

Submission on the Essential Service Commission's Draft Vulnerability Strategy

21st June 2021

By email: consumervulnerability@esc.vic.gov.au.

Dear Secretariat,

We welcome the opportunity to comment on the Essential Service Commission's (ESC) draft Vulnerability Strategy.

CPRC aims to create fairer, safer and inclusive markets by undertaking consumer and policy research and working with leading regulators, policymakers, businesses, academics and community advocates. Market governance issues are a focus for CPRC, we believe market stewards can take a more active approach to market design and monitoring to improve consumer wellbeing and welfare.

CPRC strongly supports the approach, goals and initiatives outlined in the draft strategy. We welcome the ESC's considered process in developing the strategy, incorporating qualitative and quantitative research to capture the varied experiences of different consumers and emerging data trends, the deliberative engagement process with Victorian consumers and the capacity building activities.

CPRC has been involved in the development of the strategy as a member of the community sector Stakeholder Reference Group and has produced a number of reports in partnership with Monash University to inform the ESC's work. This submission is primarily concerned with the energy sector. We highlight recent evidence from our outreach program with consumers experiencing vulnerability, our COVID-19 survey, and raise a number of key points on the draft strategy.

How well does our definition of vulnerability align with contemporary understandings of consumer vulnerability and its causes and impacts?

We welcome the ESC's work to define develop a working definition of vulnerability – which provides a range of uses. It helps regulators to regularly explore how vulnerability plays out in their sectors, identify problems, outline desired outcomes, and clarify expectations of industry".¹

In our view, the ESCs' approach to defining vulnerability aligns with contemporary understanding of consumer vulnerability and its causes and impacts. As noted in CPRC's *Exploring Regulatory Approaches to Consumer Vulnerability*, everyone is likely to experience vulnerable circumstances at some point in their lives.² We strongly agree with the ESC's identification that event-based circumstances, systemic factors and market-factors can result in vulnerability. Research increasingly suggests that these factors are interlinked,

¹ Emma O'Neill, *Exploring Regulatory Approaches to Consumer Vulnerability: A Report for the Australian Energy Regulator*, (Consumer Policy Research Centre, February 2020), 15.

² Ibid. 7.

with those already experiencing systemic factors may or event-based circumstances more vulnerable to market-based factors.³

We note the ESC's working definition of consumer vulnerability emphasises "participation" in essential services markets:

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.

We find this interpretation alone however, may be limiting. There are a range of reasons why consumers may not engage in markets as envisaged by economic theory. It may be more appropriate to refer to consumers experiencing "barriers to **access** to the essential services". This may be as a result of market regulation, business behaviour or system factors – rather than the underlying expectation all consumers are intrinsically motivated to engage ("participate") in essential service markets. A fuller definition may include not only the barriers that consumer may encounter, but that vulnerability in consumers is created as a consequence of engaging with providers, or the market design itself and surrounding policy support regime.

We also welcome the ESC's approach which seeks to minimise the onus on the consumer and highlight the role of regulators and business practice in supporting consumers. As outlined in our *Towards markets that work for people* report, the priority for market stewardship should be reducing barriers and improving market accessibility over strategies that emphasise consumer engagement as the solution to market issues.⁴

Given that 'vulnerability' is widely used and easily recognised by businesses, is the hybrid approach (where we are using our legislative language where needed, but more inclusive language in general) the best approach for the ESC to take when communicating with stakeholders?

CPRC supports the hybrid approach to terminology outlined in the Vulnerability Strategy. It seems prudent to use legislative language where needed in communications with key stakeholders. In the longer term, as the regulator and industry develops a more sophisticated, and embedded understanding of the various drivers of "vulnerability" it may be reasonable to expect that language shifts to more inclusive, or nuanced language around vulnerability. In operationalising the vulnerability strategy and seeking to address different aspects of vulnerability, it may be more appropriate to address event-based, market-based, or systemic factors more directly.

We strongly support the proposal to adopt more inclusive language in consumer facing communications. CPRC considers using terminology such as "vulnerability" as potentially alienating for consumers, especially where consumers are required to self-identify or seek out supports for the vulnerable. We also agree it can be reductive to group all consumers experiencing difficulty paying bills into a single homogenous group – given the variety of factors that might ultimately cause payment difficulty.

³ Byrne, David P., and Leslie A. Martin. "Consumer Search and Income Inequality." *International Journal of Industrial Organization* (2021): 102716.

⁴ Ben Martin Hobbs and Emma O'Neill, *The experiences of older consumers: towards markets that work for people* (Consumer Policy Research Centre, July 2020).

However, it is perhaps most critical that consumer facing communications from energy retailers clearly outlines the help that is available for consumers experiencing payment difficulty – and that it is delivered to consumers in a way and via a channel that they want to engage with. Consumers also need to be able to easily access supports when calling retailer call centres, without being required to refer to specific supports (e.g. URGs), specific teams (“hardship team”) or argue about their eligibility for supports before speaking to a financial counsellor. For those newly consumers experiencing vulnerability for the first time, knowledge and awareness of particular supports and which parts of business provide may low or non-existent. Ultimately if retail call-centre staff lack an understanding of how to recognise and triage consumers experiencing vulnerability this creates a barrier to consumers accessing supports they are entitled to under the PDF. This is closely linked to the ESC’s initiative 4.3 regarding industry education – which might be escalated as a priority initiative.

Do the themes, goals and initiatives we have identified and proposed provide an appropriate pathway for the ESC to respond to the barriers currently being faced in the market?

CPRC considers the themes identified, and the goals proposed in the draft strategy provide an appropriate pathway for the ESC to address the barriers consumers face in the market. The proposed initiatives outline a considered and comprehensive workplan.

Below we outline key findings from our COVID-19 survey and our outreach work with consumers experiencing vulnerability that echo the themes identified by the ESC with comments on key initiatives in light of this evidence.

Improving both the quality and accessibility of consumer facing information

As outlined in our *Five Preconditions of Effective Consumer Engagement* report, consumers need access to clear, comprehensible and comparable information for consumers to understand it and act on it.⁵

Our COVID-19 survey indicates misleading information from energy retailers remains an issue for consumers. In our most *COVID-19 key insights series* report exploring the experiences of CALD consumers, we found 12% of CALD consumers reported they felt misled by information provided by energy provider in November, compared with 4% of the broader population.⁶ CALD consumers also reported unfair terms/conditions in their agreements at far higher rates (9%) than the broader population (5%).

- CPRC strongly supports initiative 1.1 and suggests the ESC might consider further comprehension testing of retailer information (especially those required by regulation) and more carefully auditing information provided by providers, as well as the communication of information itself via call centre staff, with a broader range of consumers.⁷

Our outreach work co-designing energy literacy materials with consumers in language highlighted how standard translation services may not provide meaningful, comprehensible

⁵ Ben Martin Hobbs and Lauren Solomon, *Five preconditions of effective consumer engagement – a conceptual framework*, (Consumer Policy Research Centre, March 2018).

⁶ CPRC, *COVID-19 and Consumers: key insights series – CALD consumers*, March 2021, 19.

⁷ *Ibid.*, 25

translations of key terminology. For example, CPRC's co-design workshops with an Arabic speaking Iraqi community discovered there were key limitations around standard translations of key terminology - such as "concession" or "energy plan", which resulted in language that was highly confusing or even meaningless.⁸

- Building on initiatives 1.1 and 2.2s the ESC might consider avenues to producing materials in language in collaboration with key CALD communities, and engage in comprehension testing of materials with the intended communities.

The ESC has noted the digital divide creates a potential barrier for consumers. Our outreach team has found even accessing energy bills through online systems can be an issue for consumers already experiencing vulnerability. Many consumers have opted to shift to digital bills to avoid paying a fee for a paper bill. Online energy bills sent via email by a tier one retailer were only accessible via a link which often expired after 30 days - meaning consumers could not easily access their bill history. In the case of another tier one retailer, consumers with access to the retailer's app found it difficult to navigate beyond readily accessible energy insights to access their actual bill. Without access to a full bill consumers cannot easily identify if they are on the best available offer, if their concession had been applied, or their NMI number – which may be essential to ensure they can access one off supports such as the Power Saving Bonus. Delivering key information through digital channels may reduce costs of postage for both retailers and consumers, however if online delivery channels aren't designed with end-users' actual needs in mind this shift can exacerbate existing vulnerabilities for consumers.

- The ESC might consider initiatives that evaluate the appropriateness of particular communication channels for key information to ensure they do not create further barriers for less digitally literate consumers.
- Retailers might consider waiving the postage costs of physical bills for low-income individuals to avoid exacerbating vulnerabilities created by digital channels.

Awareness of supports and entitlements

There is still poor awareness of supports and entitlements among some consumers experiencing vulnerability. CPRC's outreach team found that an extremely low percentage of households residing in public housing, often CALD consumers, knew about the Best Available Offer notification or how to access it. Likewise, a significant proportion of these consumers in receipt of a concession were either unaware that the Annual Electricity Concession existed, or that they had to contact their retailer whenever they were issued with a new concession card.

- CPRC encourages the ESC to consider supporting outreach and energy literacy programs to help improve increased awareness around these supports and mechanisms to reduce among key consumers groups experiencing vulnerability – particularly for those with limited literacy/lower English proficiency.
- The ESC might consider further consumer research around the Best Available Offer notification on bills – e.g. comprehension testing or journey mapping - with key consumer groups experiencing vulnerability to determine why awareness remains low.

⁸ Ibid., 20

- However, there is a clear role for retailers in ensuring consumers aware of energy specific supports they may be eligible for (e.g. concessions) and ensuring call centre staff are trained to deliver the Best Available Offer mechanisms – particularly if they are to rebuild trust within the community. This relates to initiative 4.3.

Inconsistent implementation of PDF and key reforms

A number of key outstanding themes identified within the ESC's draft strategy – along with the related goals and initiatives - relate to significant inconsistency and variation between retailers in their implementation of the Payment Difficulty Framework, which is yet to translate into a cultural and practice shift across all retailers.

CPRC's outreach team found significant inconsistency and variation in the delivery of key consumer protections, reforms and how the Payment Difficulty Framework has been operationalised by retailers. Our outreach work has identified that retailers are setting up payment plans that result in low-income concession card holders being overcharged through their fortnightly payment plan – reflecting poor payment plan design and little/no review mechanism to ensure payment plans are appropriate and actually match the ongoing cost of energy consumption and arrears. In one example, a consumer paid \$55 a fortnight when he only needed to pay \$28. This resulted in him being more than \$600 in credit. In another case a consumer had accumulated over \$1,300 of credit on his account due to his fortnightly payment plan being set at more than double what was needed to cover his ongoing energy use costs. Allowing consumers experiencing vulnerability to overpay for their arrears appears cavalier

There is also inconsistency across retailers in assisting consumers experiencing vulnerability access more appropriate tariffs. As part of CPRC's outreach program, we reviewed consumer bills to identify whether they were on the Best Available Offer. Where households were unable to call their retailer, CPRC called on their behalf to access the Best Available Offer. The process for accessing the Best Available Offer remains highly variable - with one smaller tier three retailer providing the most streamlined process, while one of the big three retailers had the most complex and lengthy processes. More concerningly, some retailers do not necessarily assist consumers to move to the Best Available Offer. A tier two retailer advised CPRC they could not assist the consumer to move to the Best Available Offer because staff with relevant knowledge - switching consumers between tariffs - was not working that day. Moreover, it is evident that retailers do not proactively prompt low-income consumers to move to more appropriate tariffs. Our outreach workers encountered two instances where low-income concession card holders had been left on extremely high tariffs – one consumer was paying \$0.536/kWh and \$1.4885/day while another was paying an exorbitant \$0.77/kWh. While errors in setting up payment plans may be explained as unfortunate mistakes, the absence of effective review procedures to review payment plans and to ensure low-income consumers are placed on appropriate tariffs reflect the lack of genuine commitment to the intent of the PDF.

The consequences of poor staff training and lacklustre implementation of the Payment Difficulty Framework are that consumers experiencing vulnerability end up with energy debts. Our outreach team encountered a consumer with \$1,500 of debt who had not been informed about the availability of URGS, was not getting concessions and was unaware of a significant Best Available Offer saving on her bill. In another example, a consumer had over \$1,000 of debt due to high winter energy bills, but had not been informed of her rights under the PDF, the availability of affordable payment plans or URGS to help her manage this debt.

These findings indicate some of the proactive supports required by retailers are not being delivered.

Embedding a culture that understands vulnerability to drive trust within retailers

CPRC supports the raft of initiatives outlined in the draft vulnerability strategy to drive a culture change within energy retailers.

We strongly support the initiatives to gather data about the experiences of consumers and highlight best practice both across different regulated sectors and among different regulatory agencies.⁹

CPRC strongly supports initiative 4.3 to produce an industry education program on vulnerability to support better practice approaches for retailers and distributors to have a consistent understanding of vulnerability. As has been found in the UK, quality of staff training has a major influence on whether vulnerable customers are identified by businesses.¹⁰ The FCA emphasises that to support vulnerable customers, staff need to be able to have proper conversations, refer customers to specialist teams, and handle disclosure of difficult or confronting circumstances.¹¹ We suggest this program might be developed by the ESC in partnership with community organisations and industry alike to ensure alignment across the sector.

However, as part of this cultural shift, the ESC may need to consider more widespread auditing of retailers processes to ensure basic elements of the PDF are embedded across the call centre staff within different retailers.

Further, to drive this culture change in the longer term, the ESC might consider developing and measuring a broader range of consumer outcomes and impact measures to identify whether retailers are delivering and delivering the envisaged by the PDF and other energy market reforms.

Incorporating consumer voices in adopting an inclusive and universal approach

We strongly support the array of initiatives (2.5, 3.2, 3.3, 3.5) seeking to incorporate the consumer voice into the ESC's various process. CPRC has long held the view that understanding lived experience of consumers in navigating complex markets remains essential for regulators and policymakers to ensure regulatory frameworks deliver positive consumer outcomes.¹²

CPRC agrees a review of the effectiveness of the PDF is a critical to identify whether the framework is delivering on its intended outcomes given the more principle-based orientation of the PDF. We strongly welcome the ESC taking an inclusive and universal approach to this review – to better understand the barriers that particular groups might face in accessing or navigating key provisions of the framework. It may also be that the variability in how retailers have implemented the PDF explains the inconsistency across the sector noted elsewhere,

⁹ See CPRC, *Building Consumer Trust: A principles and practice guide*, June 2017

¹⁰ O'Neill, *Exploring Regulatory Approaches to Consumer Vulnerability*,

¹¹ Ibid.

¹² CPRC, *Five preconditions of effective consumer engagement*.

so this review closely ties to initiatives around industry education.¹³ Likewise, reviewing the efficacy of family violence provisions is an important initiative to ensure protections for consumers at risk of serious harm to avoid significant consumer harms.

CPRC also strongly welcomes the ESC's initiative to develop a Reconciliation Action Plan – recognising the specific barriers faced by First Nations consumers and seeking to improve outcomes for First Nations consumers and communities.

Are there other considerations we should include in our strategy?

Sharing insights across sectors

The ESC could consider looking for examples of best practices beyond its own regulated sectors and work with other Australian and international regulators to highlight current best practice in managing consumer vulnerability as part of a broader continuous improvement program. Moreover, as the first regulator to adopt a Vulnerability Strategy in Australia, the ESC might consider initiating a network of regulators to work more closely on the issue of vulnerability, much like the UK Regulators Network.¹⁴

Assessing the impact of a changing energy market on vulnerable consumers

We welcome the ESC's initiative to develop analytical tools to evaluate the bill impacts on vulnerable consumers. As a longer-term goal, CPRC suggests the ESC might consider adopting a proactive approach to assess the impact of changing energy market on vulnerable consumers. We note in the UK, Ofgem has proposing to create an analytical framework to consistently assess the impact of its policies on particular groups of consumers in vulnerable circumstances.¹⁵ While the proposed review of the PDF achieves goes some of the way in achieving this aim, the ESC might consider a similar initiative in the longer term. The ESC might also consider an ongoing work program of consumer research to identify where barriers emerge for new energy products and services.

Recognising the limits of engagement for consumers experiencing vulnerability

The ESC's fourth theme recognises consumers who need support are not always identified and supported effectively and may not always be willing to seek assistance. This is explicit recognition is welcome, as there has been limited recognition of varying consumer engagement and motivation to make choices in complex markets among regulators and policymakers until recently, despite the empirical evidence to the contrary.¹⁶ Recent empirical research finds that both the lowest income band and highest income band Australian consumers are statistically less likely to switch providers.¹⁷ Byrne and Martin also note further empirical evidence from the US indicating low-income consumers "suffer more disproportionately from behavioural bias".¹⁸ While the ESC has introduced market mechanisms (e.g. the VDO and Best Available Offer) that take this into consideration, there

¹³ EWOF, *Missing the Mark - EWOF insights on the impact of the Payment Difficulty Framework*, December 2020.

¹⁴ Britain Thinks, *The challenge of identifying vulnerability: a literature review: A report for the UK Regulators Network*, March 2020.

¹⁵ O'Neill, *Exploring Regulatory Approaches to Consumer Vulnerability*, 44.

¹⁶ Martin Hobbs and O'Neill, *Towards markets that work for people*, 48-54.

¹⁷ Byrne and Martin, "Consumer Search and Income Inequality," 3.

¹⁸ *Ibid.*, 6.

is scope for the ESC to consider how the choice architecture and considered use of defaults can be used to further minimise any barriers for consumers seeking access to key support mechanisms and entitlements in the PDF.¹⁹

Whole of government approach to addressing vulnerability in essential service markets

Regulation of essential service markets and social policy go hand in hand. We would encourage the ESC to collaborate with other relevant government departments – such as DEWLP and DFFH - to design policy and regulatory solutions around consumers. Research methodologies such as journey mapping can provide useful insights into the interplay between policy and regulatory levers and help to ensure that protection frameworks delivers positive outcomes for consumers from end to end. In regulating the market and evaluating outcomes for consumers, the ESC could also look to collect data about the performance of DFFH and DELWP policy initiatives for the purpose of improving consumer outcomes across the market.

If you have any queries about this submission and the attached reports, please contact Ben Martin Hobbs, Senior Research and Policy Manager at ben.martinhobbs@cprc.org.au.

Yours sincerely,



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¹⁹ See Jon M. Jachimowicz, Shannon Duncan, Elke U. Weber, and Eric J. Johnson. “When and why defaults influence decisions: A meta-analysis of default effects.” *Behavioural Public Policy* 3, no. 2 (2019): 159-186.