

Building a strategy to address consumer vulnerability

Approach Paper

17 September 2020



An appropriate citation for this paper is:

Essential Services Commission 2020, Building a strategy to address consumer vulnerability: Approach Paper, 17 September

Copyright notice

© Essential Services Commission, 2020



This work, Building a strategy to address consumer vulnerability, 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



Against an increasingly uncertain external environment, it is with some urgency we are turning our efforts to ensuring consumers experiencing vulnerability have access to essential services including appropriate support.

In recent years we have demonstrated our role in supporting consumers experiencing vulnerability. Our payment difficulty framework and innovative family violence reforms created targeted protections for consumers experiencing vulnerability in our regulated sectors. We are proud this work is making a difference. Now we want to create a more coordinated and consistent approach to drive our long-term work in this area.

In late 2019 we identified consumer vulnerability as a priority area for examination. Only months later, the bushfires in early 2020 and the coronavirus pandemic brought forward the need to establish this approach, as new forms of vulnerability emerged, and existing ones were exacerbated. Our imperative to hear, understand and incorporate the perspectives of consumers experiencing vulnerability in our work has never been more prominent.

Now is a pivotal time and we must act with purpose to ensure consumers have equitable access to their essential services. Our work to develop a vulnerability strategy is the first step in our long-term goal to strengthen how we address consumer vulnerability across the commission's work.

We recognise that our regulated sectors operate in unpredictable times, and innovation and technology continue to herald change. Each sector has unique characteristics, which we will need to consider as we develop our approach. We are committed to meaningful engagement and will work collaboratively across sectors and directly with consumers to inform our position.

We warmly welcome you to be involved in developing our vulnerability strategy. We look forward to working together to drive positive outcomes for the Victorian community.

A handwritten signature in blue ink, appearing to read 'Kate Symons', written over a light blue horizontal line.

Kate Symons
Chairperson

Contents

A message from our Chairperson	ii
Summary	4
Our approach to developing a vulnerability strategy	5
We need to understand the changing nature of consumer vulnerability	5
We will develop a definition for the problem we seek to address	5
We will develop initiatives across our regulatory functions	8
Our vulnerability strategy will set an ongoing work program	9
Our current role in responding to consumer vulnerability	10
We have been active in responding to consumer vulnerability	11
Our future work will complement our vulnerability strategy	13
The Victorian Government provides protections for consumers experiencing vulnerability	15
How we are responding to the coronavirus pandemic	17
The Victorian Government response to the pandemic is supporting consumers served by our regulated industries	17
We are monitoring the environment throughout the pandemic	18
We developed reforms to meet emerging challenges	24
We focused on trust in our compliance and enforcement priorities	26
How regulators are considering consumer vulnerability	28
Regulatory definitions of vulnerability have evolved over time	28
Regulators have distinguished between key drivers of vulnerability	29
New approaches to defining vulnerability present challenges and opportunities	31
These new approaches to consumer vulnerability have implications for how we consider the impact of coronavirus pandemic	33
We want to hear from you	34
Appendix 1: Qualitative and Quantitative research	35
Appendix 2: Key engagement mechanisms	37
Appendix 3: Data collection between April—August 2020	40
Appendix 4: Regulatory definitions of consumer vulnerability	41

Summary

We are embarking on a one-year project (2020–21) to develop a consumer vulnerability strategy. This paper sets out our approach to establish this strategy, and how stakeholders can engage with us as we undertake this work.

Our vulnerability strategy will be 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 strategy will form a **contemporary definition of consumer vulnerability** and identify measurable and achievable outcomes across our regulatory functions.

This will set a pathway forward for the commission to take a consistent and coordinated long-term approach to supporting the interests of consumers experiencing vulnerability.

In developing this approach, we have considered:

- 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.

Work being done by other regulators has revealed that different drivers can create forms of vulnerability and a tailored approach supports regulators to fulfill their functions in each respective context. Modern regulators must consider this across their functions, including monitoring, compliance, enforcement, education and engagement. We think the time is right to now build an approach to this work through a vulnerability strategy.

We know this is not a challenge we can solve alone. We are committed to systems-thinking and ongoing collaboration with our stakeholders to ensure the long-term interests of Victorian consumers are protected. The release of our vulnerability strategy will include a forward workplan for implementation, monitoring, evaluation, and review of the strategy, which the commission intends to embed as an ongoing operational priority.

Our approach to developing a vulnerability strategy

We need to understand the changing nature of consumer vulnerability

Following the bushfires in 2020 and subsequent coronavirus pandemic, the importance of hearing, understanding, and incorporating the perspectives of consumers experiencing vulnerability into regulatory processes has taken on increased importance. In this unprecedented time, the nature of consumer vulnerability is constantly evolving. Initial insights we have gathered on the impact of the coronavirus pandemic on consumers show new forms of vulnerability emerging, and existing vulnerabilities being exacerbated.

We are committed to addressing consumer vulnerability both through sustainable, long-term regulatory practices and during times of acute need. This includes a commitment to developing and maintaining a contemporary understanding of the evolving nature of consumer vulnerability, to be realised through our vulnerability strategy.

Our vulnerability strategy will develop a consistent approach to addressing consumer vulnerability. The strategy will draw on evidence to define vulnerability in the changing economic environment and bring the voices of consumers experiencing vulnerability to our regulatory processes. To be published in mid-2021, the strategy will outline a forward work program to support the commission in ensuring consumers have equitable access to essential services, including implementation and evaluation. It will include:

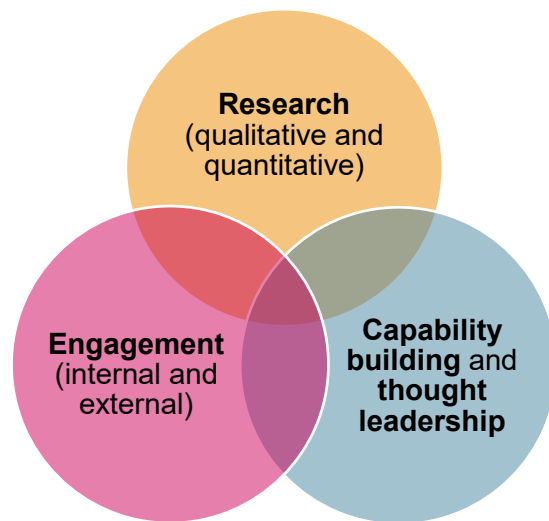
- A contemporary definition of vulnerability using existing and emerging evidence; ensuring staff understanding and capability to apply this definition to regulatory work.
- Outcomes across our functions related to consumer vulnerability, including monitoring and reporting, education and engagement, compliance and enforcement and regulatory reforms, as well as internal policies and procedures.
- Strategies for building staff capability in policy and process design and engagement, (including tools, resources, and training programs).
- A dedicated function and a forward-looking work program for implementation, monitoring and evaluation, and review of the strategy.

We will develop a definition for the problem we seek to address

For the remainder of 2020, we will conduct a program of research and engagement to build a comprehensive understanding of consumer vulnerability in a changing world, and use systems-thinking to ensure the outcomes we set meet the changing needs of consumers.

This program of work, aimed at understanding the evolving world of consumer vulnerability, will comprise of three intersecting streams:

- research
- engagement
- capability building and thought leadership.



The outputs of the activities in these workstreams will help us establish a problem definition. This will feed into developing our vulnerability strategy and setting outcomes in relation to our operational functions in early 2021. Our problem definition will include:

- a working definition of consumer vulnerability
- the scope of consumer vulnerability in Victoria in relation to our regulated sectors
- the changing nature of vulnerability in the coronavirus environment
- identification of potential risks of consumer harm in our regulated sectors
- opportunities within the commission's remit where reform or action could play a role in mitigating consumer harm.

Our proposed activities for these workstreams are outlined below.

Research: analysing systems data to understand trends in vulnerability

Research and data analysis are essential to understanding the scope of consumer vulnerability. We understand that consumer vulnerability is complex, dynamic, and fluid. Two research projects will inform our problem definition, and help us to better understand the scope and evolution of vulnerability in the coronavirus context:

- **Qualitative interviews with community workers and volunteers** to collect the experiences of consumers experiencing vulnerability in the energy market (conducted by Consumer Policy Research Centre with quarterly reports).
- **Quantitative data analysis of relevant datasets** to capture the systemic factors impacting on consumers in the current environment, allowing us to monitor the conditions of vulnerability (datasets include reports from businesses, consumer surveys, unemployment, underemployment and employment availability, JobKeeper and JobSeeker payments,

housing availability and affordability, concession eligibility, digital and general literacy and household income).

These projects will seek to increase direct information exchange with consumer advocates, enhance our data gathering capacity, and better equip us to act appropriately and with agility in future situations of external uncertainty. They will help us develop clear outcomes in the design of policy and regulation to meet the contemporaneous needs of consumers experiencing vulnerability. See appendix 1 for more information on these projects.

Engagement: consultation and deliberation

Rigorous engagement with our stakeholders is essential to the success of this project. Understanding the perspectives and needs of consumers experiencing vulnerability requires meaningful collaboration with consumers, the community sector, our regulated sectors, other essential industries, and commission staff. Our engagement program is focused on building strong relationships with stakeholders to establish trust and authority to act on issues related to consumer vulnerability. It includes:

- **Continued community sector roundtables**, held regularly to the end of 2020, to understand the unfolding social and economic effects of the coronavirus pandemic (we will reassess the regularity of our roundtables with members at the beginning of 2021).
- **A community sector reference group** made up of diverse consumer and community representative organisations across Victoria. This group is distinct from the roundtables and will focus on testing ideas and providing advice to inform the vulnerability strategy.
- **Deliberative engagement with consumers**, to ensure our vulnerability strategy reflects the informed view of consumers. We will have regard to the recommendations developed by consumers in the development of the vulnerability strategy and will include a definition of 'consumer wellbeing' developed by the participants.
- **Targeted industry engagement** through consultation at industry roundtables and cross-sector workshops to share insights and examples of better practice. Businesses in our regulated sectors are on the frontline providing customer service and we recognise that these insights are essential to understanding the challenges and opportunities to be addressed in our strategy.
- **Dedicated internal engagement**, including an internal working group to audit our internal operations to identify opportunities and areas of focus; webinars with presentations from expert speakers; internal 'champions' who will support our external engagement and targeted workshops in 2021 to develop the outcomes across divisional functions.
- See appendix 2 for more information on these projects.

Capability building and thought leadership

Notably, all research and engagement activities outlined above contribute to capability building and thought leadership. Our capability building will have an inward focus, but we will also collaborate and share practices to build a dynamic and resilient community of practice with our stakeholders. We are currently undertaking work to design two intersecting engagement frameworks to help us better engage in ways that are inclusive and appropriate with consumers experiencing vulnerability:

- **Best-practice guidance for working with victim-survivors of family violence**, in partnership with Domestic Violence Victoria, to inform the next stages of our work on family violence which will require direct engagement with victim-survivors.
- **Guidance for sensitive and appropriate engagement with consumers experiencing vulnerability**, in partnership with the University of Melbourne's Social Equity Institute. This includes a tool to assess the accessibility of online communications, and a roadmap for engagement to inform the vulnerability strategy.

Our commitment to capability building and thought leadership is ongoing, and we consider it vital to model and reflect the values that drive the vulnerability strategy in our own practices. We will seek opportunities to drive capability and thought leadership in relation to consumer vulnerability not only through this work, but across all the commission's functions, and will share this with our stakeholders where possible.

We will develop initiatives across our regulatory functions

The second part of our work program is to develop the initiatives that will live within our vulnerability strategy. To do this, we will:

- **apply insights from our research and engagement program** to regulatory operations and internal functions
- **co-create initiatives with stakeholders**, working to design tailored and achievable outcomes to inform our long-term work program.

The insights gathered throughout our research and engagement program will inform our problem definition, including a definition of consumer vulnerability, and priority areas of focus. This problem definition will help us identify where there are the most significant potential risks to consumers in the marketplace. Using this definition and emerging themes and risks, we will work in partnership with our stakeholders to determine measurable and achievable targeted outcomes. These outcomes will form a long-term pathway that will inform the commission's future work.

Our work in developing initiatives for our vulnerability strategy will be supplemented with ongoing stakeholder engagement. We will continue to consult with our community sector reference group and will hold workshops to test initiatives with our industry and government stakeholders.

Our vulnerability strategy will set an ongoing work program

Our final vulnerability strategy will support us to bring the voices of consumers experiencing vulnerability to our regulatory processes and promote equitable access for consumers to essential services. Importantly, it will establish an ongoing function for the commission in relation to consumers experiencing vulnerability. Our vulnerability team will support implementation, monitoring and evaluation of the outcomes set in the strategy.

Along with the strategy, we will continue to produce research reports, publications and external engagement activities that establish the commission as a contributor to thought leadership on consumer vulnerability. Our ongoing work in relation to consumers experiencing vulnerability will also include internal reporting to support our insights into business service quality and performance in relation to the experiences of consumers experiencing vulnerability in our regulated sectors.

We acknowledge that our vulnerability strategy is being developed at a critical time where concepts of 'vulnerability' are rapidly evolving. As noted throughout this paper, the coronavirus pandemic has exacerbated existing vulnerabilities, and created new ones.

At the same time, markets are also evolving: our regulated sectors operate in an increasingly uncertain environment, and innovation and technology continue to herald change across sectors. We are taking this into account in the development of our strategy, which must be sufficiently flexible to account for these uncertainties.

As we acknowledge the unknowns in this environment, we are also committing to a review of the vulnerability strategy in 2023 to ensure we are on track to achieve our outcomes, and that the strategy remains fit-for-purpose.

Our current role in responding to consumer vulnerability

In accordance with the *Essential Services Commission Act 2001*, ‘the commission must have regard to the interests of consumers and users of products or services (including low income and vulnerable consumers)’ in different contexts and ways to fulfil our legislative objectives.¹

Recent royal commissions into the banking and aged care sectors have reflected evolving community expectations about the role that regulators play in ensuring fair and equitable outcomes for consumers.² When things go wrong, the community wants to know that a regulator will step in and hold businesses to account and ensure that consumer rights are appropriately protected. This is particularly important for the most vulnerable members of our community.

Historically, when considering consumer vulnerability, regulators have focused on supporting customers experiencing payment difficulty. Indeed, ensuring that essential services are affordable is an important part of our role. Reforms like the payment difficulty framework for energy customers provide a safety net for tailored and flexible support.³ But consumer vulnerability is broader than payment difficulty. The coronavirus pandemic has demonstrated that anyone can experience vulnerability, and that circumstances can change quickly.

Consumers may experience vulnerability due to an event (loss of employment, natural disaster) or systemic barriers to access (language barriers, digital literacy, regional limitations). Some causes will be transient, while others are longer-term or permanent, and people can be affected by both at the same time. Markets can also create or exacerbate vulnerabilities, through poor product and service design, targeted exploitation, or inappropriate communication.⁴

¹ *Essential Services Commission Act 2001* (Vic), s 8A(1)(d) and 8A(1)(e)(i).

² Royal Commission into the Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report, Commonwealth of Australia, 2019; Royal Commission into Aged Care Quality and Safety, Interim Report, Commonwealth of Australia, 2019.

³ Essential Services Commission, Payment difficulty framework, Final decision, 10 October 2017.

⁴ Emma O’Neill, ‘Exploring regulatory approaches to consumer vulnerability: a report for the Australian Energy Regulator’, Consumer Policy Research Centre, February 2020.

Modern regulatory approaches are increasingly considering holistic responses to consumer vulnerability. These approaches include protections for consumers experiencing payment difficulty and extend to ensuring equitable access to services. Part of our role is to promote the inclusive design of services and products and ensure accountability for exploitative behaviour. To do this effectively, we must address consumer vulnerability across our regulatory functions, including monitoring and reporting, education and engagement, and compliance and enforcement.

We have been active in implementing innovative approaches to regulatory reform to provide more appropriate protections for consumers experiencing vulnerability. Our ground-breaking family violence reforms considered how to ensure energy and water businesses were not creating unintended consequences for people affected by family violence. We worked with family violence experts, businesses, and other industries to understand risks and develop effective solutions.

We are committed to ensuring accountability in our regulated sectors. Over the past eighteen months we have taken strong action to enforce the obligations energy businesses have under our regulatory codes. In that time ten energy businesses have paid penalties totalling \$2.45 million for alleged breaches of the rules.⁵ Through this enforcement action and our ongoing reform work, we are demonstrating our commitment to meeting changing community expectations, and to promoting the long-term interests of Victorian consumers.

We have been active in responding to consumer vulnerability

In recent years we have implemented reforms to respond to specific issues relating to consumer vulnerability in line with our legislative objectives. These reforms have been complementary to the Victorian Government's broader policies and programs to ensure all consumers have access to essential services.

Energy hardship inquiry (2015–16)

In 2015 the commission commenced its review of the assistance offered by electricity and gas retailers to customers experiencing payment difficulty. The energy hardship inquiry identified a wide range of customer experiences in accessing support for payment difficulty. Some customers were not receiving any assistance, and for others the assistance was inadequate – in some instances, customers accumulated arrears to unmanageable levels before assistance was offered.

⁵ Essential Services Commission, Energy compliance and enforcement priorities 2021, July 2020, p.10.

The inquiry found that better and more timely assistance from retailers could have meant customers avoided accumulating arrears and experiencing disconnection. The final report recommended a new approach to assisting customers experiencing payment difficulties, which became the payment difficulty framework.⁶

Payment Difficulty Framework (2017)

In October 2017, the commission delivered its final decision on a payment difficulty framework, designed to deliver better outcomes for customers struggling to pay electricity or gas bills. Where previous approaches focused on process, rules and compliance, the new framework gives clear entitlements to customers for assistance from their energy retailer. The payment difficulty framework was designed to empower customers to work with their retailers to design assistance arrangements that are most appropriate to their individual circumstances.⁷

Requirements for family violence policies (2017 and 2019)

The Royal Commission into Family Violence (Victoria) noted the adverse financial impacts of family violence and the potential risks through interactions with service providers.⁸ It recommended the commission update the water customer service codes and Energy Retail Code to mitigate these risks and ensure victim-survivors of family violence receive safe and flexible support.

In response, we worked collaboratively with businesses, family violence experts and survivor advocates to update our customer service codes in the water sector (2017) and the Energy Retail Code (2019), and promote better practice in business responses to family violence. Water businesses and energy retailers are now required to offer safe and flexible support for customers affected by family violence. Minimum requirements include:

- development and monitoring of a family violence policy
- training and support for staff dealing with customers affected by family violence
- protection of private and confidential customer information
- access to existing payment difficulty programs
- minimising repeat disclosure of family violence by a customer

⁶ Essential Services Commission, Supporting customers avoiding labels — Energy hardship inquiry, Final report, February 2016.

⁷ Essential Services Commission, Payment difficulty framework, Final decision, 10 October 2017.

⁸ Royal Commission into Family Violence, Final Report, Parliament of Victoria, 2016.

- customer referral to specialist family violence services.⁹

The regulatory frameworks now in place in the water and energy sectors have ensured a level of protection for victim-survivors of family violence. Frontline services have reported that the frequency and severity of family violence is increasing during the pandemic, so it has never been a more crucial time to have these protections in place.¹⁰

Victorian Default Offer (2019)

The Victorian Default Offer is a simple, trusted and reasonably priced electricity option safeguarding consumers unable (or unwilling) to engage in the electricity retail market. From 1 January 2020, the Victorian Default Offer replaced all standing offers. All domestic and small business electricity customers can access the default offer, and it now forms the basis of retail discounting making it easier for consumers to understand electricity offers.

On 1 September 2020, the Victorian Default Offer became the new maximum price for all households and most businesses in embedded networks.¹¹ In an embedded network, energy is supplied to an area or building through a privately owned and managed supplier – such as through an apartment building, caravan park or retirement village – and not a licenced retailer.

Our future work will complement our vulnerability strategy

We recognise that our vulnerability strategy will be developed concurrently with other strategic projects across the commission. This includes reform projects like the competitiveness review and the review of the water customer service codes, the strengthening of our enforcement capacity and how we go about delivering water price reviews. We will ensure that these projects are informed by, and will inform, our work.

Competitiveness review

In August 2017, the 'Independent review into the electricity and gas retail markets in Victoria' (the Thwaites review) recommended the commission monitor and report on the competitiveness and

⁹ Essential Services Commission, Amendments to water customer service codes – New requirements for family violence policies, Final decision, April 2017.

¹⁰ Kate Fitz-Gibbon, Naomi Pfitzner & Jacqui True, 'More help required: the crisis in family violence during the coronavirus pandemic', The Conversation, 18 August 2020.

¹¹ Essential Services Commission, Maximum prices for embedded networks and other exempt sellers, Final decision, 22 July 2020.

efficiency of the Victorian energy market. We have developed a framework for assessing the market and in the first year of reporting we will focus on customer trust and innovation.

As part of the competitiveness review, we are undertaking the following customer-focused work:

- **Customer sentiment survey:** conducted by the Consumer Policy Research Centre to look at the experiences of Australian consumers during the coronavirus pandemic. We have commissioned a specific Victorian energy consumer module to provide in-depth insights.
- **Customer experience testing – comparison and switching:** this project will analyse and report on customer experiences when comparing energy offers and changing to a better offer. This project will identify opportunities for improvement and areas of focus for further consideration.

Water code review and adoption of National Cabinet principles

The water codes review commenced in 2019 with the aim of updating our urban and rural codes to ensure they meet the contemporary needs of Victorian water consumers.

Since the start of 2020, the circumstances of many Victorian consumers have changed rapidly, with little certainty about the long-term effects of the coronavirus pandemic. We have temporarily postponed the review of our water customer service codes while we respond to the immediate challenges presented by the coronavirus pandemic (see 'How we are responding to the coronavirus pandemic').

In 2021 we intend to resume the process of longer-term reform of the codes. We will consider changes in the water sector and community sentiment because of the pandemic. We note that areas of potential reform identified in the 2019 review are already being adopted as common practice. For example, water businesses have reported that they are placing greater emphasis on proactive communications and extending support to small business customers.

Water price reviews under the PREMO framework

Since 2016, the commission has used the PREMO water pricing framework to review prices submitted to us by Victorian water businesses.¹² We developed the PREMO framework to give water businesses strong incentives to deliver better value for customers.¹³ The framework, as well

¹² Essential Services Commission, Water Pricing Framework and Approach - Implementing PREMO from 2018, October 2016.

¹³ PREMO is an acronym of five elements that help make up the incentive mechanism of the framework: performance, risk, engagement, management and outcomes.

as the legal requirements against which we assess price submissions, require us to consider (among other things) the effects of a water business' pricing proposal on customers with a low income or who are experiencing vulnerability.

Strengthening our enforcement capacity

Our 2020-21 compliance and enforcement priorities will focus on energy rules that seek to promote trust in our market, particularly those aimed at helping customers experiencing vulnerability stay connected. Our energy and compliance priorities are focused on consumer protection rules, including:¹⁴

- payment difficulty framework
- family violence protections
- wrongful disconnections of customers
- planned interruptions, especially affecting customers dependent on life support equipment
- the transfer of customers without explicit informed consent
- overcharging of customers experiencing vulnerability, especially those with concession entitlements or in payment difficulty
- embedded networks.

This will be completed through compliance and monitoring but may involve enforcement action. We will also continue to monitor and investigate breaches of other rules and laws that create substantial risks for the Victorian community.

We will continue to monitor the implementation of new customer protection rules introduced under our energy reform program (see 'We developed reforms to meet emerging challenges'), as well as the Victorian Default Offer, best offer requirements and new obligations for energy businesses to make sure contract periods, practices and variations are clear and fair.¹⁵

The Victorian Government provides protections for consumers experiencing vulnerability

The Victorian Government has policies and programs in place to support consumers experiencing vulnerability in our regulated sectors. These include long-standing programs such as concessions

¹⁴ Essential Services Commission, 'Energy regulator says protecting vulnerable customers 'more important than ever'', Melbourne, 24 July 2020.

¹⁵ Essential Services Commission, Energy compliance and enforcement priorities 2021, July 2020.

and the Utility Relief Grant Scheme. Such programs are reflective of broader government policy agendas designed to support economic and social inclusion for all Victorians.

Concessions

Consumers with low incomes or experiencing forms of vulnerability may be eligible for a range of concessions, including:

- seasonal energy discounts – available on electricity and gas bills during winter
- transfer fee waivers – where utility connection fees are waived
- service to property discounts – a reduction for low income households with low consumption
- time of use discounts – such as a reduction on off-peak rates
- capital grants – one off assistance to replace or repair household appliances causing high utility bills.¹⁶

Utility Relief Grant scheme

The Utility Relief Grant scheme assists eligible concession card holders who cannot pay a utility bill (mains electricity, gas or water) and who are at risk of disconnection due to an unexpected and temporary financial crisis. Customers without a concession card, but who are part of a low-income household, may also be able to apply.

The program is administered by the Department of Health and Human Services and utility retailers. Based on the amount owing by the customer at the time of application, grants of up to \$650 for each utility type (\$1,300 for households with a single source of energy) may be provided in a two-year period.¹⁷

As part of our targeted response to the coronavirus pandemic, we introduced reforms that require energy retailers to support customers in completing applications for utility relief grants (see 'How we are responding to the coronavirus pandemic').

¹⁶ 'Concessions and benefits', Department of Health and Human Services, accessed 12 August 2020, <http://www.dhs.vic.gov.au/concessions/concessions>.

¹⁷ 'Utility Relief Grant Scheme', Department of Health and Human Services, accessed 12 August 2020, <https://services.dhhs.vic.gov.au/utility-relief-grant-scheme>.

How we are responding to the coronavirus pandemic

The coronavirus pandemic is affecting the lives of every Victorian and has reset the priorities of regulators, governments, industries and community organisations. We are cognisant of our role in protecting the long-term interests of Victorian consumers in this changing and uncertain environment. This sits within broader work of the Victorian Government, which is undertaking initiatives to support consumers accessing essential services.

The Victorian Government response to the pandemic is supporting consumers served by our regulated industries

The Victorian Government developed a whole-of-government response to the coronavirus pandemic, including as part of the National Cabinet. According to a report from the inquiry into the Victorian Government's response to the coronavirus pandemic, early indicators show that Victoria will be hit harder than other states by the economic impacts of the pandemic and that the state is likely to experience a widespread economic downturn in 2020 and 2021.¹⁸

By 4 June 2020 the Victorian Government had announced \$8.4 billion in funding in response to the pandemic, with its primary response being the \$1.7 billion Economic and Survival Package to Support Small Businesses and Jobs.¹⁹ This includes a \$500 million 'Working for Victoria' initiative to help local governments employ jobseekers, and those who have lost employment due to coronavirus.²⁰

The Victorian Government also announced support for energy consumers affected by the coronavirus pandemic through a \$3.7 million support package to:

- provide training for 1,100 frontline workers for up to six months, including delivering online information sessions to benefit 2,200 disadvantaged households

¹⁸ 'Inquiry into the Victorian Government's response to the COVID-19 pandemic, Interim report', Parliament of Victoria Public Accounts and Estimates Committee, 4 August 2020.

¹⁹ Ibid, p.52.

²⁰ 'Working for Victoria – Information for local governments', Victorian State Government, accessed 25 August 2020, <https://www.vic.gov.au/sites/default/files/2020-04/Working%20for%20Victoria%20Information%20for%20local%20governments.pdf>.

- build the energy advisory capacity of the financial sector with new financial counselling positions to provide one-on-one advice on complex debt and hardship matters
- establish a brokerage program with tailored one-on-one support and referrals to the Victorian Energy Compare website to switch to cheaper offers.

The Victorian Government has recognised that the coronavirus pandemic is having a disproportionate impact on culturally and linguistically diverse Victorians, First Nations Victorians, people experiencing family violence, and people on temporary visas or with insecure employment.

This response sits alongside the Commonwealth Government’s economic response, including JobSeeker and JobKeeper payment programs. These wide-scale stimulus programs have provided essential support to many Victorians impacted by the pandemic. JobKeeper payment application data shows a higher number of applications in regional centres than in rural Victoria, while most applications come from metropolitan Melbourne.²¹

We are monitoring the environment throughout the pandemic

We are mindful of the need to maintain a contemporary understanding of emerging challenges for consumers and industry throughout the coronavirus pandemic. Alongside our regular mechanisms for monitoring and reporting, we are using a multi-pronged approach to collect data and hear insights from experts on what’s happening on the ground, including what issues we should be alive to in our regulatory decision-making. We have been sharing the knowledge gathered with relevant government departments to provide timely information and support consistent and well-informed decision-making.

Mechanisms to gather data and insights include:

- data collection from energy retailers and water businesses
- community sector roundtables
- industry roundtables and one-on-one interviews
- audit program focused on obligations under Payment Difficulty Framework and for customers affected by family violence
- consumer sentiment survey conducted by the Consumer Policy Research Centre Data (see ‘Competitiveness review’).

²¹ Parliament of Victoria, p.58.

Data collection from energy retailers and water businesses

Since April 2020, we have requested weekly data from electricity and gas retailers and water businesses in relation to support provided to customers. This data has given us valuable insights into how businesses have supported customers through the coronavirus pandemic. We have collected data relating to:

- energy disconnections and water restrictions
- the capacity of customers to pay their bills, including the deferral of payments
- the number of calls for support received
- customers receiving payment assistance
- Utility Relief Grant applications.

Specific data collected during April—August 2020 can be found in appendix 3. The commission will continue to monitor the environment as changes in lockdown restrictions and government support payments evolve over the coming months.

Community sector roundtables

Since April 2020, we have held regular roundtables with the community sector and government organisations to share insights on the impact of the evolving situation on consumers. We have heard about the trends and challenges faced by the community at different stages of restrictions, and updated the community sector on our initiatives to ensure consumers are receiving adequate support at this critical time

Our community sector roundtables will continue through 2020. The key findings from the four roundtables we have held to date are discussed below.

What we heard at the community roundtables

Community groups noted that most consumers identified the economic and social effects of the pandemic as the main driver for them seeking support.

- **The pandemic environment has intensified systemic forms of inequality.**

The shift to telephone and digital service delivery has created barriers to accessing support for consumers with low literacy, accessibility issues including health conditions, and language support requirements.

There is a gendered nature to the impact of the pandemic, with a reported increase in disclosures of family violence (predominantly affecting women). Many women are facing the additional burden of managing childcare and home-based education as primary carers.

- **New forms of vulnerability are also emerging.**

Many consumers have lost access to income through unemployment or reduced employment, and this has particularly affected people not eligible for the JobSeeker or JobKeeper payments (including many people in casual employment, international students and people on temporary visas). More people are seeking support in relation to food, household goods, transport, education, and utilities (electricity, gas and telecommunications). The community sector is deeply concerned about many consumers presenting with mental health issues associated with financial hardship and isolation in the current circumstances.

Small business representatives are increasingly concerned about the future financial viability of small businesses given the ongoing restrictions. It is anticipated that some small businesses will be unable to reopen once government support ends.

- **There are many facets to the challenges created by the coronavirus pandemic**

The community sector reported there has been an increase in complex issues presented by consumers. People at greater risk are those who experienced marginalisation prior to the pandemic, including people on temporary visas, refugees, people in energy poverty and those with specific communications needs.

- **Calls for support have been lower than expected, but the reasons are complex**

Overall, calls to community support services have decreased during the pandemic. This trend is likely partly due to government support payments and superannuation withdrawals temporarily stabilising or improving the financial position of some consumers, but there is also a concern that people may not be reaching out for support. The community sector suggested that checking in on the welfare of existing clients is an important measure to ensure disengaged customers are not in situations that place them at greater risk.

Other issues for consumer support include delays in getting through to business support services and receiving support under the Utility Relief Grants scheme. The community sector highlighted potential risks in consumers presenting with critical issues like family violence being placed in the general 'coronavirus support' category, thereby delaying receiving specialised support.

- **Lack of awareness of consumer entitlements is placing consumer welfare at risk**

Community support services shared several case studies of businesses continuing to pressure consumers to pay more than they can afford, sending disconnection warnings, restricting consumers' access to utilities, and initiating debt collection. They reported some energy retailers are not applying the payment difficulty framework in their interactions with consumers.

Residential energy consumption has increased compared to last year, but the full impact of high use during winter is yet to be seen. The pandemic has forced some consumers to make difficult choices in meeting essential household expenses, putting their health and well-being at risk. Consumers have used savings, borrowed money or sought early access to superannuation to pay utility bills. Many others are deferring payment, raising concerns of household debt accumulating to problematic levels.

Many consumers who are experiencing vulnerability (particularly those for the first time) are not familiar with their rights or eligibility for certain concessions. The community sector stressed the need to widen the reach to consumers and clearly communicate about the assistance available to those facing vulnerability.

- **Inclusive communication and increased resourcing are crucial for recovery**

The community sector expects an influx of requests for support as the restrictions ease and government support is reduced or withdrawn. Organisations emphasised that adequate resourcing would be required for frontline services to be prepared for this increase. Ensuring inclusive access to information and providing targeted communication are crucial to achieving effective outcomes particularly for consumers facing vulnerability.

The impact created by the pandemic is likely to be felt over a long period. The community sector stressed the importance of retailers being cognisant of the diverse challenges faced by consumers and providing empathetic and tailored responses. There are several research projects by community sector organisations currently underway on the experiences of consumers as the situation unfolds. These initiatives aim to support policy makers and regulators in identifying issues to make informed decisions and ensure a smooth transition into the post-pandemic recovery period.

Industry roundtables in relation to customer support

We have held several roundtables with the energy and water sectors to understand the impact of the coronavirus pandemic on each sector and on Victorian customers.

What we heard at the energy industry roundtables

Representatives from energy businesses, peak bodies and government have met three times at roundtables with commissioners and commission staff since the pandemic began.

The first roundtable heard there was a large increase in the number of customers calling to request payment assistance, with many customers choosing to defer their bills.

At the second roundtable in June, retailers were concerned that the JobKeeper and JobSeeker payments are likely masking a bigger problem that will emerge later in the year when it is expected government assistance will cease. We were told that small businesses are accumulating energy debt due to a range of payment deferral and other assistance measures and may accumulate significant arrears by the end of the year.²²

²² Essential Services Commission, 'Energy industry representatives share insights at second roundtable', Melbourne, 18 July 2020.

At our most recent roundtable in August, energy retailers expressed concerns about the complexity of the Utility Relief Grant Scheme application process. There were also concerns about past delays in approvals for completed applications. Retailers noted that the process has improved, but there was still concerns that smaller retailers might have trouble with resourcing to assist customers in filling out Utility Relief Grant Scheme applications.

Retailers also observed their role in supporting staff working remotely. We heard that frontline customer service staff often receive calls from distressed customers, which has an impact on their mental health and wellbeing. It was also noted that care responsibilities created added challenges for staff working from home, particularly staff answering calls from customers seeking support. Retailers are acutely aware of the impact of the pandemic on their staff and are attempting to implement innovative strategies to better support people.

What we heard at the water industry roundtables

We invited representatives from water businesses, community organisations and government to our first water industry roundtable in August. Water businesses told us there was interest in seeing the results from reporting to the commission by water businesses during the pandemic, including about different forms of payment plans and support.

There was broad support for incorporating the National Cabinet principles into the water customer service codes. We confirmed that businesses would not be expected to update their customer charters, but that there is an expectation that businesses will communicate the changes to customers through other channels, such as their websites. Water businesses reflected on the impact of aged debt and what it might mean for customers, and it was noted that the National Cabinet principles did not include consideration of liens.

Water businesses reported that they are offering different forms of payment extension to customers (other than payment plans) and could soon see a movement into payment plans/hardship programs when extensions end. It was noted that many businesses are providing support to customers that is broader than what is being captured through formal reporting channels.

Business are committed to their responses being flexible based on customers' circumstances and are interested in exploring new ways of engaging with consumers when face-to-face interactions are not possible due to the pandemic. We also heard that businesses have an interest in exploring how coronavirus considerations might be carried forward, even after the pandemic ends.

Energy audit program concentrating on consumer-focused obligations

We have refocused this year's audit program on how energy retailers are meeting obligations under the Energy Retail Code as it relates to the payment difficulty framework and supporting customers affected by family violence.²³

The payment difficulty framework entitles all customers to flexible payment options and additional support – including a six month hold on debt repayments – for customers who cannot pay for their ongoing usage. Customers who are participating in a payment plan or receiving bill assistance cannot be disconnected or subject to debt collection.

We developed reforms to meet emerging challenges

We developed regulatory responses to respond to the emerging challenges presented by the coronavirus pandemic. In developing these reforms, we were mindful of ensuring our regulatory framework remains fit-for-purpose, while not creating an additional burden for industries already under stress.

Water sector

We made a short-term amendment to the water customer service codes to adopt National Cabinet approved policies and principles for support by essential services.²⁴ We have also released accessible communication guides to promote accessible and effective communications.²⁵

Embedding these national principles into our codes will ensure Victoria's consumer protection framework is consistent, transparent, and accessible. Many of the protections outlined in the national principles are already regulated in some way through our water customer service codes. Areas extended by the national principles include:

- expanded hardship support for small businesses customers
- coronavirus specific measures such as halting supply restrictions, debt collection and debt recovery.

²³ Essential Services Commission, 'Regulator keeps watch on energy retailers', Melbourne, 21 April 2020.

²⁴ Essential Services Commission, Amending water customer service codes – adopting national principles for coronavirus support, Final decision, 5 August 2020.

²⁵ 'Accessible communication guidance for water businesses', Essential Services Commission, accessed 25 August 2020, <https://www.esc.vic.gov.au/water/codes-and-guidelines/accessible-communication-guidance-water-businesses>

Some of the national principles' measures were designed to be temporary. Accordingly, we intend to engage with stakeholders as we review how long to retain the full set of national principles in the codes.

Energy retail sector

In the energy retail sector we introduced targeted reforms to support Victorian households and small businesses paying their bills through the coronavirus pandemic.²⁶ These measures complement the payment difficulty framework, which sets out entitlements for residential consumers experiencing payment difficulty and has become the national standard for engagement and support in the coronavirus pandemic environment.²⁷

The additional measures require retailers to:

- support residential customers in completing utility relief grant applications, including by submitting forms online on behalf of the customer where possible, with the customer's informed consent (ongoing requirement)
- conduct a tariff check for all residential customers receiving tailored assistance (temporary for six months from 1 October 2020)
- provide temporary assistance to small businesses experiencing financial stress due to the coronavirus pandemic (temporary for six months from 1 October 2020).²⁸

Other regulatory decisions

We also considered the current environment in other regulatory decisions, including:

- proposing to keep the cost of rank and hail taxi fares steady through the current market uncertainty²⁹
- extending the Victorian Default Offer as the new maximum price for electricity sold to embedded network customers³⁰

²⁶ Essential Services Commission, 'Support for energy customers during the pandemic', Melbourne, 30 June 2020.

²⁷ Essential Services Commission, 'Thousands of Victorians calling for energy assistance', Melbourne, 18 June 2020.

²⁸ Essential Services Commission, Supporting energy customers through the coronavirus pandemic, Final decision, 24 August 2020.

²⁹ Essential Services Commission, 'No change to rank and hail taxi fares under regulator proposal', Melbourne, 30 June 2020.

³⁰ Essential Services Commission, 'Default offer extended to Victorians in embedded networks', Melbourne, 28 July 2020.

- energy reforms including back-billing time limits and limits for how much can be charged if a bill payment is missed³¹
- having regard to a fair access to services and accessibility in our review of unbooked taxi fares³²
- suspending incentives offered under the Victorian Energy Upgrades program that involve installers visiting multiple homes per day (in line with social distancing guidance from the Victorian Government).

We focused on trust in our compliance and enforcement priorities

The businesses we regulate are critical to ensuring that Victorian consumers have access to essential services during the coronavirus pandemic and as we enter the recovery phase.

Since November 2018, ten energy businesses have paid penalties totalling \$2.45 million for alleged breaches of the Energy Retail Code, including failing to obtain explicit informed consent, failure to notify about planned outages, and failure to apply concessions (overcharging). We have also required retailers to pay customers who were wrongfully disconnected.³³

Our current compliance and enforcement priorities are focused on ensuring that Victorian consumers can trust the energy market, especially while the community is affected by the coronavirus pandemic. These priorities aim to ensure:

- customers experiencing vulnerability are protected from disconnection and accumulating debt
- customers affected by family violence are treated with respect and not subject to actions within the control of energy businesses that may endanger them
- energy businesses are deterred from disconnecting customers when they were not entitled to, or if they have not followed the relevant rules
- when businesses break the rules that regulate the market, they are held to account
- we are informed of the current state of the market.³⁴

³¹ Essential Services Commission, 'Back-billing rule change caps off two years of Victorian energy reform', Melbourne, 8 July 2020.

³² Essential Services Commission, 'No change to rank and hail taxi fares under regulator proposal', Melbourne, 30 June 2020.

³³ Essential Services Commission, Energy compliance and enforcement priorities 2021, July 2020, p.10.

³⁴ Ibid, p.4.

We will monitor and act according to these priorities throughout 2020-21 (see 'Our future work will complement our vulnerability strategy').

How regulators are considering consumer vulnerability

To inform our approach to developing a vulnerability strategy, we are considering the work done by regulators in Australia and the UK as well as approaches in the European Union.

The Australian Energy Regulator (AER), and the United Kingdom's Competition Markets Authority (CMA), Office of Gas and Electricity Markets (Ofgem), Water Services Regulation Authority (Ofwat) and Financial Conduct Authority (FCA) have all adopted new approaches to defining consumer vulnerability.

The approaches employed by these regulators accept that consumer vulnerability is an ongoing, dynamic process that takes into account people's lived experience of markets, and the impact of regulatory, business, technological and social changes on these experiences.³⁵ These approaches focus on identifying circumstances that put people at risk of harm, rather than on fixed categories of 'vulnerability'.

Regulatory definitions of vulnerability have evolved over time

Historical approaches to vulnerability focus on fixed categories of people, such as older people and people with disabilities.³⁶ The shortcoming of this approach is that it implies it is *only* consumers' circumstances that can cause vulnerability. This may result in underestimating the role of the market and businesses in creating barriers to consumer engagement.

Contemporary approaches stress that consumer vulnerability is not something experienced exclusively by certain categories of people, but that can be faced by anyone at various stages in their life. These approaches accept that vulnerability can be caused by life events relating to health, job loss, financial shock, relationship breakdown, bereavement, natural disaster, ageing or disability. In fact, emerging approaches illustrate how vulnerability can manifest itself in several ways.³⁷ Vulnerability can relate to struggling to manage bills, having limited choices available, or even less ability to make effective choices. A wide range of risk factors can exacerbate vulnerability ranging from low income, to having anxiety or depression and/or living alone, or

³⁵ Emma O'Neill, 'Exploring regulatory approaches to consumer vulnerability: a report for the Australian Energy Regulator', Consumer Policy Research Centre, February 2020.

³⁶ *Water Industry Act 1991* (UK), s 2(2C)(a).

³⁷ 'Consumer Vulnerability Strategy', Ofgem, July 2013.

reliance on electricity for heating. Where a consumer experiences multiple or intersecting risk factors, the extent of their vulnerability is likely to be deeper.

A research project by the European Commission looked at consumer vulnerability across the European Union and in Norway and Iceland.³⁸ Reviewing existing definitions the report presented a new definition that recognises that consumer vulnerability as:

A consumer, who, as a result of socio-demographic characteristics, behavioural characteristics, personal situation, or market environment: is at higher risk of experiencing negative outcomes in the market; has limited ability to maximise his/her wellbeing; has difficulty in obtaining or assimilating information; is less able to buy, choose or access suitable products; or is more susceptible to certain marketing practices.³⁹

This definition and the methodology for measuring consumer vulnerability is informing consumer policy in the European Union as well in specific sectors like the energy industry.

Regulators have distinguished between key drivers of vulnerability

To better understand the source of risk factors, some regulators have distinguished between market-specific vulnerability and vulnerability associated with personal characteristics.⁴⁰

An example of this distinction can be found in the conceptual model developed by Ofgem to illustrate the types of risk factors and how they intersect (see appendix 4). Ofgem's model illustrates that vulnerability may not only be linked to personal circumstances, but can be caused by market features, complexity and poor product and service design, deliberate exploitation of people's behavioural biases, information asymmetry, and the behaviour of businesses. This model suggests that market-based factors can create or exacerbate circumstances of vulnerability.

Ofgem has recently reviewed and updated its Consumer Vulnerability Strategy for 2025.⁴¹ Its definition of vulnerability has remained unchanged since its initial vulnerability strategy published in 2013. It has however set out new priorities to better reflect the changes in the energy market such

³⁸ 'VVA Consulting and Ipsos Mori consortium, Consumer vulnerability across key markets in the European Union', London Economics, January 2016.

³⁹ Ibid, p.21.

⁴⁰ 'Consumer vulnerability: challenges and potential solutions', Competition and Markets Authority, February 2019.

⁴¹ 'Decision on Consumer Vulnerability Strategy 2025', Ofgem, October 2019.

as digitalisation, decarbonisation and decentralisation, which could create new costs and benefits and capability challenges for consumers.

The importance of market factors in creating or exacerbating consumer vulnerability is also noted by other regulators of essential services. For instance, the FCA states that services ‘need to be able to adapt to the changing circumstances that real life throws at people, rather than being designed for the mythical perfect customer who never experiences difficulty’.⁴² Therefore, having a prescriptive list of vulnerable customer groups can be under-inclusive, and may fail to fully address the issue of consumer vulnerability.

FCA has published a map illustrating the proportion of people that are affected by key risk factors that lead to vulnerability (see appendix 4). Its findings show that 46 per cent of UK adults aged 18 and over display one or more of these risk factors.⁴³ Importantly, FCA’s map highlights the intersections between risk leading to consumer vulnerability.

Ofwat also developed a conceptual model to illustrate the intersections between drivers of vulnerability. Ofwat’s model was based on a focus group study undertaken in 2016. The findings from this study strongly support the idea that the way a consumer’s financial circumstances, specific needs, capacity and willingness to seek and act on support, interact with responses from industry, government and third-party organisations, can have a significant bearing on the consumer’s risk of harm.⁴⁴

Behavioural economics has also assisted regulators to better understand sources of vulnerability. This approach recognises that the expectation of consumer engagement in competitive markets—based on the assumption that all consumers are rational actors with the ability to make the best possible decision—is unrealistic. For instance, Ofgem⁴⁵ and the Consumer Policy Research Centre⁴⁶ have identified behavioural biases that contribute to customers experiencing vulnerability. These include limited consumer capacity, status quo bias, inertia, loss aversion and time inconsistency. While all groups of consumers are susceptible to these behavioural biases, some groups of consumers, such as those on low income and, to a lesser degree, older people, are

⁴² ‘Tackling consumer vulnerability: regulators’ powers, actions and strategies, research report for Citizens Advice’, University of Leicester, Centre for Consumers and Essential Services, July 2014.

⁴³ ‘Guidance for firms on the fair treatment of vulnerable customers’, Financial Conduct Authority, March 2020.

⁴⁴ ‘Vulnerability focus report’, Ofwat, February 2016.

⁴⁵ ‘What can behavioural economics say about GB energy consumers?’, Ofgem, March 2011.

⁴⁶ Emma O’Neill, ‘Exploring regulatory approaches to consumer vulnerability: a report for the Australian Energy Regulator’.

more likely to display these biases than others. In the context of the energy market, customers in vulnerable circumstances have been found to be the least likely to switch, and most likely to remain on more expensive default tariffs.⁴⁷

The UK Centre for Consumers and Essential Services notes that:

Finding your way through ever-more complex and changing markets can be tricky for anyone, and many people have lots of other pressures in their lives. People may not be behaving very rationally within their circumstances, for example, if they simply do not have the time or energy to compare deals or switch providers. Consumers may also be concerned about potential risks, especially if they are in vulnerable situations.⁴⁸

Understanding the behavioural biases and psychological factors that contribute to vulnerability is even more important in the current environment due to the impact of the coronavirus pandemic. This crisis can generate high levels of anxiety, paranoia, and stigma that inhibit consumers' capacity for clear thinking and their ability to analyse available information to decide how they should respond to risk.⁴⁹

New approaches to defining vulnerability present challenges and opportunities

The experiences of other regulators in adopting a broader approach to defining vulnerability has revealed challenges and opportunities.

Challenge	Opportunity
The recognition that 'vulnerability affects us all' may come at a risk of neglecting well-known issues of chronic vulnerability, and further marginalising consumers experiencing systemic disadvantage.	<p>Moving away from a prescriptive definition of vulnerability has allowed for a more inclusive and more accurate understanding of consumer vulnerability.</p> <p>Challenges in formulating a definition can be mitigated by including an acknowledgement of entrenched vulnerability.</p>

⁴⁷ 'Providing financial protection to more vulnerable consumers,' Ofgem, December 2017.

⁴⁸ 'Tackling consumer vulnerability: regulators' powers, actions and strategies, research report for Citizens Advice', University of Leicester.

⁴⁹ Steven Taylor, The Psychology of Pandemics: Preparing for the Next Global Outbreak of Infectious Disease, Cambridge Scholars, Cambridge, 2019.

A broad definition of vulnerability can be difficult to operationalise when dealing with a large group of customers.

To address this issue the UK Money Advice Trust proposes a ‘traffic light’ approach,⁵⁰ comprising three different types of vulnerable customer groups:

- **Potentially vulnerable:** customers that are currently able to manage their finances, but this could change in the future.
- **Vulnerable customers:** customers that are currently more exposed to harm, loss or disadvantage than other customers.
- **Particularly vulnerable:** customers who are currently at a greatly heightened risk of experiencing detriment compared to the majority of customers in vulnerable situations.

There is some concern that some customers do not want to be called ‘vulnerable’, or do not identify as vulnerable.

In a focus group study conducted by the UK Commission for Customers, it was noted that many people were uncomfortable with the term, due to the perceived stigma that goes along with it.⁵¹ The term can be disempowering and fail to reflect a person’s own capabilities, identity, and strengths. In addition, using the label can make consumers feel judged, and deter them from seeking assistance.⁵²

Regulators including Ofwat suggest when speaking about vulnerability, the terminology ‘customers whose circumstances make them vulnerable’, ‘customer vulnerability’, or ‘customers experiencing vulnerability’ is preferred.⁵³

⁵⁰ ‘Vulnerability: a guide for advice agencies’, Money Advice Trust, June 2016.

⁵¹ ‘The Commission for Customers in Vulnerable Circumstances Final Report’, Commission for Customers in Vulnerable Circumstances, 2019.

⁵² See Essential Services Commission, Supporting customers avoiding labels — Energy hardship inquiry, Final report, February 2016. Our inquiry found that there is no objective definition of ‘hardship’, and that *types* of payment difficulty are distinct from the *causes* of payment difficulty. We reported that ‘customers do not consider themselves as being in ‘hardship’, much less refer to themselves in these terms’ and that ‘such labels can stigmatise customers... discouraging customers in need from engaging with their retailer’, p. 14.

⁵³ ‘Vulnerability focus report’, Ofwat, February 2016.

A summary of our review of regulatory approaches to defining vulnerability are presented in appendix 4.

These new approaches to consumer vulnerability have implications for how we consider the impact of coronavirus pandemic

Adopting a broad approach allows us to be flexible and more inclusive in identifying and supporting broader range of customers. This is essential as the coronavirus pandemic has not only exacerbated existing vulnerabilities but created new ones. Many consumers are currently experiencing vulnerability for the first time, and many are experiencing vulnerability at a growing number of intersections.

Considering direct effects of the pandemic on consumers, such as increasing underemployment and unemployment, physical and mental health and higher utility usage, and dynamic and flexible approach to defining consumer vulnerability is vital to accommodate and support an expanding and fluctuating group of consumers. This 'evolving world of vulnerability' will be discussed in greater detail throughout this paper.

We want to hear from you

Acknowledging that many of our key stakeholders are stretched as they navigate their responses to the coronavirus pandemic, we will not be seeking formal written submissions to this paper. Instead, our research and engagement programs are designed to give our stakeholders meaningful opportunities to inform the development of our vulnerability strategy at various touch points over an extended period. We will also be inviting input through Engage Victoria over the course of the work program.

We will provide ample time for a formal consultation and submissions process following the release of our draft vulnerability strategy in mid-2021.

In the meantime, we invite you to contact our project leads Kat George and Jess Gregory, with ideas or questions relating to this approach paper or our vulnerability strategy work program:

Kat George, Project Lead – Vulnerability Policy & Research kat.george@esc.vic.gov.au or

Jess Gregory, Project Lead – Vulnerability Policy & Engagement jessica.gregory@esc.vic.gov.au.

Appendix 1: Qualitative and Quantitative research

Qualitative insights

We are working with the Consumer Policy Research Centre to collect the experiences of consumers experiencing vulnerability in the energy market, through an information exchange with community workers and volunteers. The Consumer Policy Research Centre will conduct interviews with 60 community workers and volunteers who support consumers experiencing vulnerability over the course of the year, and report back to the commission on these findings each quarter.

Through this research, we will:

- Gain valuable and contemporary insight into the experiences of community workers supporting clients in the energy market.
- Have greater visibility about how the energy market, and recent reforms, are being experienced by consumers.
- Have a better understanding of how the energy market performs for everyday consumers, and especially for consumers experiencing vulnerability.

Excerpts of this research will also be used across our public reporting on energy, including in the annual Victorian Energy Market Report.

Along with the research objectives outlined above, this project will also establish an open two-way line of communication and information exchange between the commission and community workers and volunteers. It will also equip community workers with more confidence in reporting their experiences with supporting clients in the energy market.

Quantitative data analysis

We are developing a quantitative research project to capture the systemic factors impacting on consumers in the current environment, allowing us to monitor the conditions of vulnerability.

This paper has outlined the steps we have already taken to better understand the experiences of consumers during the coronavirus pandemic, including:

- our regular community sector roundtable
- phone interviews with staff at water and energy businesses

- regular reporting from regulated businesses on set indicators in relation to customer service and support
- targeted research projects conducted in partnership with the Consumer Policy and Research Centre, including consumer surveys and interviews with community workers.

Simultaneously, data being collected by the Australian and Victorian Governments, across sectors and by our community sector stakeholders continues to generate valuable insight into what life is like for consumers experiencing vulnerability right now. This data includes, but is not limited to: unemployment, underemployment and employment availability, JobKeeper and JobSeeker payments, housing availability and affordability, concession eligibility, digital and general literacy and household income.

So far, there has been limited analysis of these data sets together. We propose layering and analysing data we have gathered in our regulated sectors with available data collected in the government and community sectors to gain valuable insights into the consumer experience.

To ensure our vulnerability strategy is rigorously informed and fit-for-purpose, it is essential we understand the acute impacts of the current environment in the context of our work. This means we need to understand systems. Developing an understanding of how consumers are affected by systemic factors will in turn help us to better understand how consumers are experiencing our regulated sectors and identify existing and emerging risks to consumers.

Appendix 2: Key engagement mechanisms

Through our engagement program we will engage across the community and business sectors. In addition, we will continue to engage with stakeholders across government. Government representatives will be invited to participate in our external stakeholder roundtables, to hear directly from different groups representing both consumers and businesses in our regulated sectors.

Community sector roundtable

Our community sector roundtable, first convened in April 2020, has been a crucial element in our coronavirus pandemic response. The community sector roundtable will continue to be held once a month to the end of 2020.

We will use insights gathered at the community sector roundtable, specific to the current environment and the unfolding social and economic effects of the coronavirus pandemic, to inform our problem definition. The community sector roundtable is essential to our understanding of the evolving nature of vulnerability, especially in this uncertain time.

We will assess how we will continue the community sector roundtable in 2021 at the conclusion of the 2020 series.

Community sector reference group

We are convening a stakeholder reference group made up of diverse consumer and community representative organisations from across Victoria. Distinct from the community sector roundtable, the smaller reference group will meet every six to eight weeks and focus on the vulnerability strategy, including workshopping ideas and providing expert advice as needed. The reference group will specifically assist us:

- to shape the problem definition and develop a contemporary definition of consumer vulnerability
- by providing insights to inform the strategy, especially around barriers to market access for different groups of consumers in our regulated sectors
- to develop alternatives and solutions to challenges in shaping the problem definition and outcomes.

The reference group will advocate for consumer interests, represent better practice across sectors, and ensure that the needs of diverse consumers are included in the development of

the strategy. The reference group will also provide customer-focused feedback in the early stages of drafting of the strategy.

The contributions of the reference group will help to ensure a rigorous process for developing our draft strategy, so that it is fit-for-purpose, and appropriately supports the long-term interests of consumers experiencing vulnerability in a dynamic environment. We will have regard to the contributions of the reference group and will decide how and what parts of this input will be incorporated into the final strategy.

Deliberative engagement with consumers

Our vulnerability strategy is ultimately aimed at delivering better outcomes for Victorian consumers experiencing vulnerability. Hearing the voices of consumers in our processes is essential to this aim. To achieve this, we will be facilitating a deliberative engagement process to give consumers the opportunity to have input into our vulnerability strategy in the form of recommendations.

We will have regard to the recommendations made by the participants in this process, and their input will inform the broader strategy and the outcomes identified by teams across the commission. As part of this process participants will also be invited to develop a shared definition of 'consumer wellbeing' that we commit to including in our vulnerability strategy and will have regard to in our work. These important insights will help us shape our vulnerability strategy, and the commission will make the final decision about what items from the deliberative process are included in the final strategy.

A deliberative engagement process will provide us with deeper insights into the views and experiences of consumers, particularly consumers experiencing vulnerability. Seeking input over multiple sessions will support consumers to provide informed and robust input on a complex topic. This will help to ensure the direction of the vulnerability strategy reflects the views of Victorian consumers. It will also show our commitment to genuine and considered engagement with consumers, demonstrating collaboration and engendering trust.

Industry engagement

Businesses in our regulated sectors are on the frontlines of providing customer service and have first-hand experience in assisting and supporting consumers experiencing vulnerability.

Their insights are essential to this work, and to understanding the challenges and opportunities for consumers experiencing vulnerability in our regulated sectors. We also note that examples of better practice from within our regulated sectors are key to understanding the ways in which businesses can provide consumers with sensitive and appropriate support

at the operational level. Similarly, businesses in other sectors can also provide valuable insights and examples of better practice for supporting consumers experiencing vulnerability.

We will be continuing to hold industry roundtables and gather data from our regulated businesses in relation to the coronavirus pandemic through 2020. We will also be holding workshops and webinars to discuss and collaborate on better practice with our regulated businesses and cross-sector stakeholders. Themes for these workshops will be announced throughout the second half of 2020 and will be based on emerging areas of challenge and opportunity identified through other research and engagement activities. In 2021, we will hold focused workshops with our regulated businesses in the process of our outcomes design.

Internal engagement

Our vulnerability strategy will shape the future of our work. Our staff are key stakeholders, and over the course of the year we will be undertaking extensive engagement internally. This engagement will include:

- an internal working group to help feed into our problem definition, including auditing our internal operations to identify opportunities and areas of focus for the strategy
- webinars to keep staff informed and engaged with issues relating to consumer vulnerability, including presentations from expert speakers
- internal 'champions' who will observe our external engagement (i.e. the community roundtable and deliberative process) to feedback information and inspiration to their teams
- a series of targeted workshops in 2021 to develop the vulnerability strategy's outcomes around divisional functions.

Appendix 3: Data collection between April—August 2020

Data collected from energy retailers

The data shows that for energy customers there have been no disconnections for non-payment of bills from April – July 2020, but there are indications that customers are struggling to pay their bills. Between 30 March and 31 May 2020 116,805 calls for support were made to energy retailers, around 10,000 calls every week.

In July 2020 there was a decrease in calls for support (11 per cent) and more customers were paying their bills on time compared to June.⁵⁴ However, the number of residential customers deferring their payments increased (two per cent for electricity customers to 8,729 and six per cent for gas customers to 7,506). Overall, about two per cent of Victorian residential customers are receiving assistance – 48,000 electricity customers and 36,000 gas customers. For those customers, average arrears for those who can pay for ongoing use increased by two per cent (to \$648) but decreased by two per cent for those who cannot (to \$1,506).⁵⁵

Data collected from water businesses

For water customers the data shows no new water supply restrictions have been applied since April for overdue debt. In early August, businesses reported 1,999 more customers on water business hardship programs (a 10 per cent increase) since late April, indicating that customers are finding it difficult to pay their water bills. However, these figures varied across the state.

The data also shows that customer uptake of water business instalment plans is slightly below the historical average, while the number of customers applying for the Utility Relief Grant is well above the historical average. This suggests that more customers during this pandemic require debt relief rather than smaller but more regular payments to meet their payment obligations.

⁵⁴ Essential Services Commission, Energy customers during the coronavirus pandemic – Update covering data up to 26 July 2020,

⁵⁵ Ibid, p.1-2.

Appendix 4: Regulatory definitions of consumer vulnerability

Regulator	Definition of vulnerability	Strategic approach	Key drivers of vulnerability/ conceptual framework
The Office of Gas and Electricity Markets (Ofgem)	<p>When a consumer's personal circumstances and characteristics combine with aspects of the market to create situations where they are:</p> <ul style="list-style-type: none"> • significantly less able than a typical consumer to protect or represent their interests in the market, and/or • significantly more likely than a typical consumer to suffer detriment, or that detriment is likely to be more substantial.⁵⁶ 	<p>This approach is based on looking at risk factors that contribute to vulnerability which stem from personal circumstances as well as from the market itself. The strategy recognises that the causes of vulnerability are complex and multidimensional, and that vulnerability can be transitory, ongoing, or long-term.</p>	<ul style="list-style-type: none"> • individual circumstances • the market • interaction between the market and individual circumstances. <div data-bbox="1406 628 1890 995" data-label="Diagram"> </div> <p>Source: Ofgem, Consumer Vulnerability Strategy (2013)</p>

⁵⁶ 'Consumer Vulnerability Strategy' Ofgem, July 2013.

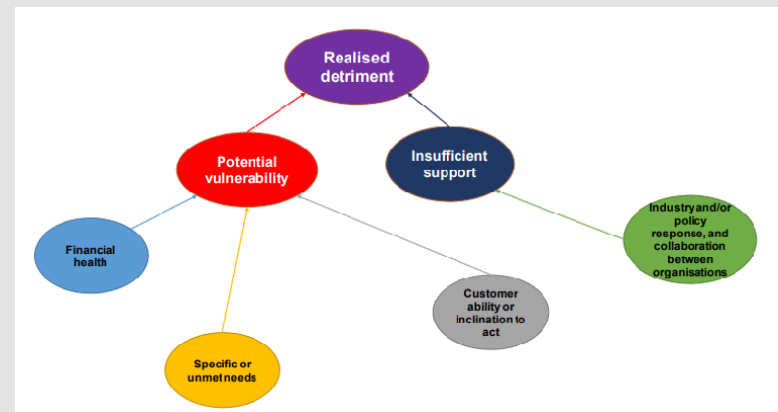
The Water Services Regulation Authority (Ofwat)

A consumer who, due to personal characteristics, overall life situation or due to broader market and economic factors, does not have a reasonable opportunity to access and receive an inclusive service which may have a detrimental impact on their health, wellbeing or finances.⁵⁷

It is not appropriate to limit the concept of consumer vulnerability to something that only affects specific customer groups. Applying such a narrow definition will not deliver the best outcomes for water customers in circumstances that make them vulnerable in a wider sense.

- customer’s personal characteristics: age, income, health, numeracy/literacy
- changes in personal circumstances: losing a job, an accident or illness, an increase in caring responsibilities, changes to domestic situations
- combination of both.

A definition of vulnerability should recognise that people can move in and out of positions of vulnerability.



Source: London Economics and Risk Solutions focus group sessions

The Financial Conduct

The FCA defines a vulnerable consumer as ‘someone who, due to their personal

Vulnerability is a state, not a trait. Some consumers will be **actually vulnerable** because of

- Health: Physical disability, long-term illness, hearing, visual impairments, low mental capacity, or cognitive disabilities.
- Life events: caring responsibilities, income shock,

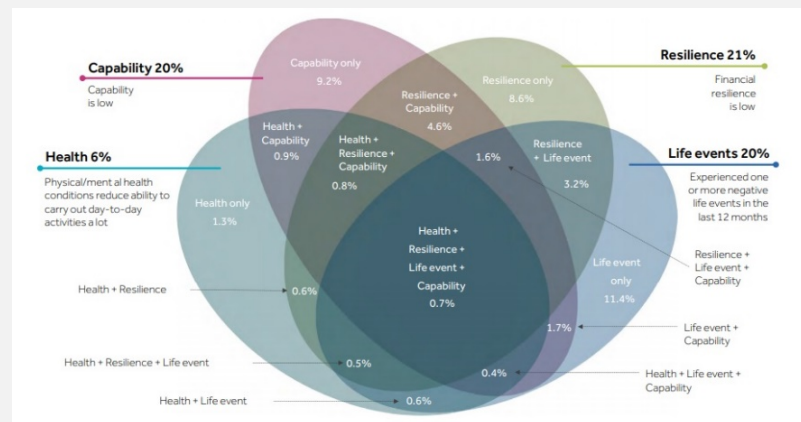
⁵⁷ ‘Vulnerability focus report’, Ofwat, February 2016.

Authority (FCA) circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care.⁵⁸

their personal circumstances. Actual vulnerability can be permanent but is often transient because consumers' circumstances constantly change. This can cause consumers who had not previously been vulnerable to become so at some stage of their life. Other consumers may be **potentially vulnerable**. Although not currently vulnerable, they may be more susceptible than others, due to certain characteristics; for example, someone with a history of stress-related illnesses.

relationship breakdown, ex offender, refugee status.

- Resilience: low income, low saving, over indebtedness, lack of support structure.
- Capability: low financial knowledge, poor literacy, low English language skills, poor digital skills, learning disabilities.



Source: FCA, Guidance Consultation and feedback statement (July 2020)

Competition Vulnerability is defined as 'any The CMA distinguishes

- Market risk factors: the specific context of a markets as a

⁵⁸ 'Guidance for firms on the fair treatment of vulnerable customers', Financial Conduct Authority, March 2020.

Markets Authority (CMA)	situation in which an individual may be unable to engage effectively in a market and, as a result, is at a particularly high risk of getting a poor deal. ⁵⁹	between market-specific vulnerability, and vulnerability associated with physical characteristics.	driver of vulnerability. <ul style="list-style-type: none"> Personal characteristics: physical disability, mental health, or low income.
Australian Energy Regulator (AER)	Consumer vulnerability refers to circumstances that make it difficult to use markets or receive adequate products and services, and create risks of harm, detriment, or disadvantage. ⁶⁰	Regulators' vulnerability strategies should identify and address market-based factors and individual-based factors to set clear expectations about what good business practices look like. Data has an important role to play in this process. Vulnerability can be tackled at multiple stages of the customer journey.	<ul style="list-style-type: none"> Individual-based: income level, age, disability, or health conditions. Market-based: markets can create or exacerbate vulnerability through unfair practices, complex market structures and pricing, and information asymmetries.

⁵⁹ 'Consumer vulnerability: Challenges and potential solutions', Competition Markets Authority, February 2019.