable and inclusive participation in essential services.

Indicative dates for the next stages in the development of the strategy are provided below. You can also visit our website at www.esc.vic.gov.au/about-us/how-we-regulate/regulating-consumer-vulnerability-mind.

⁹ As at end of 2019–20 financial year. Statistics from the Essential Services Commission's Victorian Energy Market Report 2019–20 and water data performance reports.

Key dates for public engagement for the strategy are:

- 11 May 2021 – virtual public forum
- Late May – sector specific workshops
- 4 June 2021 – closing date for submissions on our draft strategy
- 30 June 2021 – release of final strategy.

We want your feedback on this draft strategy

Throughout this document we have included consultation questions to prompt feedback. Overall, we are looking for feedback on the following questions:

- Do you think implementing these goals will assist to improve outcomes for consumers? If not, why not? If yes, is there a way we could strengthen or improve our proposals further?
- Do you think there are other goals or initiatives we should consider, within our scope of responsibility, that would better support consumers?

We invite you to make submissions with your feedback through the below methods.

Attending a virtual public forum

We will hold a virtual public forum on **11 May 2021**. Find details about our public forum [on Engage Victoria](#).

Providing written comments or submissions

Written comments or submissions in response to this draft strategy are due by **4 June 2021**.

We require submissions by this date, so we have time to fully consider them for our final strategy. Comments or submissions received after this date may not be afforded the same weight as submissions received by the due date.

We would prefer to receive comments and submissions via:

- [our website](#)
- our dedicated consultation page [on Engage Victoria](#).

Alternatively, you may send comments and submissions by mail to:

Getting to fair: consumer vulnerability strategy
Essential Services Commission
Level 8, 570 Bourke Street
Melbourne VIC 3000.

We usually make all comments and submissions publicly available in the interests of transparency. If you want part of or all your submission to be private, please call us on (03) 9032 1300 or email us at consumervulnerability@esc.vic.gov.au.

If you cannot access any of the documents related to our draft strategy, please contact us to make alternative arrangements.

How we developed our draft strategy

Our approach

Our draft strategy to address barriers to access essential services has been informed by:

- **qualitative and quantitative research** to capture the varied experiences of different consumers and emerging data trends
- **an internal and external engagement program** (including deliberative engagement with Victorian consumers)
- **capability building activities** to model and reflect our values and expectations.

Our approach in developing the draft strategy was based on:

- community expectations of regulators following recent royal commissions
- our current role in responding to consumer vulnerability and how we responded to the coronavirus pandemic
- the work of the Victorian Government to support consumers in our regulated sectors
- an increasing focus on consumer vulnerability by regulators in the UK and Australia.¹⁰

Our aim in using this approach was to build a comprehensive understanding of consumer vulnerability in a changing world.

Definitions and terminology

Our research has shown us that the term 'vulnerability' is not always appropriate or well accepted, particularly by those the term is trying to describe.

We are exploring how we can frame our draft strategy, so it better aligns with contemporary usage and reflects the voices and interests of consumers.

This section sets out the information we gathered from our stakeholders, the approaches of other regulators, and our position on what consumer vulnerability means.

¹⁰ Essential Services Commission, 'Building a strategy to address consumer vulnerability: approach paper', September 2020.

What we mean by vulnerability

Our working definition of consumer vulnerability is as follows:

A person experiencing vulnerability is someone who experiences barriers to participating in the essential services we regulate or administer. As a result of those barriers that person experiences economic and social exclusion or harm.

Our definition focuses on socially constructed barriers to participation in essential services, including those created by markets. In doing so, we recognise that barriers – rather than characteristics of the individual – are the biggest contributing factor in minimising inclusion and participation and ultimately sustaining marketplaces that are inaccessible to many consumers. With this definition we aim to minimise the onus on the consumer and highlight the role of regulators and business practice in supporting consumers.

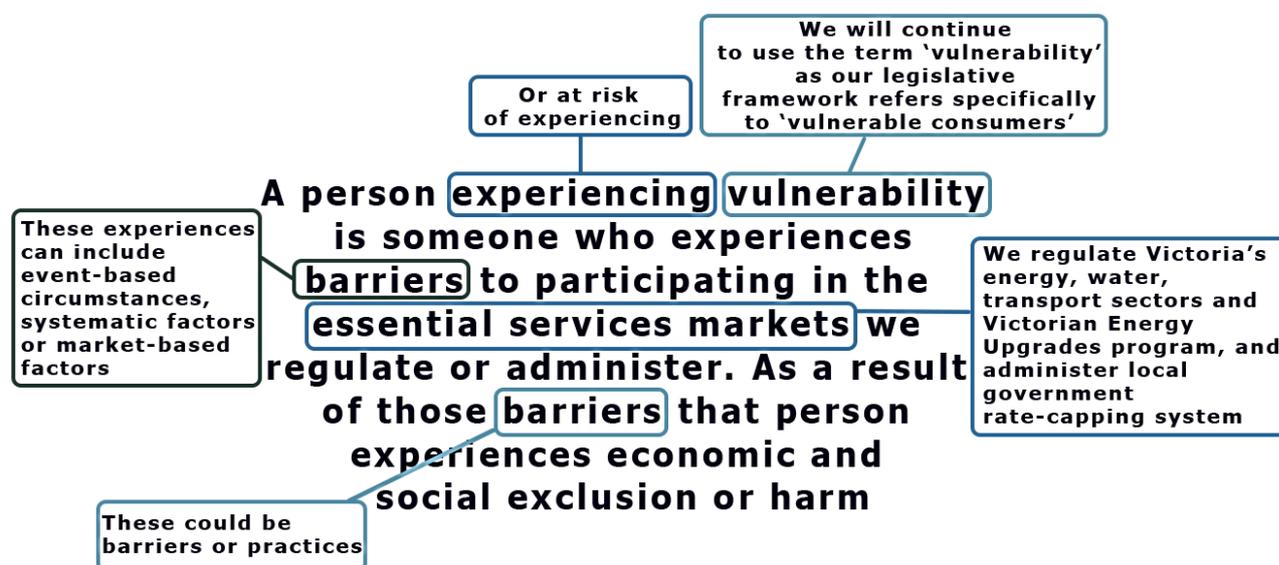


Image: breakdown of vulnerability definition

We mean barriers to include events, systems and structures that do not facilitate the participation of consumers.¹¹ These experiences can include:

- event-based circumstances such as illness, job loss, financial stress, death of a loved one, natural disaster, global pandemic

¹¹ Emma O'Neill, 'Exploring regulatory approaches to consumer vulnerability: a report for the Australian Energy Regulator', Consumer Policy Research Centre, February 2020.

- systemic factors such as ageing, poor mental health, social isolation, disability, language barriers, regional limitations, digital and financial literacy, siloed services
- market-based factors such as inadequate or overly complex documentation, pricing strategies, misleading marketing, and targeted exploitation.

Barriers can be temporary, long-term, or permanent, and consumers might be affected by multiple barriers at the same time. They may be the result of processes and practices of regulators, governments, essential services businesses, and other organisations that consumers need easy access to so they can participate equitably in essential services.

The coronavirus pandemic has demonstrated that anyone can experience unexpected or exacerbated barriers to access, and that economic and social exclusion can cause widespread harm as a result. This ultimately leads to decreased consumer wellbeing and an erosion of trust in the essential services that were designed to serve the long-term interests of consumers.

Acknowledging the importance of language in breaking down barriers

Language is important, and its use carries weighty implications, especially when it is used insensitively or inappropriately. Through our strategy development, we have heard that there is significant stigma attached to the term ‘vulnerability’, and the commission’s draft strategy should not create any additional barriers for consumers. Inclusion and accessibility are key outcomes of our strategy, and we must acknowledge that the term ‘vulnerable’ is a clear barrier for consumers in essential services marketplaces. See appendix 2 for more information about language.

In the spirit of what we have learned from our stakeholders, we are calling this draft strategy: *Getting to Fair: breaking down barriers to essential services*.

Our hybrid approach to communicating on vulnerability

To ensure we can work proactively with all our stakeholders, and at the same time model and influence better practice, we propose a hybrid approach for communicating about vulnerability.

This approach acknowledges our legislative objectives and functions

Our legislative framework refers specifically to our obligation to have regard to ‘vulnerable consumers’.¹² This language is embedded in the regulatory environment in which we operate

¹² Essential Services Commission Act 2001, s 8A(e)(i).

and ensures the legal integrity of the work we do. Similarly, we have noted that ‘vulnerability’ is a widely used and recognised term for regulators and across sectors.

We will reframe the term ‘vulnerability’ when communicating about our legislative functions

In recent years, among the community sector and industry stakeholders, there has been a purposeful shift away from saying ‘vulnerable consumers’, instead using the phrase ‘consumers experiencing, or at risk of experiencing, vulnerability’. This is to recognise that it is the **systems** and **structures** that create barriers to access, and not an inherent quality that makes someone ‘vulnerable’. We support this practice, but still see room for evolution of better practice in this space.

We propose to continue to use ‘consumers experiencing, or at risk of experiencing, vulnerability’ where this is helpful shorthand in our communications to specialist stakeholders, such as our government partners, industry and relevant community stakeholders. These communications are often more explicitly linked to outlining how we intend to fulfill our legislative functions.

We will use inclusive language in public communications

We propose to use more inclusive terms (some of which are discussed below) when communicating directly to consumers who may face barriers to access and avoid the term ‘vulnerability’ in that context. We encourage others to do likewise.

When communicating outwardly, we will use language suggested by our stakeholders, including:

- resilience
- wellbeing
- equity
- accessibility
- inclusion
- fairness.

This approach reflects the feedback we have received through our research and engagement program, the context of our authorising environment and the audiences we commonly communicate with.

Consistent with this approach, we use ‘consumers experiencing vulnerability’ throughout this draft strategy. For more information about how we identified best practice terminology, see appendix 2.

Consultation questions on the definition and terminology used in the draft strategy

Suggestions for framing feedback on the definition:

- How well does the definition on page 18 align with the contemporary understanding of consumer vulnerability and its causes and impacts?
- Given that 'vulnerability' is widely used and easily recognised by businesses, is the hybrid approach the best approach for the commission to take when communicating with stakeholders?

Identifying the problem: Understanding the changing nature of consumer vulnerability

Through our program of research and engagement (appendix 5), we aimed to develop a comprehensive understanding of consumer vulnerability against an uncertain global and local environment, while keeping longer-term and ongoing challenges within scope. We heard that consumer vulnerability is a dynamic and individual experience, and we developed our themes to reflect the complex nature of these personal circumstances.

Using this engagement, along with analysis of key research reports and datasets, we have identified eight key themes of how consumers are experiencing barriers when seeking to access our regulated and administered sectors. In identifying these themes, we also took into consideration recommendations provided to the commission through key pieces of research and engagement (appendix 5).

Our activities gave us a robust evidence base on which we were able to identify the problems consumers face in accessing their essential services. We were able to clearly group these identified problems into eight key themes (appendix 4). For each of these themes, we went on to develop goals against which to align the commission's future initiatives.

Theme one: Consumers require appropriate, consistent and accessible communications

The importance of appropriate, consistent, and accessible communication was highlighted in our research as being vital to consumers participating in essential services. We heard that some consumers received messages that were unclear, confusing or which actively contradicts other information. This experience creates a significant barrier to consumer engagement, understanding and capacity to participate.

Regulators can ensure businesses provide consistent and easily accessible communications

A common theme from our research and engagement was that communication from businesses can be inconsistent and inaccessible – with some consumers unable to decipher the different communications they are receiving from government, regulators and businesses.

For instance, energy retailer websites were noted by our community sector roundtable as a cause of conflicting messaging, with some energy retailers using different language to government organisations (e.g., specifying 'case-by-case' assistant rather than 'tailored

assistance’).¹³ We heard that the lack of uniformity muddles an already confusing area for consumers.

Our stakeholders noted that during disaster events, communication in easy-to-access formats is vital to supporting consumer resilience. During times of acute crisis, ‘timely, clear and consistent communications [can] also be[come] a barrier to decision-making and responding’.¹⁴ This barrier can heighten a person’s experience of vulnerability, resulting in greater personal loss and longer-term financial hardship.¹⁵

At the peak of the coronavirus lockdown in Victoria in 2020, many community sector representatives were concerned about inconsistent outcomes for consumers seeking coronavirus assistance.¹⁶

We received reports of financial counsellors or community sector representatives calling energy retailers to find that the operator who took the call was not aware of, or providing inaccurate information, on available support. In response to this, many would simply end the call and then call back, hoping to speak to a more knowledgeable operator.¹⁷ Not only does this offer inefficient service, but it suggests that consumers may be receiving incorrect information.

Lack of awareness of where to get information

A recurring theme throughout our research and engagement was that consumers face barriers to accessing important information due to lack of awareness of where it can be found.¹⁸

During a meeting of our community sector roundtable, we heard that 78 per cent of consumers from a single energy retailer were uncertain as to whether they could contact their retailer to seek assistance.¹⁹ For many experiencing vulnerability for the first time,

¹³ Community sector roundtable, Essential Services Commission, held online, 30 April 2020.

¹⁴ Thriving Communities Partnership, ‘Disaster planning and recover collaborative research project, June 2020, p55.

¹⁵ Ibid., p30.

¹⁶ Community sector roundtable, Essential Services Commission, held online, 22 October 2020.

¹⁷ Ibid.

¹⁸ Thriving Communities Partnership, ‘Disaster planning and recover collaborative research project, June 2020, p30.

¹⁹ Community sector roundtable, Essential Services Commission, held online, 16 July 2020.

navigating the communications and hardship/payment difficulty support systems becomes an impossible task. This is made harder for consumers who have limited English skills.²⁰

Communicating with diversity in mind: meeting the cultural and language needs of all consumers

We heard that currently the diverse needs of Victorian consumers – their language and cultural needs – are often not being met by businesses or regulators. For those experiencing vulnerability, language barriers can often cause or exacerbate harm, excluding consumers from seeking support or managing and paying their bills. For instance, it was noted in one of our cross-sector workshops that awareness of the Utility Relief Grant Scheme remains low among those whose first language is not English.

At our community sector roundtable, we heard that to meet the needs of consumers, some community sector organisations include written material on the walls of their community locations (retail stores, community centres etc.) which gives those who visit the location an opportunity to engage with information.²¹

Our stakeholders told us that meeting culturally specific needs is key to providing appropriate communications to consumers – particularly in relation to support that is open to consumers. The Energy and Water Ombudsman (Victoria) suggests that ‘consideration should be given to appointing dedicated staff to provide culturally safe assistance to consumers from cultural groups that are currently poorly served by the [payment difficulty framework]’.²² This is particularly relevant to supporting those who identify as a First Nations person.²³

The digital divide is leaving some consumers behind

While digital and online services can improve accessibility for consumers, for many, these cause additional barriers. Not all Victorians have access to digital platforms or devices, and an over-reliance on digital mediums risks leaving some consumers in the dark. One in five Australians do not have a computer at home, and many consumers rely on their phones and

²⁰ Cross sector workshop, Essential Services Commission, held online, 29 March 2020.

²¹ Community sector roundtable, Essential Services Commission, held online, 10 June 2020.

²² Energy and Water Ombudsman, ‘Missing the Mark: EWOV insights on the impact of the payment difficulty framework’, December 2020, p27.

²³ Ibid.

mobile data to access the internet, thus increasing their digital costs.²⁴ Some community members (particularly older members) may be completely excluded from accessing or participating in online communications as they have no access to online content at all.²⁵

Thriving Communities Partnership also found that while social media does play an important role in circulating information, consumers often do not trust it as a source – but rather a channel that ‘circulate[s] false information and arouse[s] public fear’.²⁶

The commission is encouraging inclusive communication

Across much of our research and engagement, we heard the reason consumers are often reluctant to engage with their essential service providers is that the communication is difficult to understand. Our community panel made two recommendations towards the commission’s role in enhancing communication across sectors:

[The commission] must work with providers to ensure bills, forms and communications are understandable, inclusive and accessible for all Victorian consumers and are tested with a diverse group of people experiencing hardship. Methods of communication must be driven by the consumers, not the provider.²⁷

[The commission] must improve customer communication... to ensure better outcomes for those facing hardship, and regularly monitor and apply penalties for poor performance in this area.²⁸

While we acknowledge operational capacities of businesses to deliver accessible communication – for instance, it may not be possible to provide communications in multiple languages and formats – we consider that it is important to explore a variety of communications mechanisms and formats to improve accessibility overall.

The commission notes that to encourage better practice communications, we must take stewardship to model the way forward. In our guidance paper on universal and inclusive

²⁴ Community sector roundtable, Essential Services Commission, held online, 22 October 2020.

²⁵ Ibid.

²⁶ Thriving Communities Partnership, ‘Disaster planning and recover collaborative research project, June 2020, p30.

²⁷ Deliberative community panel, recommendation 1, December 2020.

²⁸ Deliberative community panel, recommendation 3, December 2020.

engagement, the University of Melbourne's Social Equity Institute recommends that as a regulator, we:

Publish all information in all community languages and multiple accessible formats, including plain language, large print, Easy English and easy-read, audio and video. Consult existing guidance on making information accessible, and engage experts where needed (for example, to develop Easy English versions).²⁹

The commission is committed to improving the accessibility of our own communication, not only for consumers, but for our stakeholders across government, industry and the community sector that rely on information provided by us.

We will continue to champion better practice work in relation to communications, and act as a support for our various stakeholders on the journey to the adoption of widespread inclusive and accessible communication. To facilitate this, we propose:

Proposed goal one: We aim to improve the accessibility of the communications consumers receive, so they are consistent, accessible and meet their needs.

Possible supporting initiatives:

Supporting sector-focused initiatives

Possible initiative	Timeframe	Measure of success
1.1 We will develop and improve consumer facing information to better meet the diverse needs of consumers, including improving information about consumer rights.	Ongoing work over the next two years with key milestones during that period.	Development of digital and culturally appropriate information for the program. Provide guidance on sensitive and inclusive terminology in all communication and engagement.

²⁹ Essential Services Commission and the University of Melbourne's Social Equity Institute, Sensitive and appropriate engagement with consumers experiencing vulnerability, March 2021, p 12.

Theme two: Consumer engagement is not always universal or inclusive, leading to less accessible services

One of the key objectives of our approach to developing a consumer vulnerability strategy is to bring the voices of consumers closer to our regulatory work.

We heard that there are currently many challenges to the way consumers are being consulted in the design and delivery of the systems they use to access essential services.

Consumers engage in different ways and their needs can change quickly

Our stakeholder reference group highlighted that people from different cultural backgrounds may have a mixed understanding of the relationship between consumers and regulated businesses in the Australian environment.³⁰ Some consumers may have lived in countries where energy provision is government owned or not part of a privatised market. The way they navigate and engage with competitive market can be affected by this level of understanding, creating additional barriers and challenges.

The Energy and Water Ombudsman (Victoria) has discussed the general ways businesses can prepare for consumers who may be experiencing vulnerability, including staff training, communication tone and proactive initiation of entitlements.³¹

Similarly, people experiencing vulnerability will engage with essential services in ways that reflect their individual circumstances particularly at times of acute stress. Thriving Communities Partnership highlighted that consumers can experience disasters differently – for example people on life support mechanisms will be highly concerned about their access to energy during events where they may be isolated from support (e.g. a flood or bushfire).³²

During the coronavirus pandemic, government agencies and businesses implemented support mechanisms and made them available quickly. However, the Consumer Policy Research Centre highlighted that while these support mechanisms were important, they did not always reach consumers most in need.³³

³⁰ Stakeholder reference group, Essential Services Commission, held online, 29 October 2020.

³¹ Energy and Water Ombudsman, 'EWOV's affordability report', March 2020, p18.

³² Thriving Communities Partnership, 'Disaster planning and recover collaborative research project, June 2020, p11.

³³ Community panel reflections, community panel meeting, Essential Services Commission, held online, 9 December 2020.

Our community panel told us that consumers living in regional and remote areas experience challenges in their interactions with businesses. They may have intermittent access to the internet, which reduces their capacity to engage with online-only communications platforms. For many participating in the panel itself, access to online resources to take part in the discussion process was difficult due to an unfamiliarity with the platforms being used.³⁴

We need to understand and build connections with the communities we serve

At our community roundtable we heard that when information was distributed through local community groups or agencies, particularly in relevant languages, there was a much higher take up of support.³⁵

Our cross-sector workshop identified that some businesses are building connections with new and emerging communities through council groups, community leaders and community organisations. Through these relationships they are improving awareness of the support available for consumers and have seen a higher level of engagement from these communities. This has benefits for both the business and the consumer, reducing long-term debt and improving access to available support.

In developing this draft strategy, we ran a deliberative community panel to hear directly from a broad range of consumers. We sought out a broad representation from different geographic areas, cultural backgrounds, socioeconomic groups, and ages. This was one mechanism to inform our thinking for the vulnerability draft strategy and it highlighted the different experiences that consumers have in interacting with our regulated sectors.

In its deliberations the community panel was clear that the commission needs to continue to hear directly from consumers to inform its work. The panel recommended ongoing mechanisms for engagement with consumers to ensure that our work reflects the values and experiences of people in the Victorian community.

The commission is committed to universal and inclusive engagement

In its guidance on universal and inclusive engagement the University of Melbourne's Social Equity Institute identifies that regulators are becoming increasingly aware that standard approaches to engagement may not be designed to capture the full diversity of consumer

³⁴ Community panel reflections, community panel meeting, Essential Services Commission, held online, 9 December 2020.

³⁵ Community sector roundtable, Essential Services Commission, held online, 9 April 2020.

perspectives, particularly in times of widespread health or economic crisis.³⁶ Its guidance highlights that if engagement is not designed sensitively and appropriately, some consumers the views of will not be considered. This has the potential to exacerbate existing vulnerabilities and create unintended negative consequences.

Thriving Communities Partnership agrees that incorporating a deeper understanding of community needs (particularly those at greater risk of experiencing vulnerability) into the design and evaluation of products and services will help to avoid unintended negative outcomes.³⁷

The University of Melbourne's Social Equity Institute recommends that engagement be 'universal' and 'inclusive', which means that it is:

open to everyone in the Victorian community and can be adapted to the perspectives and requirements of consumers in any circumstances, including circumstances of vulnerability.³⁸

In its report the Consumer Policy Research Centre says taking a consumer-centric approach to designing policy and markets will drive inclusive growth.³⁹ This will ensure that all consumers are given the opportunity to receive the best possible outcomes by integrating principles of equity from the outset.

Our community panel also emphasised the importance of universal engagement, with their fifth recommendation calling for the commission to:

[s]upport consumers to be able to engage with suppliers by having standardised information, offers and contracts provided by all suppliers so that offers can be easily compared.⁴⁰

³⁶Essential Services Commission and the University of Melbourne's Social Equity Institute, 'Sensitive and appropriate engagement with consumers experiencing vulnerability', March 2021, p51.

³⁷ Thriving Communities Partnership, 'Disaster planning and recover collaborative research project, June 2020, p55.

³⁸ Essential Services Commission and the University of Melbourne's Social Equity Institute, 'Universal engagement with consumers experiencing vulnerability: a pathway for action', March 2021, p.3.

³⁹ Consumer Policy Research Centre, 'COVID-19 and consumers: from crisis to recovery', June 2020, p8.

⁴⁰ Deliberative community panel, recommendation 5, December 2020.

We are committed to continuing to provide universal and inclusive engagement activities across our regulatory functions, and to leading better practices in this space. Our proposed goal two is therefore:

Proposed goal two: We aim to take a universal and inclusive approach to our own engagement practices with consumers and support our regulated sectors to do the same.

Possible supporting initiatives

Supporting sector-focused initiatives

Possible initiative	Timeframe	Measure of success
2.1 We will work collaboratively with local government sector to promote better practice in direct engagement with consumers.	Two years	Commission delivers engagement activities to promote better practice with local government sector (conference and/or recognition event).
2.2 We will work more proactively with community groups to support more effective and targeted engagement with the full spectrum of consumer groups.	Two years	Engagement activities reflect advice gained through new relationships with relevant community groups.
2.3 We will include direct engagement with consumers and community groups in Victorian Energy Upgrades engagement program.	12 months	Consumers and community groups provided opportunities for engagement as part of Victorian Energy Upgrades engagement program.
2.4 We will ensure engagement practices by water businesses are universal and inclusive, enabling the participation of hard-to-reach consumers.	Ongoing	Include in the guidance material and commission decisions in water our expectations on the use of engagement practices that universal and inclusive.
2.5 We will review of the effectiveness of the payment difficulty framework, incorporating the voices of consumers experiencing vulnerability. This relates to goals three and five.	Two years	Our review has factored in the effect of consumers experiencing vulnerability.

Theme three: Consumer trust of their service provider is low, with many not empowered to make choices or seek support

We heard that a significant barrier to consumers engaging with providers of essential services – including to seeking support when they need it – is a lack of trust. Our stakeholders told us that consumers do not trust businesses to act in their best interests, or to provide the correct information. The causes of this mistrust are outlined below.

We heard energy retailers could do more to support consumer engagement in the energy market

Energy retailer behaviour can have a significant influence on market participation for consumers. Through interviews with community workers, the Consumer Policy Research Centre reported that in the energy market, complexity coupled with inconsistent support from retailers eroded consumer trust and disempowered consumers from self-advocating.⁴¹ Consumers often find information about the energy market difficult to navigate or understand, and they reported that retailers don't always take stewardship to support their awareness and understanding. One community worker told the Consumer Policy Research Centre:

[consumers] don't trust the utility company, there's a real distrust there... there's no layman term brochures or information out there to explain this to the vulnerable customer.

In another report surveying consumers through the coronavirus pandemic, the Consumer Policy Research Centre identified several other factors contributing to lower consumer trust.⁴² These also related to retailer practices and difficulties faced when seeking support or information. Barriers to engagement included call centre wait times, poor and unhelpful service, often delivered through offshore call centres. Consumers with these experiences had a lower level of trust in their retailers and were more reluctant to attempt to engage again.

⁴¹ Consumer Policy Research Centre, 'Consumer experiences following energy market reforms in Victoria' (quarter 2 report), interviews report for the Essential Services Commission, January 2021, p18.

⁴² Consumer Policy Research Centre, 'COVID-19 and consumers: from crisis to recovery', June 2020, p4.

The Consumer Policy Research Centre subsequently recommended that the commission 'identify mechanisms to increase consumer awareness of assistance available and capacity to self-advocate.'⁴³

Our community panel agreed that there is not sufficient education available to empower consumers to act on their rights. Similarly, attendees at our community sector roundtables noted an ongoing lack of consumer understanding about entitlements. At our cross-sector workshop on understanding access to barriers to support for consumers, participants noted that this lack of understanding is exacerbated by many businesses failing to communicate and personalise assistance. This in turn leads consumers to feel unsupported, and ultimately lose trust in their businesses.

Thriving Communities Partnership reported that the communication methods and channels used by businesses also contributed to mistrust.⁴⁴ It noted that people, especially those whose first language is not English, are not only unsure how to access information or cannot access information, but also do not trust the information provided by businesses.

Consumers believe that regulators do not apply appropriate penalties

We heard that more could be done in the area of monitoring of compliance with communication and engagement obligations of businesses. When consumers are not aware that penalties are applied to businesses in breach of their obligations, perceived lack of consequences erodes trust in the market overall.

Our community panel recommended the commission take a course of action including developing 'minimum standards to ensure providers respond in an appropriate way when dealing with people from diverse cultures, background and needs.' The panel also recommended monitoring of these standards to ensure compliance, as a means of rebuilding trust in consumers that their interests are being addressed.

Further, at our community sector roundtable we heard the need for greater clarity around what is enforceable, and what evidence is needed for community workers, consumer advocates and lawyers to act on behalf of their clients.

⁴³ Consumer Policy Research Centre, 'Consumer experiences following energy market reforms in Victoria' (quarter 2 report), interviews report for the Essential Services Commission, January 2021, p45

⁴⁴ Thriving Communities Partnership, 'Disaster planning and recover collaborative research project, June 2020, p30.

Systems issues may make it difficult for consumers to access their entitlements

Supports that rely on multiple sectors and organisations to be effective can lead to the loss of trust when they fail. An example that it often raised with us is utility relief grant scheme and concessions which relies on coordination between energy and water utilities, the consumer and state government. Participants at our community sector roundtable highlighted challenges with the application and approval process. As a result of these difficulties, they noted that consumers may be less willing to apply for a grant if they were declined or their application was delayed on an earlier occasion.

We have made some progress in this area. Our analysis in June last year highlighted that where providers assist consumers complete and lodge grant applications – which had been common in the water sector – more applications were lodged with the relevant government department and more were able to be approved.⁴⁵ Based on this analysis, we updated our code so that energy retailers are now required to support residential consumers in completing utility relief grant application forms, including by submitting forms online on behalf of the consumer where possible and where the consumer consents to this. However, continued efforts to strengthen coordination are needed to effectively support consumers.

The commission is committed to growing consumer trust to support better outcomes for consumers

Energy Consumers Australia reports that in 2020, 38 per cent of households are confident the energy market is working in their interests, up from 21 per cent in December 2017.⁴⁶ This is a promising trend – and maintaining this trajectory is a strong incentive for more to be done to build trust and empower consumers to self-advocate.

We received several recommendations from our stakeholders around our role in building trust, outlined in this section. Further, our community panel recommended:

[the commission] work directly with consumers, and in partnership with organisations, to help educate consumer to become more aware of their rights, entitlements and obligations so that they are confident and empowered to understand, act and navigate the system with positive outcomes.

⁴⁵ 'Supporting energy customers through the coronavirus pandemic: Draft decision', Essential Services Commission, 30 June 2020

⁴⁶ Energy Consumers Australia, 'Energy Consumer Sentiment Survey: December 2020', December 2020, p8.

The commission is committed to exploring this recommendation further. We are already assessing the energy retail market's competitiveness and efficiency.⁴⁷ Early reports in this assessment diagnosed low levels of trust as an impediment to a fully effective market, noting 'trust ought to be present for the market to be effective for all consumers, particularly consumers experiencing vulnerability.'⁴⁸ This will be a focus area for our monitoring and reporting on the energy market in future years, especially in relation to consumer perspectives and retailer conduct. Ongoing investigation will give us a better understanding of the causes of eroding trust in the energy market, and actions we can take as a regulator to rebuild trust and empower consumers.

In addition, we have included new initiatives to support achieving our goals in relation to this theme (viewed below).

Our proposed goal three aims to address these consumer concerns.

Proposed goal three: We aim to improve consumer trust and support them to feel empowered, make choices and seek support.

Possible supporting initiatives:

Supporting sector -focussed initiatives

Possible initiatives	Timeframe	Measure of success
3.1 We will review of the effectiveness of the payment difficulty framework, incorporating the voices of consumers experiencing vulnerability. This relates to goals two and five.	Two years	Our review has factored in the effect of consumers experiencing vulnerability.
3.2 We will hear the voices of consumers experiencing vulnerability to better informs our reforms and monitoring of the energy market.	Ongoing work over the next two years with key	Applies or conducts research where required.

⁴⁷ 'Assessing the energy retail market's competitiveness and efficiency', Essential Services Commission, accessed 13 April 2021, <https://www.esc.vic.gov.au/electricity-and-gas/inquiries-studies-and-reviews/electricity-and-gas-retail-markets-review-implementation-2018/assessing-energy-retail-markets-competitiveness-and-efficiency-2019>

⁴⁸ 'Assessing the competitiveness and efficiency of the Victorian energy retail market: framework and approach', Essential Services Commission, 17 December 2019, accessed 13 April 2021, https://www.esc.vic.gov.au/sites/default/files/documents/assessing-the-competitiveness-and-efficiency-of-the-victorian-energy-market-framework-and-approach-paper-20191217_0.pdf, p5.

		milestones during that period.	
3.3	We will develop options to include the voice of the consumer experience in enforcement processes.		<ul style="list-style-type: none"> • Consumer experience informs compliance and enforcement priority setting. • Consumer harm assessment in enforcement matters is informed by these options.
3.4	We will bring together qualitative and quantitative data to better understand how consumers experiencing vulnerability interact in the sectors we regulate. This also relates to goal eight.	12 months (ongoing initiative)	<ul style="list-style-type: none"> • Use existing data analytics tool to improve understanding of the impact (particularly bill impacts) of sudden events on various consumer cohorts. • We work collaboratively with community agencies and our industry stakeholders to understand which segments of the community are accessing the Victorian Default Offer. Develop a consumer insights report that complements and builds on existing monitoring and reporting practices across the commission. • Develop and monitoring and reporting framework for understanding the effectiveness of the strategy.
3.5	The review of the effectiveness of family violence provisions currently in place across our regulated sectors, work in collaboration with the community and government stakeholders to promote better industry practice. This also relates to goal four and five.	Two years	<ul style="list-style-type: none"> • Review outcomes that identify the effectiveness of the framework for consumers affected by family violence. • Consumer experiencing vulnerability have been engaged. • Cross sector and industry specific workshops delivered. • We will work with the community sector and the Department of Families, Fairness and Housing on embedding our family violence reform work. (in conjunction with the better practice)

Theme four: Consumers who need support are not always identified and supported effectively

We heard that sometimes there is a failure to identify consumers in need of support in essential services markets. The consequence of this is a persistence in the experience of vulnerability, as consumers are not supported effectively to pay for and access their essential services.

Consumers often don't self-identify as 'vulnerable'

We heard that the reasons consumers often are not identified as needing support are varied. Consumers often do not see themselves as, or do not want to be labelled as vulnerable, so they do not seek assistance. This becomes a significant barrier to consumers reaching out to their providers when they need their support.⁴⁹ Some other consumers may not see their circumstances as 'worthy' of help, such as small businesses.⁵⁰ Therefore, relying solely on the consumers to approach their providers to seek assistance may not be the most effective way of identifying consumers who needs support.

Businesses sometimes do not engage proactively with consumers

Another reason we heard of consumers who need assistance are not getting it is that they are not identified due to ineffective engagement on the part of their business.⁵¹ We heard that some consumers have contacted their providers for additional assistance, however they have not received the support they expected due to not meeting the organisation's the pre-defined criteria of a vulnerable consumer.

We also heard that some inequalities and experiences such as family violence – which are not always visible or obvious to businesses – can be a source of experiencing vulnerability for a long time without receiving timely assistance.⁵²

⁴⁹ Stakeholder Reference Group 1, Essential Services Commission, held online, 29 October 2020.

⁵⁰ Thriving Communities Partnership, 'Disaster planning and recover collaborative research project', June 2020.

⁵¹ Consumer Policy Research Centre, 'Consumer experiences following energy market reforms in Victoria' (quarter 2 report), interviews report for the Essential Services Commission, January 2021.

⁵² Community sector roundtable, Essential Services Commission, held online, 10 June 2020.

We are committed to promoting innovating approaches to identifying consumers in need of support

Regardless of the source of failure, we noted some concern with the consequence of ineffective process of identifying consumers who require support.

For instance, we heard that consumers who experienced vulnerability for a long time and had not received timely support might end up with unsustainable long-term debt. As it was noted during the pandemic, some consumers had to access their superannuation to pay off their accumulated debt.⁵³ The risk associated with long-term debt and not having access to energy at the time of disaster can be a serious concern as it can put the life of consumers at risk, specially the one on life support.⁵⁴

The commission is committed to supporting better approaches to the identification of consumers needing support through our proposed goal four:

Proposed goal four: We aim to improve practices so consumers who need support are identified effectively and in a timely manner.

Possible supporting initiatives:

Supporting sector-focused initiatives

Possible initiative	Timeframe	Measure of success
4.1 We will incorporate the voices of consumers and reflect the barriers to access and inclusion in the outcomes of the review of the water customer service codes.	Two years	Consumers experiencing vulnerability are identified as a key stakeholder group to be engaged in the review of the water customer service codes. The outcomes of the review respond to barriers to access and inclusion experienced by consumers experiencing vulnerability in the water sector.
4.2 We will continue to highlight business innovation and better practice in identifying and responding to consumer	12 months (ongoing initiative)	Develop a business innovation report that highlights better practice approaches from across our regulated and administered

⁵³ Community sector roundtable, Essential Services Commission, held online, 16 July 2020.

⁵⁴ Thriving Communities Partnership, 'Disaster planning and recover collaborative research project', June 2020.

	vulnerability across our regulated sectors.		sectors, to supporting consumers experiencing vulnerability.
4.3	We will use industry education to support better practice approaches for retailers and distributors to have a consistent understanding of vulnerability.	Two years	Industry education program on vulnerability (including family violence) and hardship policies developed and delivered (incorporating findings from review of the payment difficulty framework).
4.4	We will support a consistent understanding of vulnerability across the local government sector.	Three years	Develop of an education and engagement program for the local government sector.
4.5	We will work with Accredited Providers of the Victorian Energy Upgrades program to support better practice in identifying and understanding consumer vulnerability.	Two years	Engagement program developed to work with Accredited Providers on identifying and understanding consumer vulnerability.
4.6	The review of the effectiveness of family violence provisions currently in place across our regulated sectors, work in collaboration with the community and government stakeholders to promote better industry practice. This also relates to goal three and five.	Two years	<ul style="list-style-type: none"> • Review outcomes that identify the effectiveness of the framework for consumers affected by family violence. • Consumer experiencing vulnerability have been engaged. • Cross sector and industry specific workshops delivered. • We will work with the community sector and the Department of Families, Fairness and Housing on embedding our family violence reform work. (in conjunction with the better practice)

Theme five: Support offered to consumers is inconsistent, which means it is not always appropriate or flexible

Inconsistency is a key issue for consumers navigating essential services markets and accessing their rights and entitlements. We have heard that this inconsistency happens both between businesses, and in responses from within the business, varying between customer service staff. The consequences of inconsistency include the provision of inappropriate support that lacks empathy and does not meet the consumer’s needs.

In energy, we heard that retailers may not be applying the payment difficulty framework correctly

In the energy market, a key opportunity for improved consistency seems to be the application of the payment difficulty framework. Resoundingly, we heard that the inconsistent application of the payment difficulty framework is an ongoing source of frustration for consumers and their advocates, as retailers often apply it incorrectly, or differently from time to time.

We heard that even within the same retailer, responses over the phone can vary greatly and depend on ‘luck of the draw’.⁵⁵ Through interviews with community workers and financial counsellors, Consumer Policy Research Centre found ‘outcomes for consumers who approach their retailer for assistance and/ or better tariffs appear to depend highly on who you get to speak to’.⁵⁶ Customer support workers have subsequently reported adopting a tactic of hanging up and calling the retailer back until they find someone that can help. One support worker told Consumer Policy Research Centre:

Halfway through the conversation, if they are not helpful, we hang up and call again because we will get someone more helpful. I know it sounds awful and ridiculous but if somebody doesn’t understand what we are asking and that’s their job to understand that... Hang up and we will talk to someone who knows what they are talking about.⁵⁷

Customer support workers also reported advising clients to use the same strategy when self-advocating. Consumer Policy Research Centre noted that this approach is ‘an inefficient use of consumers and advocates time, and poor retailer responses and misinformation contribute to client disengagement and reluctance to self-advocate to resolve issues and seek better tariffs.’⁵⁸

The application of the payment difficulty framework is also inconsistent across different retailers and tiers of retailers. One customer support worker said that:

⁵⁵ Consumer Policy Research Centre, ‘Consumer experiences following energy market reforms in Victoria’ (quarter 2 report), interviews report for the Essential Services Commission, January 2021, p8.

⁵⁶ Consumer Policy Research Centre, ‘Consumer experiences following energy market reforms in Victoria’ (quarter 2 report), interviews report for the Essential Services Commission, January 2021, p2.

⁵⁷ Ibid., p9.

⁵⁸ Ibid., p2.

I was a little bit disappointed with [Tier 1 retailer]’s resolutions department. They said that the energy Payment Difficulty Framework was discontinued in November last year. I said, ‘who the hell told you that?’. I think it’s an issue of training. Number one, they are not familiar with things, or someone came over from a different department. I think they are not trained. They need to be trained to make sure they are informed of the regulations and frameworks.⁵⁹

In its March 2020 Affordability Report, the Energy and Water Ombudsman (Victoria) reported that consumer credit complaints have been steady since the introduction of the payment difficulty framework on 1 January 2019.⁶⁰

Businesses are not always responding to consumers with empathy and understanding

We found that inconsistent responses to consumers are also often coupled with a lack of empathy and understanding by business call centre staff. Thriving Communities Partnership reported that a lack of trauma informed approaches to support—especially at times of acute crisis—create significant barriers to accessing support for consumers experiencing a heavy mental load or trauma.⁶¹ Similarly, the Energy and Water Ombudsman (Victoria) reported that consumers often do not engage or have difficulty engaging with businesses precisely because of certain traumatic situations, such as family violence, and subsequently may not receive much needed support with their utilities.⁶²

A lack of trauma informed approaches to supporting consumers means that businesses often don’t apply the right interventions and tailored responses to assist consumers. Our stakeholder reference group told us that responses to consumers seeking support may be inconsistent, and consumers may not get a response appropriate to their circumstances because staff are not properly trained to understand consumer needs. Moreover, the group noted that when businesses quickly escalate matters to debt collectors, consumers are less able to negotiate the support they might need.

⁵⁹ Ibid., p9.

⁶⁰ Energy and Water Ombudsman, ‘EWOV’s affordability report’, March 2020, p6.

⁶¹ Thriving Communities Partnership, ‘Disaster planning and recover collaborative research project’, June 2020.

⁶² Energy and Water Ombudsman, ‘Missing the Mark: EWOV insights on the impact of the payment difficulty framework’, December 2020.

Consumer Policy Research Centre’s interviews with community workers also found that empathy itself was not enough for a consumer to receive appropriate support. One customer support worker reporting that:

‘It’s one thing to say, “It sounds like you are having a hard time and I am sorry to hear that”. That’s great, but if you haven’t told them they can apply for the Utility Relief Grant then your sympathy is not doing a whole lot, is it?’⁶³

The commission is committed to investigating and mitigating inconsistency in the marketplace

To address the gap between consistency and empathy, Consumer Policy Research Centre suggested improving standards of training and quality control in business call centres to ‘minimise inconsistency, and ensure households receive accurate information and appropriate support.’⁶⁴ It also suggested facilitating continuity of care by businesses for households experiencing vulnerability, to help foster both consistency and understanding.

The commission’s payment difficulty framework review is designed to assess and analyse the effectiveness of this reform on energy retailer responses to consumers having trouble paying their bills. This review will examine the concerns raised by our stakeholders around the inconsistency of the application of the payment difficulty framework. Further, our ongoing review of the water customer service codes will continue to review the application of support measures by water providers for consistency and appropriateness. However, the commission notes that more can be done to identify and address inconsistent approaches in our regulated sectors to ensure that consumers receive support that is flexible and appropriate and have reflected this in our possible initiatives.

Our proposed goal five aims to address these concerns.

Proposed goal five: We aim to ensure support offered to consumers is flexible and suited to their needs.

⁶³ Consumer Policy Research Centre, ‘Consumer experiences following energy market reforms in Victoria’ (quarter 2 report), interviews report for the Essential Services Commission, January 2021, p9.

⁶⁴ Consumer Policy Research Centre, ‘Consumer experiences following energy market reforms in Victoria’ (quarter 2 report), interviews report for the Essential Services Commission, January 2021, p44.

Possible supporting initiatives:

Supporting sector-focused initiatives

Possible initiatives	Timeframe	Measure of success
5.1 We will consider the needs of consumers experiencing vulnerability as part of our role in setting commercial passenger vehicles fares.	Three years	Approach to industry engagement on consumer vulnerability developed.
5.2 We will review existing reporting and explore options for improved reporting on coronavirus support mechanisms by the water sector (including qualitative methods of reporting) where there are low numbers of consumers accessing support.	12 months	Continued reporting on support mechanism and engagement with the water sector where appropriate.
5.3 The review of the effectiveness of family violence provisions currently in place across our regulated sectors, work in collaboration with the community and government stakeholders to promote better industry practice. This also relates to goal three and four.	Two years	<ul style="list-style-type: none"> Review outcomes that identify the effectiveness of the framework for consumers affected by family violence. Consumer experiencing vulnerability have been engaged. Cross sector and industry specific workshops delivered. We will work with the community sector and the Department of Families, Fairness and Housing on embedding our family violence reform work. (in conjunction with the better practice)
5.4 We will review of the effectiveness of the payment difficulty framework, incorporating the voices of consumers experiencing vulnerability. This relates to goals two and three.	Two years	<ul style="list-style-type: none"> Our review has factored in the effect of consumers experiencing vulnerability.

Theme six: First Nations consumers receive limited support and engagement and face increased rates of disconnection

Throughout the research and development phases of the draft strategy, we have heard that First Nations consumers encounter specific market barriers that result in higher rates of

disconnection and limited opportunities for engagement and support. By giving specific focus to this issue, we aim to build partnerships and lasting relationships to improve outcomes for these consumers.

Respectful and inclusive language use

'I am not an Aboriginal, or indeed Indigenous, I am ... [a] First Nation's person. A sovereign person from this country.'

Rosalie Kunoth-Monks.⁶⁵

As part of this draft strategy, we aim to ensure all language is appropriate and respectful. By using the title 'First Nations', we are recognising Aboriginal and Torres Strait Islander people as 'the sovereign people of this land'.⁶⁶ 'First Nations' likewise provides an inclusive term that recognises the different languages, cultures and histories of First Nations Australians,⁶⁷ and is becoming the preferred title by many Aboriginal and Torres Strait Islander peoples.⁶⁸

First Nations consumers face increased rates of disconnection

Rates of disconnections do not affect all Victorians equally. First Nations consumers experience far higher rates of energy disconnection or other credit-related complaints than those who do not identify as Aboriginal and Torres Strait Islander.⁶⁹

The Energy and Water Ombudsman (Victoria)'s 2019–20 data showed that 11.5 per cent – or more than one in 10 – First Nations consumers were facing immediate disconnection by their energy retailer.⁷⁰ Compared to other consumers, of whom only 3.5 in 100 consumers were facing immediate disconnection. It can be seen that there is significant scope to improve the experience of First Nations consumers in the market.⁷¹ Given disconnections

⁶⁵'Aboriginal, Indigenous or First Nations', Common Ground, accessed 2 February 2021, <https://www.commonground.org.au/learn/aboriginal-or-indigenous>

⁶⁶ Ibid.

⁶⁷ Aboriginal, Indigenous or First Nations', Common Ground, accessed 2 February 2021, <https://www.commonground.org.au/learn/aboriginal-or-indigenous>

⁶⁸'Australia's First Peoples', AIATSIS, accessed 3 February 2021, <https://aiatsis.gov.au/explore/australias-first-peoples>; 'Preferences in terminology when referring to Aboriginal and/or Torres Strait Islander peoples', ACTCOSS, accessed 2 February 2021, <https://www.actcoss.org.au/sites/default/files/public/publications/gulanga-good-practice-guide-preferences-terminology-referring-to-aboriginal-torres-strait-islander-peoples.pdf>

⁶⁹ Energy and Water Ombudsman, 'Missing the Mark: EWOV insights on the impact of the payment difficulty framework', December 2020, p13.

⁷⁰ Ibid., p.14.

⁷¹ Ibid.

are a 'measure of last resort' in the payment difficulty framework, this high rate of disconnections for First Nations consumers also indicates that the framework's measures may not be correctly applied for this consumer group.⁷²

Other common issues facing First Nations consumers included actual disconnection of supply due to bills not paid (eight per cent of consumers), high billing costs (eight per cent), and credit ratings (six per cent).

There is a disconnect between the needs of First Nations consumers and the support and engagement available

Increased rates of disconnection are not the only barrier facing First Nations consumers. It was found that for Aboriginal and Torres Strait Islander communities accessing support and information remains a significant barrier to interacting with the market.

We heard through our stakeholder reference group, that community services have not been able to go out into the Aboriginal and Torres Strait Islander community and give information throughout the coronavirus pandemic of 2020. This has resulted in a decrease in information and support available to First Nations consumers during an already difficult year and an overall disconnect between the needs arising and the assistance being received.⁷³

The Energy and Water Ombudsman (Victoria) recommends that customised strategies are developed to ensure 'all consumers receive their entitlements', with one suggested strategy being that businesses consider employing liaison officers to facilitate 'culturally safe interactions and improve consumer outcomes' for First Nations communities.⁷⁴

The commission is committed to addressing barriers faced by First Nations consumers

Traditionally, the commission has had limited engagement with First Nations consumers. We are committed to ensuring we have a meaningful, coordinated and culturally sensitive approach to engaging with First Nations consumers.

⁷² Ibid.

⁷³ Stakeholder reference group meeting, Essential Services Commission, held online, 3 December 2020.

⁷⁴ Energy and Water Ombudsman, 'Missing the Mark: EWOV insights on the impact of the payment difficulty framework', December 2020, pg.15.

Part of this will see us create the commission’s Reconciliation Action Plan, which will provide a detailed framework for engagement with this consumer group in a purposeful and genuine way.

We all have a role to play... no matter how far you might feel that your operations are removed from the frontline of working with Traditional Owners, there is always [something] a business can do.”

Cath Brokenborough, Executive Lead First Nations Engagement, Lendlease, 2020 Australian Dialogue on Business and Human Rights⁷⁵

Our proposed goal six aims to address the barriers faced by First Nations consumers.

Proposed goal six: We recognise the specific barriers faced by First Nations consumers and will build partnerships and lasting relationships to improve outcomes for First Nations consumers and communities.

Possible supporting initiatives

Supporting organisation wide initiative

Possible initiative	Timeframe	Measure of success
6.1 We will develop a Reconciliation Action Plan to improve outcomes for First Nations consumers and communities.	Three years	<ul style="list-style-type: none"> • Reconciliation Action Plan initiated and time frame for development identified. • Connect with relevant government agencies on initiatives to support First Nations consumers in our regulated sectors. • Explore the expectations of First Nations consumers about reforms being undertaken through the commission’s work.

Supporting sector-focused initiatives

Possible initiative	Timeframe	Measure of success
---------------------	-----------	--------------------

⁷⁵ ‘2020 Australian Dialogue on Business and Human Rights: summary document’, UN Global Compact Network Australia, accessed 16 March 2021, <https://unglobalcompact.org.au/wp-content/uploads/2020/10/2020-Australian-Dialogue-on-Business-and-Human-Rights-Summary-Document-FINAL-SPREADS.pdf>, p.11.

<p>6.2 Better understand the relationship First Nations people have with lands and water and identify ways to support appropriate levels of engagement between water businesses and their First Nations consumers and community.</p>	<p>Three years</p>	<p>Through collaborative engagement with First Nations organisations and water businesses, demonstrate understanding of the relationship First Nations people have with country and water. Engagement with First Nations people, or representative bodies, incorporated into guidance for water businesses.</p>
--	--------------------	---

Theme seven: Government, industry and community organisations could coordinate more effectively to address issues across the system

Our approach to designing our draft strategy involved taking a systems-level approach to assessing the challenges facing consumers experiencing vulnerability, and how these challenges impact their capacity to participate in essential services markets.

Overwhelmingly, we heard that more can be done to coordinate across regulators, governments, industry and the community sector to address systems issues that cause consumers to experience barriers to participation.

Notably, our community panel told us that where there is a lack of effective partnerships between government and non-government organisations this can result in systems that are difficult to navigate for consumers. This lack of communication and coordination can also result in inconsistent approaches to consumer support, or a failure to identify issues that require a coordinated response.

Some of the ongoing systems issues we were alerted to through our program of research and engagement included family violence responses, the Utility Relief Grant Scheme and concessions. We also heard that systems issues emerged or were exacerbated in the context of the 2020 bushfires and pandemic. Some of these issues are explained below.

Ineffective coordination creates barriers to consumers accessing government support in essential services markets

An ongoing theme of our research and engagement was the broad acknowledgement that many consumers face significant barriers to accessing government support programs in relation to essential services. This was highlighted at our cross-sector workshop on understanding barriers to access and support for consumers, especially in the context of the Utility Relief Grant Scheme administered by the Department of Health and Human Services.

It was noted that where regulators, government, businesses, and community organisations don't work together or communicate effectively, consumers bear the burden and don't receive support they are eligible for.

Our stakeholder reference group also told us that consumers sometimes do not receive the concessions that they are entitled to. We heard that a lack of coordination between businesses and government often mean some consumers with concessions are not properly identified, and therefore cannot be proactively assisted to access their entitlement.

Community workers told Consumer Policy Research Centre through our interviews that accessing government support can be difficult for their clients, especially as it is often not applied appropriately. They reported that when advocating on behalf of clients, community workers do not always have access to the information they need, suggesting a lack of communication between government, businesses, and the community sector. Moreover, businesses and organisations do not proactively refer consumers to each other for additional support, and without this referral pathway, many consumers are left without the support from the system that they need to thrive.

Meanwhile, the limited capacity of the community sector can lead to difficulties in providing consumers with the support they need when experiencing vulnerability. This also creates barriers to businesses and community organisations gathering the information they need to provide adequate support to consumers.⁷⁶

Ineffective coordination creates barriers to consumers seeking and receiving support from businesses

This ineffective coordination also creates information barriers within businesses, and across essential service sectors. Where there is poor business call centre staff training, coupled with the siloing of teams, it can mean that consumer information is not always effectively used within businesses to provide consumers with the support or appropriate level of care that they require.⁷⁷

⁷⁶ 'Supporting energy customers through the coronavirus pandemic', Victorian Council of Social Service, accessed 13 April 2021, <https://vcoss.org.au/policylibrary/2020/07/vcoss-submission-to-the-escs-draft-decision-on-supporting-energy-customers-through-the-coronavirus-pandemic/>

⁷⁷ Energy and Water Ombudsman, 'Missing the Mark: EWOV insights on the impact of the payment difficulty framework', December 2020.

Moreover, many consumers do not perceive there to be collaboration and coordination across essential services sectors, causing a disconnect in continuity of care between energy and water businesses.⁷⁸

Barriers caused by a lack of systems-based coordination can cause significant harm to consumers

We heard that these systems-based inefficiencies can cause or exacerbate harm to consumers. For instance, insecure work, coupled with payment difficulty and trouble accessing government or retailer support can lead to long term physical and mental health issues for consumers.⁷⁹

For consumers already in arrears, our community sector roundtable told us backlogs in the Utility Relief Grant Scheme application system exacerbated payment difficulty. This led to the accumulation of debt, stress on other bills and/or household essentials, and decreased overall wellbeing. Delays in processes for government support, including the utility relief grant and concessions have been reported to have significant emotional impact on consumers already experiencing vulnerability.⁸⁰

Participants at our community sector roundtable told us that the community sector is spread thin, making it difficult to support all consumers in a timely and effective way when systems aren't supporting them to participate in essential services markets. Stronger partnerships across sectors can help alleviate much of the harm caused to consumers by strengthening support mechanisms across the system.⁸¹

The commission is committed to facilitating systems improvement

Systems improvement involves many parties working together. The commission acknowledges that while there are many barriers faced by consumers in our regulated sectors that are outside the scope of the commission's powers, many of these barriers intersect with our functions. Where these barriers intersect with the commission's functions, we accept that there is a role for us in facilitating dialogue, information sharing and

⁷⁸ Consumer Policy Research Centre, 'COVID-19 and consumers: from crisis to recovery', June 2020, p64.

⁷⁹ 'Insecure work creates vulnerability and increases inequality', Victorian Council of Social Service, accessed 13 April 2021, <https://vcoss.org.au/analysis/2015/12/insecure-work-creates-vulnerability-and-increases-inequality/>

⁸⁰ Energy and Water Ombudsman, 'EWOV's affordability report', March 2020, p5.

⁸¹ 'COVID-19 and the Victorian community sector', Victorian Council of Social Service, accessed 13 April 2021, <https://vcoss.org.au/policylibrary/2020/08/vicgov-covid19-response/>

relationship building across government, other regulators, our regulated sectors, and community organisations.

Through our community sector roundtables in 2020, we identified several of these sorts of issues, the most prominent one being the Utility Relief Grant Scheme. In our role as the regulator, we were able to have influence in assisting relevant organisations to address issues arising from the grant processes for consumers by:

- issuing our own rules about how businesses provide customer service in relation to supporting grant applications⁸²
- inviting stakeholders representing government, energy and water and consumers to discuss issues surrounding the grant at a better practice workshop in November 2020
- facilitating conversations and information sharing between relevant government agencies and the community sector through our community sector roundtables and other stakeholder meetings.

Our community panel saw a distinct role for the commission in continuing to build relationships across sectors to support systems change, and recommended that the commission:

form active partnerships with relevant government, community and industry entities to take collective responsibility for consumers experiencing hardship. These partnerships will deliver tangible outcomes and systems improvement – delivering affordability, equity and accessibility – which are supported through internal and external accountability.

The commission will continue to play an active role in building relationships and bringing stakeholders and decision-makers together to address systems issues in our regulated sectors.

Proposed goal seven: We will build and improve partnerships with government, industry and community organisations to identify and respond to issues across the system.

⁸² 'Supporting energy customers through the coronavirus pandemic', Essential Services Commission, accessed 17 March, <https://www.esc.vic.gov.au/electricity-and-gas/inquiries-studies-and-reviews/supporting-energy-customers-through-coronavirus-pandemic-2020>

Possible supporting initiatives

Supporting sector-focused initiatives

Possible initiatives	Timeframe	Measure of success
7.1 We will reflect the needs of consumers based on our research and engagement through our role in assisting the Department of Environment, Land, Water and Planning with the expansion of the Victorian Energy Upgrades program.	12 months	Insights from our work on the Victorian Energy Upgrades program and consumer vulnerability are reflected in this expansion work program.
7.2 We will work with relevant agencies to understand where eligibility for the Victorian Energy Upgrades program interacts with other policy initiatives (e.g., community housing upgrades).	Two years	Links between the Victorian Energy Upgrades program and other initiatives identified and responded to through active partnerships with relevant agencies.
7.3 Work with relevant agencies to address systemic issues affecting consumers access to essential services. As well as the impact of large scale sudden and acute events. This also relates to goal eight.	12 months (ongoing)	<ul style="list-style-type: none"> • Cross sector workshops on systemic issues in relation to consumers and accessing support. • Demonstrate partnerships with relevant agencies to address identified systemic issues. • Consider consumer vulnerability in the context of current and future memorandums of understanding with relevant organisations. • Work with national agencies including the Australian Energy Regulator to promote a coordinated response (building on approaches used throughout the coronavirus pandemic).

Theme eight: Sudden, acute and unexpected challenges can have significant impact on consumers in the short, medium and long term

We identified consumer vulnerability as a priority work area for the commission long before the coronavirus pandemic began. The events of 2020 – including the Victorian bushfires and pandemic – brought into stark relief the importance of this work, and the impact of unexpected external events on consumers. Even though consumers face challenges through

emergencies, they are often not treated as critical to economic recovery.⁸³ The commission considers it critical to address the resilience of our regulated sectors through emergencies, and how consumers can be best supported through them and through recovery periods.

External events can create or exacerbate barriers for consumers

Emergency situations can quickly throw a consumer's life into deep uncertainty. Different consumers experience challenges through emergencies in different ways. Some may experience vulnerability for the first time, and others may find their existing barriers to market participation are exacerbated.

For the 'newly vulnerable', we heard that there are significant barriers to accessing support during emergencies. Our community sector roundtable told us that people experiencing vulnerability for the first time might not identify themselves as needing support, or do not know what support is available or how to find it – in both circumstances, these consumers often do not seek or receive the support they need and are entitled to.

Overwhelmingly, our stakeholders agreed that some people experienced vulnerability more than others through 2020 and are likely to experience an exacerbation of vulnerability through emergencies. Our stakeholder reference group and participants at our cross-sector workshops told us these groups include renters, young people, people in insecure or casual employment, international students, and new migrants. The pandemic also disproportionately affected those who 'are already experiencing disadvantage, who may not have access to the tools, resources and supports to know about, understand, prepare or comply with public health directives'.⁸⁴

Our cross-sector workshops also highlighted that for consumers reliant on face-to-face interactions to communicate, accessing support through 2020 was challenging. Consumers reliant on physical supports, including couch surfing and face-to-face meetings with community workers, were at a distinct disadvantage throughout lockdown periods during the height of the pandemic.⁸⁵ The pandemic also highlighted challenges around digital literacy. Our stakeholder reference group told us that for people with limited digital literacy or access to online tools at home, there were significant barriers to accessing support.

⁸³ Consumer Policy Research Centre, 'COVID-19 and consumers: from crisis to recovery', June 2020, p67.

⁸⁴ 'Insecure work creates vulnerability and increases inequality', Victorian Council of Social Service, accessed 13 April 2021, <https://vcoss.org.au/analysis/2015/12/insecure-work-creates-vulnerability-and-increases-inequality/>

⁸⁵ 'COVID-19 and the Victorian community sector', Victorian Council of Social Service, accessed 13 April 2021, <https://vcoss.org.au/policylibrary/2020/08/vicgov-covid19-response/>

During pandemic-related lockdowns in 2020, Victorian households also saw an increase in service usage costs.⁸⁶ For those unable to work from home and in insecure employment, the gap between usage and capacity to pay widened. This, coupled with the stress and anxiety of the pandemic, meant that for any consumers struggling with the challenges financial stress, remote schooling, isolation and other pressures of the environment, engaging with businesses was not a priority.⁸⁷

Support provided in emergencies is often not enough to help consumers, both in the short and longer term

Since the pandemic began in early 2020, Energy Consumer Australia reported that 15 per cent of consumers said they sought support, with six per cent saying they did not receive useful help, while a further 10 per cent said they expected to seek help from their energy company in the future.⁸⁸ Despite this, there were no 'sustained, adaptive and adjustable consumer support measures' in place to meet consumer need in crisis, with most support offered unsustainable past the immediate emergency.⁸⁹

As a result, many consumers drew on their superannuation to pay for essentials through 2020.⁹⁰ Household debt continued to grow, as consumers accessed credit products to pay for their essential services.⁹¹ While the pandemic had many short-term implications for the economic and social wellbeing of consumers, it has also created many long-term challenges that consumers will continue to contend with through the recovery period and after.

The commission is committed to developing processes to respond with agility to external events at times of acute need, and to design resilient longer-term regulatory practices

Through the events of 2020, we were able to learn much about the dynamic, uncompromising, and often unexpected nature of the experience of vulnerability. It is impossible for the commission to go forward without adopting resilient regulatory practices

⁸⁶ Ibid.

⁸⁷ 'Supporting energy customers through the coronavirus pandemic', Victorian Council of Social Service, accessed 13 April 2021, <https://vcoss.org.au/policylibrary/2020/07/vcoss-submission-to-the-esccs-draft-decision-on-supporting-energy-customers-through-the-coronavirus-pandemic/>

⁸⁸ Energy Consumers Australia, 'Energy consumer sentiment survey: December 2020', December 2020, p9.

⁸⁹ Consumer Policy Research Centre, 'COVID-19 and consumers: from crisis to recovery', June 2020, p.7

⁹⁰ Consumer Policy Research Centre, 'COVID-19 and consumers: from crisis to recovery', June 2020, p.26.

⁹¹ Ibid. p5.

that allow us to both respond quickly to circumstances as they change, but that also help us to influence the design of marketplaces that have sustainable, long term support measures in place to seamlessly assist consumers in periods of acute need.

We commissioned the development of a tool that will allow us to monitor the changing nature of vulnerability in the post pandemic environment. The tool uses inputs of data we collect from businesses, along with data from the Australian Bureau of Statistics, mental health and family violence service data. We are committed to monitoring the conditions of vulnerability at a systems level to better understand how our contributions – whether through regulatory reform or better practice – can establish both agility and resilience in our regulated sectors. We will continue to update the data tool through periods of stability and periods of uncertainty through several of our possible initiatives.

Proposed goal eight: We aim to be well-equipped to respond to sudden, acute and unexpected challenges, including the economic impacts of events (e.g., natural disasters and global pandemics), and will support our regulated sectors to do the same.

Possible supporting initiatives

Supporting sector-focused initiatives

Possible initiatives	Timeframe	Measure of success
8.1 We will work collaboratively with local government to identify and promote best practice approaches to consumer outcomes.	Two years (ongoing)	Identify and recognise local councils that responded well to the coronavirus pandemic in promoting consumer outcomes.
8.2 Examine the intersection between consumer vulnerability and climate change and how this interacts in our regulated sectors, to ensure our approach is well informed	Two years	Report on intersection between consumer vulnerability and climate change delivered.
8.3 We will bring together qualitative and quantitative data to better understand how consumers experiencing vulnerability interact in the sectors we regulate. This also relates to goal three.	12 months (ongoing initiative)	<ul style="list-style-type: none"> Use existing data analytics tool to improve understanding of the impact (particularly bill impacts) of sudden events on various consumer cohorts. We work collaboratively with community agencies and our industry stakeholders to understand which segments of the community are accessing the Victorian Default Offer. Develop a

		<p>consumer insights report that complements and builds on existing monitoring and reporting practices across the commission.</p> <ul style="list-style-type: none"> • Develop and monitoring and reporting framework for understanding the effectiveness of the strategy.
8.4	<p>Work with relevant agencies to address systemic issues affecting consumers access to essential services. As well as the impact of large scale sudden and acute events. This also relates to goal seven.</p>	<p>12 months (ongoing)</p> <ul style="list-style-type: none"> • Cross sector workshops on systemic issues in relation to consumers and accessing support. • Demonstrate partnerships with relevant agencies to address the impact of large scale sudden and acute events. • Work with national agencies including the Australian Energy Regulator to promote a coordinated response (building on approaches used throughout the coronavirus pandemic).

Our goals and possible initiatives: how we plan to address consumer vulnerability

The insights we gathered in our research and engagement program gave us a comprehensive understanding of the issues facing consumers in our regulated sectors. We used the key themes we established when identifying problems to develop long-term goals that address consumer vulnerability in our work now and into the future.

We want to embed a consistent and contemporary approach to addressing systemic and market-based barriers to access. Therefore, our goals aim to build towards equity, accessibility, and inclusion for all Victorian consumers. Our possible initiatives set a specific and achievable pathway to achieve this. The initiatives we have across our regulatory functions are:

- **Critical initiatives** – these reflect high priority projects that respond to the most significant potential risks to consumers in the marketplace.
- **Governance and capability initiatives** – these build a foundation to ensure we are well-equipped to meet the goals of the draft strategy and integrate them into our ongoing work.
- **Sector initiatives** (see appendix 1) – these sit under each goal and reflect our approach to consumer vulnerability across all areas of our work.

Strategy timeframes

This first version of our strategy is intended to be in place for three years. However, we see this strategy as a long-lasting program that will change and develop as our regulatory framework does. The possible initiatives that make up the strategy reflect this timing, but some initiatives may continue beyond 2023 to suit the ongoing needs of their delivery. At this stage, some initiatives are milestones, with the full initiative continuing over a longer period.

Consultation questions on the themes, goals and possible initiatives

Below are some suggestions for framing feedback on the themes, goals and possible initiatives of the commission:

- Are the goals identified appropriate given the overall context of the commission?
- Are the possible initiatives identified appropriate for the period of the strategy?
- What other considerations should we include in our strategy?

Appendix 1: Possible initiatives by sector

Energy

Possible initiative	Timeframe	Measure of success
2.5, 3.1, 5.4 We will review of the effectiveness of the payment difficulty framework, incorporating the voices of consumers experiencing vulnerability. This relates to goals three and four. (Critical initiative)	Two years	Our review has factored in the effect of consumers experiencing vulnerability.
3.2 We will develop options to include the voice of the consumer experience in enforcement processes.	Two years	<ul style="list-style-type: none"> • Consumer experience informs compliance and enforcement priority setting. • ‘Consumer harm assessment’ in enforcement matters is informed by these options.
3.3 We will hear the voices of consumers experiencing vulnerability to better informs our reforms and monitoring of the energy market.	Ongoing work over the next two years, with key milestones during that period.	Applies or conducts research where required.
4.3 We will use industry education to support better practice approaches for retailers and distributors to have a consistent understanding of vulnerability and how to better communicate with consumers experiencing barriers to access.	Two years	Industry education program on vulnerability (including family violence) and hardship policies developed and delivered (incorporating findings from review of the payment difficulty framework).

Local government

Possible initiative	Timeframe	Measure of success
2.1 We will work collaboratively with local government sector to promote better practice in direct engagement with consumers.	Two years	Commission delivers engagement activities to promote better practice with local government sector (conference and/or recognition event).
4.4 We will support a consistent understanding of vulnerability across the local government sector.	Three years	Develop of an education and engagement program for the local government sector.
8.1 We will work collaboratively with local government to identify and promote best practice approaches to consumer outcomes.	Two years (ongoing)	Identify and recognise local councils that responded well to the coronavirus pandemic in promoting consumer outcomes.

Transport

Possible initiative	Timeframe	Measure of success
2.2 We will work more proactively to support more effective and targeted engagement regarding the economic regulation of commercial passenger vehicles with the full spectrum of consumer groups.	Two years	Engagement activities reflect advice gained through new relationships with relevant community groups.
5.1 We will consider the needs of consumers experiencing vulnerability as part of our role in setting commercial passenger vehicles fares.	Three years	Approach to industry engagement on consumer vulnerability developed and implemented.

Victorian Energy Upgrades

Possible initiative	Timeframe	Measure of success
1.1 We will develop and improve consumer facing information to better meet the diverse needs of consumers involved in the Victorian Energy Upgrades program, including improving information about consumer rights.	Ongoing work over the next two years with key milestones during that period.	Development of digital and culturally appropriate information for the program.
2.3 We will include direct engagement with consumers and community groups in Victorian Energy Upgrades engagement program.	12 months	Consumers and community groups provided opportunities for engagement as part of Victorian Energy Upgrades engagement program.
4.5 We will work with Accredited Providers of the Victorian Energy Upgrades program to support better practice in identifying and understanding consumer vulnerability.	Two years	Engagement program developed to work with Accredited Providers on identifying and understanding consumer vulnerability.
7.1 We will reflect the needs of consumers based on our research and engagement through our role in assisting the Department of Environment, Land, Water and Planning with the expansion of the Victorian Energy Upgrades program. (critical initiative)	12 months	Insights from our work on the Victorian Energy Upgrades program and consumer vulnerability are reflected in this expansion work program.
7.2 We will work with relevant agencies to understand where eligibility for the Victorian Energy Upgrades program interacts with other policy initiatives (e.g., community housing upgrades).	Two years	Links between the Victorian Energy Upgrades program and other initiatives identified and responded to through active partnerships with relevant agencies.

Water

Possible initiative	Timeframe	Measure of success
2.4 We will support more universal and inclusive engagement practices by water businesses when preparing their submissions to us, enabling better participation of hard to reach consumers.	Ongoing	Include in the guidance material and commission decisions in water our expectations on the use of engagement practices that universal and inclusive.
4.1 We will incorporate the voices of consumers and reflect the barriers to access and inclusion in the outcomes of the review of the water customer service codes. (critical initiative)	Two years	<ul style="list-style-type: none"> • Consumers experiencing vulnerability are identified as a key stakeholder group to be engaged in the review of the water customer service codes. • The outcomes of the review respond to barriers to access and inclusion experienced by consumers experiencing vulnerability in the water sector.
5.2 We will review existing reporting and explore options for improved reporting on coronavirus support mechanisms by water businesses (including qualitative methods of reporting) where there are low numbers of consumers accessing support	12 months	Continued reporting on support mechanism and engagement with the water sector where appropriate.
6.2 Better understand the relationship First Nations people have with country and water and identify ways to support appropriate levels of engagement between water businesses and their First Nations consumers and community.	Three years	<ul style="list-style-type: none"> • Through collaborative engagement with First Nations organisations and water businesses, demonstrate understanding of the relationship First Nations people have with country and water. • Engagement with First Nations consumers, or representative organisations, incorporated into guidance for water businesses.

Whole of organisation

Possible initiative	Timeframe	Measure of success
2.6 We will develop and implement a formal process for relationship-building with the consumer community to ensure the commission hears representative and reliable perspectives from the diversity of Victorian consumers.	12 months	Ongoing process for relationship-building established with consumers, consumer-led bodies and community organisations that reflect the diversity of the Victorian community.
2.7 We will investigate the development of a remuneration policy for when the commission will remunerate or pay participants for their time and expertise.	12 months	Remuneration policy developed and implemented.
3.4, 8.3 We will bring together qualitative and quantitative data to better understand how consumers experiencing vulnerability interact in the sectors we regulate. (goal three and goal 8) (critical initiative)	12 months (ongoing initiative)	<ul style="list-style-type: none"> • Use existing data analytics tool to improve understanding of the impact (particularly bill impacts) of sudden events on various consumer cohorts. • We work collaboratively with community agencies and our industry stakeholders to understand which segments of the community are accessing the Victorian Default Offer. Develop a consumer insights report that complements and builds on existing monitoring and reporting practices across the commission. • Develop and monitoring and reporting framework for understanding the effectiveness of the strategy (Vulnerability team)
4.2 We will continue to highlight business innovation and better practice in identifying and responding to consumer vulnerability across our regulated sectors	12 months (ongoing initiative)	Develop a business innovation report that highlights better practice approaches from across our regulated and administered sectors, to supporting consumers experiencing vulnerability.

4.5	Correspondence and Complaints Framework developed to ensure underlying consumer issues are identified appropriately addressed.	12 months	<ul style="list-style-type: none"> • Complaints processes are mapped to ensure complaints are referred to appropriate agencies. • Complaint data is incorporated into regular divisional reporting. • Staff indicate they have the resources and capability to engage directly with consumers experiencing vulnerability in the context of their work. • Referral resources developed and updated regularly to support staff engaging directly with consumers. • Identify and inform reform initiatives that would better support consumers experiencing vulnerability
3.5, 4.6, 5.3	The review of the effectiveness of family violence provisions currently in place across our regulated sectors, work in collaboration with the community and government stakeholders to promote better industry practice. This relates to goal three, four and seven.	Two years	<ul style="list-style-type: none"> • Review outcomes that identify the effectiveness of the framework for consumers affected by family violence. • Consumer experiencing vulnerability have been engaged. • Cross sector and industry specific workshops delivered. • We will work with the community sector and the Department of Families, Fairness and Housing on embedding our family violence reform work. (in conjunction with the better practice)
6.1	We will develop a Reconciliation Action Plan to improve outcomes for First Nations consumers and communities.	Three years	<ul style="list-style-type: none"> • Reconciliation Action Plan initiated and time frame for development identified. • Connect with relevant government agencies on initiatives to support First Nations consumers in our regulated sectors.

			<ul style="list-style-type: none"> • Explore the expectations of First Nations consumers about reforms being undertaken through the commission’s work.
7.3, 8.4	Work with relevant agencies to address systemic issues affecting consumers access to essential services. As well as the impact of large scale sudden and acute events (this relates to goals seven and eight).	12 months (ongoing)	<ul style="list-style-type: none"> • Cross sector workshops on systemic issues in relation to consumers and accessing support. • Demonstrate partnerships with relevant agencies to address identified systemic issues. • Consider consumer vulnerability in the context of current and future memorandums of understanding with relevant organisations. • Work with national agencies including the Australian Energy Regulator to promote a coordinated response (building on approaches used throughout the coronavirus pandemic). • Continued participation in Regulatory Community of Practice.
8.2	Examine the intersection between consumer vulnerability and climate change and how this interacts in our regulated sectors, to ensure our approach is well informed	Two years	Report on intersection between consumer vulnerability and climate change delivered.

Possible governance and capability building initiatives (enabling mechanisms)

These possible initiatives will support the overall delivery of the draft strategy and are in line with wider division-focused workplans already in place.

External-facing governance and capability building initiatives

Possible initiative	Timeframe	Measure of success
1.2 Ensuring our communications via all of our channels are accessible and fit for purpose.	Three years	<ul style="list-style-type: none"> • Create clear and consistent social media messages about support for people experiencing vulnerability • Our consumer-facing communications are accessible, and campaigns include strategies to target people whose first language is not English and promote more accessible communications to our regulated sectors through better practice initiatives. • We will create best practice content for the commission’s website and website updates to support consistent and accessible communications, including use of HTML for report summaries. We will audit content regularly to ensure it is accessible. • We will develop ways to demonstrate and communicate how it has considered consumer vulnerability in its regulatory decisions.
2.5 We will review the stakeholder engagement framework to evaluate its effectiveness in promoting and enabling universal and inclusive engagement in the commission’s work. The review will reflect on the findings and recommendations of the guidance	12 months	<p>Outcomes of the review include:</p> <ul style="list-style-type: none"> • opportunities to embed universal and inclusive approaches to engagement in the commission’s work • appropriate engagement with First Nations people • identifies any necessary training and tools.

developed in partnership with the University of Melbourne.

7.5	We will identify engagement programs of other agencies doing complementary work to identify opportunities to collaborate in engaging with the same community groups.	Three years	Engagement programs focused on identified community groups are well coordinated with other agencies.
-----	--	-------------	--

Internal-facing governance and capability building initiatives

These possible initiatives support the delivery of all the goals of the draft strategy, and are therefore not aligned with any specific one.

Possible initiative	Timeframe	Measure of success	
7.6	Promote increased use of social procurement.	Three years	Active use of social procurement framework across teams.
9.1	Maintain consumer privacy and security and ensure that the systems are periodically reviewed for security and privacy considerations (complementing ICT strategy)	Three years	Staff demonstrate effective use of internal systems to promote consumer privacy and security, and IT systems demonstrate effective security and privacy mechanisms.
9.2	Ensure we are consistent in our approach to equity, access and inclusion in our recruitment processes	Three years	Recruitment outcomes reflect our approach to equity, access and inclusion (outlined in our diversity and inclusion strategy).
9.3	Include information about our role in responding to consumer vulnerability (including legislative frameworks) in our induction and onboarding processes.	12 months	Induction and onboarding processes have a section on our role in responding to consumer vulnerability (including relevant legislative frameworks)

Appendix 2: Understanding the context around the term 'vulnerable'

Identifying best practice terminology and communication

To develop our draft strategy, we implemented a rigorous program of research and engagement that was designed to capture the sentiments of key stakeholders, focusing on the consumer voice.

Overwhelmingly, the message we received across these activities is that 'vulnerability' is a problematic term. Our community panel dedicated one of its eight recommendations to the assertion that:

The term vulnerability needs to be investigated further, there may be more appropriate words to use in different situations.

Acknowledging that 'vulnerability' is a familiar term used by many of our stakeholders and across sectors, we are also aware that for consumers, this language can be alienating and counterintuitive to the outcomes we are seeking to achieve. We agree with the community panel and intend to use this draft strategy to identify and model better practice terminology and communication when dealing with consumers.

A strategy that promotes resilience works for consumers and businesses

Our stakeholder reference group suggested that for businesses, the best approach when communicating to consumers is to promote and support 'resilience'.

For businesses, 'resilience' applies equally towards the desired outcomes for consumers as it does to the business itself. The group noted that through the coronavirus pandemic, businesses with resilient systems in place did not face the same level of difficulty or uncertainty in coping with the unfolding external crisis and were able to provide better support to their consumers. This approach to 'resilience' was also noted by Ofgem at the commission's launch event for the vulnerability strategy work program in September 2020.⁹²

Using the term 'vulnerable' puts the onus on consumers

In essential services, 'vulnerable consumers' is a commonly used term for describing those consumers who are experiencing some form of difficulty – from payment difficulty to trouble

⁹² 'Launch of the vulnerability strategy project', Essential Services Commission, accessed 4 March 2021, <https://www.youtube.com/watch?v=U-aBpiigs1A>.

engaging. Research we conducted in partnership with the University of Melbourne's Social Equity Institute found that the term 'vulnerable consumers' implies 'that some people's personal characteristics or failings – rather than a failure of markets, institutions and wider society to ensure that everyone has equal access and equal rights – are the reason for a person's disadvantage.'⁹³

This is problematic as it places the onus squarely on the individual consumer, focusing on 'how people should adapt to make themselves less vulnerable or how regulators and businesses can produce separate or 'special' measures to protect them,' rather than on how the provision of the essential service can evolve to include inclusively designed products and services.⁹⁴ Ultimately, describing consumers as 'vulnerable' does not account for the role of the market or institutions in creating the barriers which support the conditions of vulnerability in the first place.

Labelling a person 'vulnerable' erodes autonomy

Research published by University of New South Wales suggests that vulnerable is a 'convenient' label but should be avoided as it perpetuates a division between 'ordinary' and 'other' types of consumers.⁹⁵ It therefore risks diverting attention from what should be a substantive inquiry into the circumstances of consumers at the time of transacting. The research notes that consequently, 'vulnerable consumers' are treated as 'subjects of a benevolent protective scheme rather than holders of rights... and people with individual experiences and expertise who are entitled to full social and economic inclusion'. A suggested approach is to use the phrase 'consumers who require decision-making support' instead.

Labelling a person 'vulnerable' creates another barrier to access

Our research in partnership with the University of Melbourne's Social Equity Institute also revealed that consumers deemed 'vulnerable' by regulators and businesses 'are unlikely to

⁹³ Essential Services Commission and University of Melbourne's Social Equity Institute, 'Sensitive and appropriate engagement with consumer vulnerability', March 2021.

⁹⁴ Essential Services Commission and University of Melbourne's Social Equity Institute, 'Sensitive and appropriate engagement with consumer vulnerability', March 2021.

⁹⁵ Yvette Maker, Jeannine Marie Paterson, Anna Arstien-Kerslake, Bernadette McSherry and Lisa Brophy, 'From safety nets to support networks: beyond 'vulnerability' in protection for consumers with cognitive disabilities, UNSW Law Journal, 2018, accessed 4 March 2021, <http://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2018/09/Maker-et-al.pdf>.

use the language of ‘vulnerability’ to describe themselves,’ creating a further barrier to those consumers seeking and accessing support.⁹⁶

In a report for the Australian Energy Regulator, Emma O’Neill, noted that ‘consumer vulnerability’ may be a useful shorthand term for regulators, industry participants and consumer advocates, but can be alienating when used directly with consumers. The term can be disempowering and stigmatising, and fail to reflect a person’s own identity, strengths, and capabilities.⁹⁷

Similarly, our Stakeholder Reference Group, comprising representatives from the Victorian Mental Illness Awareness Council, Consumer Policy Research Centre, IPC Health, WestJustice, Financial Counselling Victoria’s Utilities Working Group, Ethnic Communities Council of Victoria, the Victorian Council of Social Services, Women with Disabilities Victoria, Adult Multicultural Education Services, Uniting Kildonan and Consumer Action Law Centre, told us that this language can be alienating for consumers.

The group emphasised that using this one category to describe consumers is generally considered unhelpful. It deters consumers who do not associate themselves as vulnerable from seeking support. The purpose of consumer support frameworks is to ensure consumers know and can access their rights—not to label people. The term ‘vulnerability’ does not capture the unique circumstances people face, or the dynamic and complex nature of vulnerability.

‘Vulnerability’ is a dynamic experience

To capture the extent of the fluid nature of vulnerability, we asked our community panel to answer the question, ‘What is vulnerability in the context of not being able to access or pay for essential services?’

The panel noted that everyone is affected differently by many intersecting variables, including age, disability, mental health, financial stress, speaking languages other than English, having low literacy or digital literacy, family violence, or being a new migrant. The panel also noted that ‘vulnerability’ can be represented by both systemic and short-term crisis, such as bereavement, illness, bushfire, or pandemic. We heard that even these situational or temporary vulnerabilities can have long term impacts for consumers.

⁹⁶ Essential Services Commission and University of Melbourne’s Social Equity Institute, ‘Sensitive and appropriate engagement with consumer vulnerability’, March 2021.

⁹⁷ Emma O’Neill, ‘Exploring regulatory approaches to consumer vulnerability: a report for the Australian Energy Regulator’, Consumer Policy Research Centre, February 2020.

The community panel also noted that the causes of vulnerability have deep roots and cannot be easily addressed by one organisation or by one strategy or process. The panel suggested that the commission consider working proactively with organisations and agencies across systems to account for the systemic factors continuing to impact on consumers experiencing vulnerability.

Consumer wellbeing is the ultimate objective

Our stakeholder reference group identified wellbeing as the key outcome for consumers from the development of this draft strategy. The group also noted that we must focus on giving people the opportunity to have agency, rather than detracting from their autonomy or creating negative connotations. We heard that addressing vulnerability is about ‘rights in action’. This means not just engaging consumers, but achieving an outcome where consumers actively exercise their rights to access essential services, and consequently experience economic and social inclusion and wellbeing.

To explore the notion of ‘wellbeing’ further, we invited our community panel to answer the question, ‘what is wellbeing?’. The group noted that wellbeing included physical and mental wellness, happiness, having one’s basic needs met, being surrounded by helpful and empathetic people, feeling connected, having financial security and being free from stress and anxiety. The panel came up with a definition for wellbeing in terms of access and being able to pay for essential services as follows:

The ability to know and manage your responsibilities in a supportive, convenient, and accessible way so that it does not negatively impact on your physical and mental health. The panel also noted that this definition included consumers having ‘predictability and regularity’ in their financial obligations and ‘the peace of mind of knowing [they] have stability in [their] lives’.⁹⁸

⁹⁸ Deliberative community panel: final meeting – recommendations, Essential Services Commission, held online, 6 December 2020.

Appendix 3: Terminology used by other regulators

How other regulators are approaching the terminology

Regulators in the United Kingdom have taken the lead in thinking critically about the use of language in relation to consumer vulnerability. To ensure the concept of vulnerability is adequate in supporting consumers, these regulators have taken an inclusive and empowering approach to defining consumer vulnerability that reflects the identity, strength, and capabilities of individuals. The experience of these regulators shows that the terminology used to characterise consumers can influence the effectiveness of regulatory strategy. We explored some of these approaches at length in our [approach paper](#) and have revisited and updated some of these approaches below.

The Financial Conduct Authority uses the terminology ‘vulnerable consumers/customers’ throughout their work to refer to consumers in vulnerable circumstances, recognising that some consumers may not wish to be categorised this way.

Similarly, Ofgem refers to vulnerability, but has made the purposeful shift to using phrases like ‘consumers whose circumstances made them vulnerable’ or ‘consumers experiencing vulnerability’ to acknowledge that vulnerability is not a characteristic but an experience.

The Competition and Markets Authority has recognised that using the term ‘vulnerability’ may be reductive as it does not account for the unique experiences of individuals. The authority emphasises that not all people see themselves (or want to be described) as ‘vulnerable’ based on factors such as mental health, physical disability, age, and low income.

Concurrently, Energy UK, a collective body representing over 100 members of the energy industry in the United Kingdom, held a Commission for Customers in Vulnerable Circumstances in 2018.⁹⁹ Through this work it received feedback from both experts and consumers. Overwhelmingly, it heard there is an ongoing stigma associated with the term vulnerability, and ‘many customers who are classified by others as “vulnerable” simply don’t see themselves in this way’.¹⁰⁰ However, noting the prevalence of the use of the term ‘vulnerable’ in industry and regulatory circles, Energy UK made the decision to use the term in the report as it appeared appropriate in context. The Australian Energy Regulator is

⁹⁹ ‘The commission for customers in vulnerable circumstances: final report’, Commission for customers in vulnerable circumstances, accessed 4 March 2021, <https://www.energy-uk.org.uk/publication.html?task=file.download&id=7709>.

¹⁰⁰ ‘The commission for customers in vulnerable circumstances: final report’, Commission for customers in vulnerable circumstances, accessed 4 March 2021, <https://www.energy-uk.org.uk/publication.html?task=file.download&id=7709>, p 19.

currently developing a consumer vulnerability strategy to protect vulnerable consumers, while enabling consumers to participate in energy markets. The strategy will also include a definition of vulnerability. The Australian Energy Regulator has just completed a series of collaborative workshops, seeking insights from over 100 stakeholder groups about the types of actions the regulator could take forward.

Breakdown of the experiences of other regulators

To ensure the concept of vulnerability is adequate in supporting consumers, it must have an inclusive and empowering definition that reflects individuals own identity, strength and capabilities. Experience by other regulators shows that the terminology adopted by regulators to characterise vulnerable consumers can influence the effectiveness of a strategy. Some of those experiences are presented in the table below.

Source	Reference to vulnerability terminology	Background
Ofgem ¹⁰¹	Ofgem suggests when speaking about vulnerability, the terminology 'customers whose circumstances make them vulnerable', 'customer vulnerability', or 'customers experiencing vulnerability' is preferred.	Ofgem recognises the importance of not automatically labelling people as 'vulnerable', especially if they do not consider themselves to be so. This does not mean that businesses should not intervene when appropriate to do so, but that they should avoid labelling people as vulnerable in their communications with consumers. Also, intervention, when required, can be subtle or imperceptible and still be effective for a consumer.
Ofwat ¹⁰²	Ofwat shifted from using 'vulnerable customer' to 'customers in vulnerable circumstances' in 2018 in response to the findings of a focus group study undertaken by London Economics. It considers that this change highlights the need to see vulnerability as relating to a set of circumstances, which may be transient, without labelling customers.	The evidence gathered from the research indicates that there is a consensus that any customer, given a certain combination of factors, could find themselves in circumstances that make them vulnerable. For instance, one participant said, vulnerability is a 'state not a trait', and that we should avoid using the label 'vulnerable customer'.

¹⁰¹ Ofgem, 'Consumer vulnerability strategy', 2013.

¹⁰²Ofwat, 'Vulnerability focus report', February 2016.

		<p>Other stakeholders stressed that the term ‘vulnerability’ may be a ‘loaded’ one.</p> <p>Therefore, there is a need for businesses to move away from just applying simplistic labels of vulnerability, and to listen to their customers and understand their circumstances.</p>
Financial Conduct Authority (FCA) ¹⁰³	<p>The authority uses the term ‘vulnerable consumer’ and ‘vulnerable customer’ throughout its guidance to refer to natural persons who either are, or may be, in vulnerable circumstances. However, it recognises that in some cases where it is referring to particular characteristics, some consumers may not want the label ‘vulnerable’ applied to them.</p>	<p>‘Vulnerability is a state, not a trait’.¹⁰⁴</p> <p>One consumer challenge groups representative pointed out is that consumers ought to be allowed to ‘opt out’ of the label of vulnerability, which could be a problematic term.</p> <p>Consumers in vulnerable circumstances may not identify themselves as such, either because of pride, denial, lack of understanding of the situation or because of a lack of trust in institutions.</p>
Australian Energy	<p>Because vulnerability can be triggered by temporary circumstances, it may be more appropriate to use the language of ‘customers in vulnerable circumstances’ rather than ‘vulnerable customers’, to avoid fixing people with labels that are essentialist and do not reflect the changing conditions of their lives.</p>	<p>‘Consumer vulnerability’ may be a useful shorthand term for regulators, industry participants and consumer advocates, but can be alienating, stigmatising and disempowering when used directly with consumers.</p> <p>The group-based approach to vulnerability can be over-inclusive, by labelling an entire group as at risk, when some</p>

¹⁰³ ‘Guidance for firms on the fair treatment of vulnerable customers’, Financial Conduct Authority, accessed on 13 April 2021, <https://www.fca.org.uk/publications/finalised-guidance/guidance-firms-fair-treatment-vulnerable-customers#:~:text=A%20vulnerable%20customer%20is%20someone,as%20a%20spectrum%20of%20risk>.

¹⁰⁴Financial Counselling Australia, ‘FCA Occasional paper No. 8: Consumer Vulnerability’, 2015.

Regulator (AER) ¹⁰⁵		members of the group may face little risk of detriment. For example, older people have traditionally been categorised as vulnerable consumers in absolute terms, despite varying levels of income and wealth, digital inclusion, social participation, and mental and financial capability amongst this group.
Competitive Market Authority (CMA)	The authority uses the term “consumers in vulnerable circumstances” in its document, and it recognises that not all individuals with mental health problems, physical disabilities, age, and low income see themselves (or want to be described) as ‘vulnerable’.	The authority points out that the objective in undertaking consumer vulnerability strategy work has not been to label or categorise individual experience in a reductive way.
UK Commission for Customers ¹⁰⁶	They received feedback that people were uncomfortable with the term, due to the perceived stigma that goes along with it. They note that ‘many customers who are classified by others as “vulnerable” simply don’t see themselves in this way’.	The nature of vulnerability is broad, and few people like to be labelled as “vulnerable”. This makes both self-identification, and identification by a supplier or a third party, complex and difficult. Yet this is critical, if a consumer’s vulnerability is not identified by an energy supplier, it is highly unlikely they will get the help they need. Eight out of ten consumers said they would not tell a company if they were in a potentially vulnerable situation. ¹⁰⁷
Other research		

¹⁰⁵Australian Energy Regulator, ‘Exploring regulatory approaches to consumer vulnerability: a report for the Australian Energy Regulator’, 2020.

¹⁰⁶ Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 19. See also Ofwat (February 2016) Vulnerability Focus Report, 20.

¹⁰⁷ Money and Mental Health Policy Institute, ‘Money on your mind’, June 2016.

Maker, Y, et al (2018)¹⁰⁸

They suggest convenient labels such as ‘vulnerable’ to identify those in need of protection should be avoided. They recommend using the term ‘consumers who require decision-making support’.

The label perpetuates the undesirable distinction between ordinary and other types of consumers. It therefore risks diverting attention from what should be the substantive inquiry into the circumstances of consumers at the time of transacting.

They argue this approach disadvantages both those labelled as vulnerable and those who are not. People with cognitive disabilities designated as ‘vulnerable’ can end up being treated as ‘subjects of a benevolent protective scheme rather than holders of rights, and people with individual experiences and expertise who are entitled to full social and economic inclusion.’ This, in turn, risks ignoring the difficulties faced by all other consumers—the ‘average’ or ‘non-vulnerable’ consumers—in their market dealings. They suggest using the term ‘consumers who require decision-making support’.

Centre for Consumers and Essential Services, (2014)¹⁰⁹

Labelling some consumers as ‘vulnerable’ also serves to let the companies off the hook by implying that it is only consumers’ circumstances that matter, thereby ignoring the role of the companies.

This research shows that regulators have started to recognise that consumer vulnerability is a more complex, dynamic concept than can be captured in list form. This requires a culture change, the companies need to approach how they treat consumers as a whole, and not view ‘vulnerable consumers’ as somehow separate.

¹⁰⁸ Maker, Y. et al., ‘From Safety Nets to Support Networks: Beyond “Vulnerability” in Protection for Consumers with Cognitive Disabilities’ Vol. 41(3), UNSW Law Journal 818, 2018, p.831-833.

¹⁰⁹ Centre for Consumers and Essential Services, ‘Research report for Citizens Advice, Tackling consumer vulnerability: regulators’ powers, actions and strategies’, 2014.

Appendix 5: Research and engagement activities

The following engagement, research and capability building activities helped us to identify problems and develop key themes for our draft strategy.

Key engagement activities

Community sector roundtables

In 2020 we [ran seven community sector roundtables](#). These were held regularly to facilitate information sharing and discussion between the commission and the community sector about issues presenting for consumers during the height of Victoria's coronavirus pandemic lockdowns. These roundtables will continue to be held quarterly in 2021 to provide an ongoing dialogue about the evolving situation and its impact on consumers.

Deliberative community panel

In November and December 2020, we held a deliberative community panel with 37 Victorians from a range of geographic areas, ages and cultural backgrounds. The group met over three weekends (and one evening) to consider priority areas for the commission's vulnerability strategy, and to develop a definition of consumer wellbeing.

Consultants Nicola Mendelson and Desley Renton from Mendleson Communications facilitated the community panel process. Commissioners, executives and project staff observed many of the sessions.

The panel delivered the final recommendations to Chairperson Kate Symons and Commissioner Simon Corden at its last session. We committed to reporting back to the community panel in early 2021 and conducting a workshop for those who would like to attend as part of our consultation process on the draft strategy. The report can be found on our website [link to be provided on day of strategy release].

Stakeholder reference group

Our stakeholder reference group includes representatives from mental health organisations, disability organisations, multicultural organisations, financial counsellors and consumer advocacy organisations:

- Victorian Mental Illness Awareness Council
- Consumer Policy Research Centre
- IPC Health
- WestJustice
- Financial Counselling Victoria's Utilities Working Group

- Ethnic Communities Council of Victoria
- Victorian Council of Social Services
- Women with Disabilities Victoria
- Adult Multicultural Education Services
- Uniting Kildonan
- Consumer Action Law Centre.

The group met in October and December 2020 to discuss the vulnerability strategy and provide input to inform the problem definition, particularly in relation to terminology.

Cross-industry workshops on access and inclusion

On 12 November 2020, we held a cross-sector workshop to discuss the experiences of consumers experiencing vulnerability and barriers to support, especially for the Utility Relief Grant Scheme.

Participants came from across sectors including water, energy, superannuation, banking, community and government to participate in a collaborative and fruitful discussion. The workshop had two sessions:

- understanding the experiences of consumers experiencing vulnerability
- exploring barriers to access and support, especially for utility relief grants.

Webinar on universal and inclusive engagement

On 11 March 2021, we held a webinar for government organisations, regulated businesses and members of the community sector on the launch of the guidance paper on universal and inclusive engagement, written in partnership with the University of Melbourne’s Social Equity Institute.

The guidance is a practical tool for universal engagement for regulators, but equally applies to businesses and organisations across sectors. It provides principles and actions to shape engagement practice and create inclusive engagement design.

Key research activities

Interviews with community workers

In 2020, the Consumer Policy Research Centre conducted interviews with community workers through its Energy Simplified program and in partnership with Monash University to gain insights into the experiences of consumers in the energy market. Four quarterly reports were be delivered to the commission over one year, with each report building upon the last. The report can be found on our website [link to be provided on day of strategy release].

External reports

Key reports we considered in the formulation of our themes included:

- [Consumers and COVID-19: from crisis to recovery](#) – Consumer Policy Research Centre
- [Affordability report](#) – Energy and Water Ombudsman (Victoria)
- [Missing the mark](#) - Energy and Water Ombudsman (Victoria)
- Victorian Council of Social Service reports
 - [Insecure work creates vulnerability and increases inequality](#)
 - [COVID-19 and the Victorian Community Sector](#)
 - [Supporting energy customers through the coronavirus pandemic](#)
- [Disaster planning and recovery research report](#) – Thriving Communities Partnership
- [Energy customer sentiment survey: December 2020](#) – Energy Consumers Australia.

Key capability building activities

Family violence engagement framework

Domestic Violence Victoria advised us on how we engage with survivor advocates and consumers experiencing family violence. The guidance documents developed provided practical guidance for the commission and our stakeholders on better practice engagement with victim survivors.

Domestic Violence Victoria has progressed this project with guidance from the Project Steering Group, featuring commission staff, the University of Melbourne and survivor advocates who are part of the WEAVERs project.

One-on-one interviews with representatives from the commission, energy, water, community sector and other industries were conducted in November and December 2020. A survey was also sent to approximately 70 representatives to inform the project. Domestic Violence Victoria is currently undertaking a literature review to inform two co-design sessions held in February 2021.

Guidance on universal engagement

The University of Melbourne's Social Equity Institute developed a guide for us on universal engagement to complement our existing engagement frameworks. They proposed 10 principles for universal consumer engagement by essential services regulators, including sensitive and appropriate engagement with consumers experiencing vulnerability. We launched the report they created for us in March 2021. Report can be [found on our website](#).

The institute also developed an assessment tool for website accessibility. This tool was designed to support businesses to check and improve the cognitive accessibility of their

websites. It is based on research conducted by the institute, including research with people with cognitive disabilities and representative organisations of people with disability and mental health service users. The tool can be found on our website [link to be provided on day of strategy release].