



Exploring regulatory approaches to consumer vulnerability

A report for the Australian Energy Regulator

Emma O'Neill

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ABOUT CONSUMER POLICY RESEARCH CENTRE (CPRC)

This report has been prepared for the Australian Energy Regulator (AER) by the Consumer Policy Research Centre (CPRC).

The AER works to make all Australian energy consumers better off, now and in the future. It regulates wholesale and retail energy markets, and energy networks, under national energy legislation and rules. The AER's functions mostly relate to energy markets in eastern and southern Australia. More information is available on the AER website: www.aer.gov.au.

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

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Overview

People are complex and life can be tough. At some point we all face circumstances that can affect our use of essential services like energy, banking and telecommunications. We may get sick, lose a job, experience mental health problems, become financially stressed, have caring responsibilities, experience family violence or not be able to find stable housing or enough work. Some people face more pronounced problems than others, such as entrenched poverty or low incomes, and complex markets can compound this.

The vulnerable circumstances of consumers are now firmly on the radar of many regulators and industry participants in Australia and particularly the UK. A number of regulators are developing vulnerability strategies to guide and enforce good conduct by business, and to set expectations about fair outcomes for consumers.

Regulators increasingly recognise that essential services in particular need to be inclusive of all customers, by being accessible and fairly priced, responding flexibly to common life events, and supporting people in difficult circumstances to engage with markets and access essential services. Equally, regulators also seek to address the role of markets in causing or exacerbating vulnerability, as a result of complex market structures, business practices or pricing, consumer-business power imbalances, the targeted exploitation of vulnerable customers and other actions.

Consumer vulnerability is in the spotlight following Australian and UK reviews of retail energy markets and other sectors, which revealed complex and strategically confusing or exploitative marketing practices, and egregious conduct in banking and insurance, as documented by the Financial Services Royal Commission.

Other inquiries (for example, the Victorian Family Violence Royal Commission) have also shown how essential service providers can exacerbate harm if they do not respond in an informed, sensitive way to the personal circumstances of their customers.

Vulnerability can be addressed at multiple stages of the customer journey. While many regulators and legal frameworks have traditionally focused on debt and payment difficulty, some are also looking more closely at the design of products and services, to help create inclusive markets where people can secure what they need at a fair price, without being excluded or taken advantage of. This approach has the potential to deliver deeper, more comprehensive market change and positive consumer outcomes.

About this report

This report reviews current regulatory approaches to consumer vulnerability in Australia and the UK, focusing on markets for essential services such as energy, banking and insurance, telecommunications and water, and the work of multi-sector regulators such as the Australian Competition and Consumer Commission (ACCC) and the UK Competition and Markets Authority (CMA).

The report explores the often collaborative nature of consumer vulnerability measures, discussing examples of joint work by regulators, industry, civil society and government to improve customer service and care, analyse vulnerability risks, enable expert advice in specialist areas such as family violence and mental health, and identify customers in vulnerable circumstances.

The report covers four areas:

1



Why are regulators focusing on consumer vulnerability?

2



Understanding vulnerability

- Major definitions
- Identifying priority areas
- Opportunities and limitations with the concept of consumer vulnerability
- The diverse circumstances of Australian consumers

3



Current regulatory arrangements

- Regulatory instruments
- Regulatory arrangements in the energy sector
- Institutions and actors

4



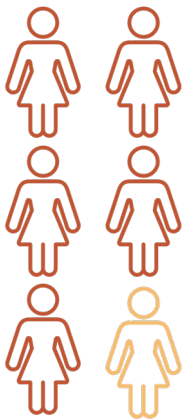
Supporting vulnerable consumers

- Conceptual frameworks
- Vulnerability impact assessments
- Good product, service and market design
- Identifying and supporting customers in vulnerable circumstances

Australian consumers' circumstances

1 in 5

National Debt Helpline callers with energy issues in 2019 were experiencing mental health problems



1 in 6

Australian women have experienced physical and/or sexual violence by a current or previous partner

44%

of Australians have low literacy



2 in 3

Australians experience some level of financial stress



1 in 5

Australians speak a language other than English at home

30%

of Australians have savings of less than one month's income or none at all, placing them only a few pays away from financial difficulty



1 in 5

Australians have a disability



Key lessons

Consumer vulnerability should be a priority issue for regulators

Regulators and industry sectors in Australia and the UK are increasingly adopting vulnerability strategies, including Ofgem, the Financial Conduct Authority (FCA) and the CMA. Recent scrutiny of the energy and financial services sectors has shown many consumers are vulnerable to poor outcomes, and regulators need to play a greater role in preventing harm in markets for essential services.

Equally, as our understanding of issues such as family violence, mental health and inequality has grown, regulators need to ensure essential services markets are inclusive and responsive to people's circumstances, so markets deliver for consumers.

A vulnerability strategy should be integrated into the main domains of regulatory work—including policy and advocacy, compliance and enforcement, and community outreach, research and engagement—and has the potential to positively influence a broad range of regulatory decision-making.

Anyone can become vulnerable as a consumer

Everyone is likely to experience vulnerable circumstances at some point in their lives, due to common, unavoidable and unpredictable life events such as illness, job loss, financial shocks, the death of a loved one and natural disaster. Life events such as having children, ageing and disability can also contribute to consumer vulnerability.

Some vulnerable circumstances are transient and people will move through them with the right support; other circumstances will necessitate longer-term assistance. Risks of consumer vulnerability will also change over time, as a result of regulatory, business, technological and social changes, and new understandings of consumer needs.

Given widespread vulnerability risks, regulators are considering the appropriate scope of their vulnerability measures, and the extent to which they intervene in markets to protect consumers from poor outcomes.

Vulnerability can arise from personal circumstances or market features, or both

It is increasingly recognised that vulnerability arises not just from personal factors but market features, including complexity and poor product and service design, deliberate exploitation of people's behavioural biases, information asymmetry and targeted exploitation of particular communities. Regulators' vulnerability strategies can identify and address these market-based factors alongside individual-based factors, and set clear expectations about what good business practices look like.

People's lived experience of markets matters

Regulators, industry participants and others are best placed to address market problems when they seek to understand how people actually experience markets in the context of their lives, and their inclusion in—or exclusion from—essential services. Developing this understanding of vulnerability is an important ongoing feature of a vulnerability strategy, to ensure the nature and scope of problems are clear, that regulatory measures are responsive to these problems and targeted for high impact, and that industry participants are positioned to act proactively and innovate in the way they interact with vulnerability. There is significant potential for regulators to better use methodologies such as human-centred and inclusive design to understand people's lived experience of markets.

Vulnerability can be tackled at multiple stages of the customer journey

There are many opportunities to address vulnerability, from product, service and market design, to specific measures for customers facing payment problems and other difficult circumstances, such as family violence. Because the risks of vulnerability are broad, all customers need access to well-designed, fair and transparent products, services and information from the outset, and flexible, tailored support that can respond to the changing circumstances of their lives.

From a market-outcomes perspective, it is efficient and effective for regulators, government, community organisations and industry to prioritise early and pre-emptive interventions wherever possible, rather than focusing on 'bottom of the cliff' measures that wait for problems to emerge or become more advanced.

Data has an important role to play in vulnerability strategies

Data can be used for good to help identify areas of pressing need, prioritise regulators' vulnerability work, and identify customers at risk of, or experiencing, vulnerability. It can also be used by industry participants and others to develop innovative interventions and engagement with consumers experiencing vulnerability, and in better product and service design. This should be coupled with qualitative inquiry into the nuances and real-life experiences of markets.

Although anyone can experience vulnerability at some point in their lives, regulators need to be able to prioritise their vulnerability work using data analysis and other tools, to ensure expectations are clear and their work is manageable and impactful.

Key opportunities

Develop a vulnerability strategy

The AER could work with consumers, industry, community organisations and other regulators to develop a vulnerability strategy. The strategy could outline the AER's concept of consumer vulnerability, its plans for understanding and responding to vulnerability across different regulatory functions, and how these measures will be evaluated. Having a vulnerability strategy in place has been useful to other regulators such as Ofgem, by enabling a better understanding of consumer vulnerability, providing direction and transparency in regulatory work, and setting out a framework for practical actions in policy- and decision-making.

Clarify the role of the regulator in supporting vulnerable consumers

Fair, affordable energy supply—with protections for those who are unable to safeguard their interests—is not just the responsibility of regulators and industry, but government and civil society. Through a vulnerability strategy, the AER could clarify its role as a regulator in supporting vulnerable consumers, to provide certainty to stakeholders, to help ensure structural issues of poverty, disadvantage and financial stress are properly addressed by government, and to set expectations about good business practices.

Adopt a leading approach to understanding vulnerability in the energy sector

The AER could work with diverse consumers to understand how they interact with the energy market, and the barriers they face to more affordable, accessible energy supply and services. Inclusive consultation, learning and testing could be an ongoing part of the vulnerability strategy.

An AER vulnerability strategy could be primarily informed by this consultation. It could also draw on current thinking and research to set out priorities and actions, including:

- **principles for identifying vulnerability risks among customers** – the AER could work with consumers, industry, community organisations and data analysts to design a common set of principles for identifying major vulnerability risks, particularly where those risks are not expressly disclosed by customers
- **a revised approach to hardship/payment difficulty** – the AER could continue monitoring the revised *Customer Hardship Policy Guideline*, identify necessary reforms, and assess whether those reforms can be delivered using the current regulatory arrangements
- **assessing the impact of a changing energy market on vulnerable customers** – the AER could assess how new energy products and services such as household electricity generation, storage and supply can be made inclusive for vulnerable customers.



1. Why are regulators focusing on consumer vulnerability?

The concept of consumer vulnerability has become prominent in Australia and the UK in recent years. While definitions vary, in broad terms 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. This section outlines some of the major reasons for the regulatory focus on consumer vulnerability, and the implications of not properly addressing this issue.

Consumer vulnerability work is probably most advanced in the UK, among regulators such as Ofgem (which covers Great Britain), the FCA, the CMA and Ofwat. Consumer vulnerability is also a priority issue for Australian regulators such as ASIC and the ACCC, essential services ombudsmen, and industry sectors such as banking and insurance, which include measures for vulnerable customers in their codes of practice. There appear to have been at least three key triggers for the focus on consumer vulnerability.

First, controversy and dysfunction in the energy and financial services sectors have led to state and federal reviews of energy markets and the Financial Services Royal Commission. Each of these inquiries revealed poor customer outcomes, and found complexity, confusion and exploitative practices and cultures are features of energy and financial services markets.¹ Consumer confidence in these markets is low, and regulators and business now face the task of rebuilding trust. UK consumers have had similar experiences, culminating in energy market reforms and ongoing work to restore the integrity of financial services following the Global Financial Crisis.²

Second, since the deregulation of sectors such as energy, financial services and telecommunications, governments have developed a greater understanding of issues such as family violence, mental illness, disability and the ageing population. In turn, this has led to a better appreciation of how these issues affect people's use of markets and access to essential services, and the way in which businesses can create risks of harm if they are not aware of and responsive to the individual circumstances of their customers. For example, the Victorian Family Violence Royal Commission found that providers of essential services such as energy could better support customers facing economic abuse.³

Wider structural changes have also occurred that affect access to essential services and consumer experiences, including the decline of homeownership and the growth of renting, significant increases in household debt, and the rise of digital living and the emergence of a digital divide. Similar changes have taken place in the UK.

A third and related trigger is a growing recognition of the barriers to choice and engagement in competitive markets. After a period of deregulation and privatisation, there are now debates about whether people in vulnerable circumstances can be supported to engage with markets and exercise choice, whether a reliance on engagement is fundamentally problematic and inevitably privileges some customers at the expense of others, or whether the truth lies somewhere in between.

Regulators are eager to address consumer vulnerability in essential services markets in particular because the consequences can be so severe, threatening people's health, wellbeing and ability to lead a good life. High energy costs have contributed to an increase in inequality and poverty, with people on low incomes and those receiving Newstart and similar allowances having to allocate more of their very limited incomes to energy bills over the past decade. On average, low-income households now spend 6.4 per cent of their income on energy, while high-income households only spend an average of 1.5 per cent.⁴

1. Australian Competition and Consumer Commission (June 2018) Restoring Electricity Affordability and Australia's Competitive Advantage: Retail Electricity Pricing Inquiry – Final Report; John Thwaites, Patricia Faulkner and Terry Mulder (August 2017) Independent Review into the Electricity & Gas Retail Markets in Victoria; Commonwealth of Australia (2019) Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry – Final Report, vol 1.
2. Competition and Markets Authority (24 June 2016) Energy Market Investigation: Final Report; Ofgem (9 November 2016) CMA Remedies Implementation Plan; Andrew Bailey, Chief Executive of the Financial Conduct Authority (23 April 2019) 'The Future of Financial Conduct Regulation', speech to The Future of Financial Conduct Regulation, Bloomberg, London.
3. State of Victoria (2014-16) Royal Commission into Family Violence: Summary and Recommendations, 105-106, 120.
4. Australian Council of Social Service, Brotherhood of St Laurence and the ANU Centre for Social Research and Methods (October 2018) Energy Stressed in Australia, 4.

If regulatory action is delayed, problems become more entrenched and difficult to unwind, including particular products, services and market features. Inaction can lead to crises and controversies, and regulators may be pressured to respond quickly in the face of public and government pressure.

When addressing consumer vulnerability, the precise nature of the problem/s to be addressed will vary among and within markets. Some problems will involve excessive pricing and unaffordable products and services, while others will concern issues such as inaccessible communication methods, poor responses to payment difficulty, and inadequate support for people experiencing family violence, mental illness or other circumstances. Problem definition is key to designing effective interventions and requires regulators to develop a detailed understanding of vulnerability in the sectors they regulate, by learning how people use particular markets, products and services in the context of their lives.

1.1 The role of regulators

Across the jurisdictions and sectors we reviewed, we noted that many regulators have established a central and ongoing role in addressing consumer vulnerability, along with government, industry and civil society. For example, Ofgem established a vulnerability strategy in 2013 and are currently renewing their strategy for 2025. The FCA and the CMA also have strategies for customers in vulnerable circumstances, while protecting vulnerable consumers is one of ASIC's seven regulatory priorities for 2019-20.⁵

Throughout this work, however, the nature and scope of a regulator's role are sometimes unclear. In consultations on Ofgem's 2025 strategy, stakeholders have told Ofgem that they would like a better articulation of Ofgem's role compared to government's role in addressing vulnerability. Ofgem is therefore working with government as part of the multi-sector Consumer Forum to clarify the boundaries between regulatory and social policy.⁶

The UK National Audit Office made similar observations in its report on vulnerable consumers in regulated industries, which covered the work of Ofwat, Ofgem, Ofcom and the FCA. It found the responsibilities of regulators and government are not sufficiently clear; in particular, regulators' duties to protect vulnerable consumers can sometimes conflict with measures designed to promote competition, and regulatory interventions alone can be insufficient to protect all vulnerable consumers.⁷

The National Audit Office also cautioned that regulators cannot alone solve problems relating to access, affordability and debt, and that a lack of clarity about the responsibilities of regulators and government can mean systemic issues are not addressed.⁸

In Australia, those systemic issues include low and inadequate rates of income support, such as the Newstart allowance; unaffordable and poor-quality housing; low wage growth, insufficient work and employment insecurity; and the prevalence of family violence.⁹ PIAC research on energy disconnections suggests efforts to reduce disconnections are only likely to be truly effective if they address the long-term structural issues that make people vulnerable to bill non-payment, including health problems and disability, housing stress and homelessness, and being a victim of crime such as family violence.¹⁰ Although these types of issues are largely the responsibility of government and social policy, essential services regulators have a critical role to play by ensuring industry supports people facing financial pressures and other difficult life circumstances, and avoids compounding existing vulnerabilities or creating new ones.

5. Australian Securities and Investments Commission (2019) ASIC Corporate Plan 2019-2023 – Focus 2019-20, 14.

6. Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 11, 42.

7. National Audit Office (31 March 2017) Vulnerable Consumers in Regulated Industries – Report by the Comptroller and Auditor General, 8-10.

8. Ibid.

9. See Table 2 below.

10. Public Interest Advocacy Centre (November 2018) Close to the Edge: A Qualitative and Quantitative Study.

While acknowledging the distinction between regulatory and social policy, some regulators could potentially contribute to the social policy-making process by providing formal advice to government on the adequacy of concessions and aspects of income support. The AER, for example, already collects data on energy affordability that tracks energy costs as a proportion of income for average and low-income households. The current data shows that low-income households spend a much higher proportion of their incomes on energy than average income households—in some cases, more than double.¹¹ This data could be combined with other analysis of energy affordability and hardship to inform advice to government on concessions and income support.

11. Australian Energy Regulator (September 2019) *Affordability in Retail Energy Markets*, 14-16.



2. Understanding vulnerability

Developing an understanding of vulnerability will be a major part of any regulator's vulnerability strategy. This is an ongoing, dynamic process that considers people's lived experience of markets, and the impact of regulatory, business, technological and social change on these experiences.

This section outlines how regulators and other bodies in Australia and the UK currently define consumer vulnerability, and some of the current debates about the use of this concept. It discusses:

1. the main **definitions of consumer vulnerability** in Australia and the UK and the common themes among these definitions
2. how regulators identify **priority areas** for vulnerability strategies
3. opportunities and limitations with the concept of consumer vulnerability, and the emerging use of **customer inclusion** as an alternative or complementary concept
4. the **circumstances of Australian consumers** that may place people at risk of vulnerability in their interactions with markets, particularly the energy market.

2.1 Defining vulnerability

There is no uniformly accepted, consistent definition of consumer vulnerability among regulators, business or consumer advocates. At its broadest, 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. Those circumstances can be individual-based (for example, related to income level, age, disability or health conditions) or market-based (for example, markets can create or exacerbate vulnerability through unfair practices, complex market structures and pricing, and information asymmetries).

In this report, we acknowledge that 'consumer vulnerability' is often a shorthand term used by regulators, industry participants and consumer advocates, and is unlikely to be used by individual consumers. While there is debate about the adequacy and appropriateness of this term (see section 2.3), we note its utility for regulators and others in policy-making and advocacy, and that other terms may be preferable when engaging with individual consumers.

As Table 1 shows, various definitions of consumer vulnerability are used in Australia, the UK and by the OECD. Some definitions focus on specific groups of people at risk of vulnerability in their interactions with markets, such as older people, people with disability and people experiencing mental illness. However, more recent definitions rely less on a list-based approach and focus more on the broad and wide-ranging circumstances of vulnerability that could affect any person on a permanent or temporary basis.

Some regulators have taken an active role in defining consumer vulnerability. For example, Ofgem conducted significant research and consultation to prepare its first vulnerability definition and strategy in 2013 and has continued to receive feedback on definitional issues in preparing its 2025 strategy. Ofgem's mature, tested work in this area has influenced other regulatory and government definitions of vulnerability.¹² The FCA has also spent time defining vulnerability in the financial services sector and continues to engage with stakeholders on this issue.¹³

A clear definition of consumer vulnerability will help regulators explore how vulnerability plays out in their sectors, identify problems, outline desired outcomes, and clarify expectations of industry.

12. Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 6-7.

13. Financial Conduct Authority (February 2015) Consumer Vulnerability – Occasional Paper No. 8, 19-28.

A regulator's definition can directly influence the nature and scope of their work in this area. For example, in 2017, the FCA proposed to change its current definition of vulnerability and was criticised by debt and financial advocacy organisations, who considered the new definition would mean less focus on the actions of business in contributing to vulnerability, and lower the regulator's expectations of business. The FCA ultimately decided to retain its existing definition.¹⁴

However, regulators will need to consider how much time to spend developing their own definitions of vulnerability, and whether existing definitions can be adopted or modified, to leave enough time and resources for other, potentially more difficult tasks. The FCA seeks to understand consumer vulnerability in depth, but cautions against overworking definitional issues:

Vulnerability in consumer policy has been widely discussed and is recognised in legislation; however, definitions tend to vary widely. Other regulators have come up with their own definitions while developing a vulnerability strategy. The characteristics of the individual, their circumstances, static and transitory states, and the practices of providers, all appear in these definitions in various ways. What is clear is that, however finely nuanced the definition of vulnerability is, the real challenge lies in how to operationalise it: how to embed it both in the culture of the regulator, and the practices of firms.¹⁵

Existing definitions of vulnerability appear to operate at a high level, and leave room for understandings of vulnerability to evolve in response to regulatory, business, technological and social changes, and new understandings of consumer needs.

A summary of key definitions is outlined in Table 1, followed by an overview of common themes.



14. Financial Conduct Authority (2018) FCA Mission: Approach to Consumers; Money Advice Trust (17 July 2018) 'The FCA opts for the right approach to defining vulnerability' (<http://www.moneyadvicetrustblog.org/2018/07/17/the-fca-opts-for-the-right-approach-to-defining-vulnerability/>).

15. Financial Conduct Authority (February 2015) Consumer Vulnerability – Occasional Paper No. 8, 19.

Table 1: Definitions of consumer vulnerability

Sector / Source	Definition
Cross-sector	
Organisation for Economic Co-operation and Development	Vulnerable consumers are consumers who are susceptible to detriment at a particular point in time, owing to the characteristics of the market for a particular product, the product's qualities, the nature of a transaction or the consumer's attributes or circumstances. ¹⁶
Australian Competition & Consumer Commission	<p>Conduct affecting vulnerable and disadvantaged consumers is an ongoing compliance and enforcement priority for the ACCC.¹⁷</p> <p>The ACCC does not adopt a single definition of consumer vulnerability. In its compliance guide for business on disadvantaged and vulnerable consumers, it states some consumers may be disadvantaged or vulnerable in marketplace situations if they:</p> <ul style="list-style-type: none"> • have a low income • are from a non-English speaking background • have a disability • have a serious or chronic illness • have poor reading, writing and numerical skills • are homeless • are very young • are old • come from a remote area • have an Indigenous background.¹⁸ <p>In its 2018 Retail Electricity Pricing Inquiry, the ACCC considered two overlapping forms of vulnerability:</p> <ul style="list-style-type: none"> • where a consumer who, due to personal circumstances, is unable to meet or is at risk of being unable to meet the cost of electricity supply and, as a result, is at risk of experiencing detriment to their wellbeing and standard of living • where a consumer faces additional barriers to engaging with the retail electricity market.¹⁹
Competition & Markets Authority (UK)	<p>Consumer vulnerability is defined as 'any 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'. The CMA distinguishes between:</p> <ul style="list-style-type: none"> • market-specific vulnerability, which derives from the specific context of particular markets and can affect a broad range of customers in those markets • vulnerability associated with physical characteristics, such as physical disability, poor mental health or low incomes, which may result in individuals with those characteristics facing particularly severe, persistent problems across markets.²⁰

16. Organisation for Economic Co-operation and Development (March 2014) OECD Recommendation on Consumer Policy Decision Making, 4.

17. Australian Competition and Consumer Commission (2019) 'Compliance & Enforcement Policy & Priorities' (<https://www.accc.gov.au/about-us/australian-competition-consumer-commission/compliance-enforcement-policy-priorities>).18. Australian Competition and Consumer Commission (2011) 'Don't Take Advantage of Disadvantage: A Compliance Guide for Businesses Dealing with Disadvantaged or Vulnerable Customers' (<https://www.accc.gov.au/publications/business-snapshot/dont-take-advantage-of-disadvantage>).

19. Australian Competition and Consumer Commission (June 2018) Restoring Electricity Affordability and Australia's Competitive Advantage: Retail Electricity Pricing Inquiry – Final Report, 291.

20. Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions, 4.

Sector / Source	Definition
Cross-sector	
Commission for Customers in Vulnerable Circumstances (UK)	<p>The CCVC adopts the Ofgem definition of vulnerability—that is, where 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; and/or • significantly more likely than a typical consumer to suffer detriment or that detriment is likely to be more substantial.²¹
European Commission	<p>A vulnerable consumer is one who, as a result of socio-demographic characteristics, behavioural characteristics, personal situation or market environment:</p> <ul style="list-style-type: none"> • is at higher risk of experiencing negative outcomes in the market • has limited ability to maximise their wellbeing • has difficulty in obtaining or assimilating information • is less able to buy, choose or access suitable products • is more susceptible to certain marketing practices.²²
Energy	
Ofgem (GB)	<p>Vulnerability occurs where 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; and/or • significantly more likely than a typical consumer to suffer detriment or that detriment is likely to be more substantial.²³
Financial services	
Australian Securities and Investments Commission	<p>Any consumer can experience vulnerability as a result of a number of factors, including:</p> <ul style="list-style-type: none"> • the actions of the market or individual providers, e.g. being targeted by products that are inappropriate for a particular consumer, or being given inadequate or overly complex documentation • experiencing specific life events or temporary difficulties, e.g. an accident or sudden illness, relationship breakdown, family violence, job loss, having a baby or the death of a family member • personal or social characteristics that can affect a person’s ability to manage financial interactions, e.g. speaking a language other than English, having different cultural assumptions or attitudes about money, or experiencing cognitive or behavioural impairments due to intellectual disability, mental illness, chronic health problems or age.²⁴

21. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 19.

22. European Commission (January 2016) Consumer Vulnerability Across Key Markets in the European Union – Final Report, xx.

23. Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 47-48.

24. Australian Securities and Investments Commission (2019) ASIC Corporate Plan 2019-2023 – Focus 2019-20, 12.

Sector / Source	Definition
Financial Services	
Banking Code of Practice	Vulnerable customers include those who are experiencing: <ul style="list-style-type: none"> • age-related impairment • cognitive impairment • elder abuse • family or domestic violence • financial abuse • mental illness • serious illness • any other personal or financial circumstance causing significant detriment.²⁵
Life Insurance Code of Practice	The Code refers to ‘consumers requiring additional support’ rather than vulnerable customers. It states: ‘we recognise that some groups may have unique needs, such as older persons, consumers with a disability, people from non-English speaking backgrounds and Indigenous people, when accessing insurance, making an inquiry, claiming on their insurance, making a complaint and communicating with us’. ²⁶
Insurance in Superannuation Voluntary Code of Practice	The Code has a section on vulnerable consumers but does not define this term as such. It states: ‘we recognise that some people may have unique needs, such as older persons, people with mental health conditions, people with a disability, people from non-English speaking backgrounds, people with low levels of literacy, people in financial distress, and Indigenous Australians, when accessing insurance, making an enquiry, claiming on their cover, making a complaint and communicating with us’. ²⁷
Financial Conduct Authority (UK)	A vulnerable customer is someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care. ²⁸
Telecommunications	
Telecommunications Consumer Protections Code	The Code requires telecommunications suppliers to have regard to the ACCC compliance guide ‘Don’t Take Advantage of Disadvantage’ in respect of disadvantaged and vulnerable consumers but does not provide a definition of these consumers. ²⁹ Telecommunications regulation provides entitlements to people with particular needs, including older people, those living in rural and remote areas, people who speak English as a second language, and people with disability or a life-threatening illness. ³⁰
Ofcom (UK)	UK telecommunication providers have regulatory obligations in relation to people with disability, and consumers who may be vulnerable due to circumstances such as age, physical or learning disability, physical or mental illness, low literacy, communications difficulties or changes in circumstances such as bereavement. ³¹
Water	
Ofwat (UK)	Ofwat uses the concept of ‘a customer whose circumstances make them vulnerable’, defined as ‘a customer who due to personal characteristics, their overall life situation or due to broader market and economic factors, is not having reasonable opportunity to access and receive an inclusive service which may have a detrimental impact on their health, wellbeing or finances’. ³²

25. Australian Banking Association (1 July 2019) Banking Code of Practice, 22.

26. Financial Services Council (2019) Life Insurance Code of Practice, 14.

27. Association of Superannuation Funds of Australia, Australian Institute of Superannuation Trustees and Financial Services Council (2018) Insurance in Superannuation Voluntary Code of Practice, 11.

28. Financial Conduct Authority (February 2015) Consumer Vulnerability – Occasional Paper No. 8.

29. Communications Alliance (July 2019) Industry Code C628:2019 – Telecommunications Consumer Protections Code, 20.

30. See Australian Communications and Media Authority, ‘People with Particular Needs’ (<https://www.acma.gov.au/theACMA/i-am-a-special-needs-telecommunications-customer-what-are-my-rights-acma>).

31. Ofcom (1 July 2019) General Conditions of Entitlement – Unofficial Consolidated Version.

32. Ofwat (February 2016) Vulnerability Focus Report, 20.

Some common themes emerge from these definitions and the associated commentary on vulnerability within these regulatory frameworks.

2.1.1 Circumstances of vulnerability

Early approaches to vulnerability focused on fixed categories of people, such as older people and people with disability. Some regulatory frameworks retain this approach; for example, the Australian insurance industry codes.

A different approach, however, has emerged in recent years. Several regulators now focus on identifying the various circumstances that can cause vulnerability and affect us all. On this view, vulnerability is not something experienced by fixed groups of people, but can be faced by anyone at various stages of their lives, due to common or unavoidable events such as illness, job loss, financial shocks, the death of a loved one, natural disaster, ageing or disability. Market-based factors can also create or exacerbate circumstances of vulnerability, as discussed below.

This approach to vulnerability is adopted by ASIC and is especially apparent in the UK, with regulators such as the CMA, Ofgem, Ofwat and the FCA adopting broad definitions that focus on circumstances placing people at risk of detriment, rather than lists of vulnerable customer groups. Research by the UK-based Centre for Consumers and Essential Services indicates these circumstances cut across the community, and that ‘society is not divided between “vulnerable consumers” and the rest’.³³ The FCA reached similar conclusions after conducting its own research, stating 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’. A prescriptive list of vulnerable customer groups can therefore be under-inclusive:

It is common when thinking about vulnerability to fall into an ‘us and them’ mindset, which categorises vulnerable customers into specific minority groups, like the very old and frail, or those with disabilities. This approach perceives vulnerability as purely related to the individual’s characteristics. In reality, consumer vulnerability is much broader than this and it is simplistic and unhelpful to categorise people in this way. While some circumstances that cause vulnerability may be longstanding, others may happen almost overnight, and could affect anyone, whatever their circumstances, level of income or capability.³⁴

The more traditional group-based approach to vulnerability can also be over-inclusive, by labelling an entire group as at risk, when some members of the group may face little risk of detriment.³⁵ For example, older people have traditionally been categorised as vulnerable consumers in absolute terms, despite varying levels of income and wealth, digital inclusion, social participation, and mental and financial capability amongst this group.

2.1.2 Multi-layered nature of vulnerability

A focus on people’s circumstances, rather than specific groups of people, also recognises that vulnerability can be multi-layered and involve the interaction of various circumstances—both individual- and market-based. These circumstances can overlap at a single point in time and place people at higher risk of detriment than others.³⁶ For example, a person may experience job loss and a chronic health condition and take on additional debt to cope, exacerbating vulnerability.

33. Centre for Consumers and Essential Services (July 2014) *Tackling Consumer Vulnerability: Regulators’ Powers, Actions and Strategies*, Research report for Citizens Advice, University of Leicester, 9.

34. Financial Conduct Authority (February 2015) *Consumer Vulnerability – Occasional Paper No. 8*, 6, 17.

35. Graham, C. (2018) ‘Tackling Consumer Vulnerability in Energy and Banking: Towards a New Approach’ Vol. 40(2) *Journal of Social Welfare and Family Law* 241, 244.

36. Commission for Customers in Vulnerable Circumstances (2019) *The Commission for Customers in Vulnerable Circumstances Final Report*, 19; Financial Conduct Authority (February 2015) *Consumer Vulnerability – Occasional Paper No. 8*, 8.

2.1.3 Temporal nature of vulnerability

Circumstances of vulnerability can be permanent or transient.³⁷ Regulators and industry therefore need to be responsive to people's changing circumstances over the life course, and recognise these changes can occur quite rapidly and unexpectedly. Transient circumstances might involve short-term unemployment, temporary financial stress, or relationship breakdown, while permanent circumstances could include chronic health conditions, long-term unemployment or poverty, or ongoing language barriers.

Regulators and industry should be cautious not to assume a seemingly short-term period of difficulty has been resolved. As Ofgem notes, a person can quickly fall into a vulnerable situation, but it may take them time to recover from it. For example, if someone is made redundant, their vulnerability can continue even once they are working if they have accumulated significant debt during a period of unemployment.³⁸ Likewise, family violence victim-survivors can face financial barriers many years, or even decades, after separating from an abusive partner, including poverty, housing and employment insecurity, a lack of retirement options, and mental health problems.³⁹

Because vulnerability can be triggered by temporary circumstances, it may be more appropriate to use the language of 'customers in vulnerable circumstances' rather than 'vulnerable customers', to avoid fixing people with labels that are essentialist and do not reflect the changing conditions of their lives. Labels such as 'vulnerable customer' can also be stigmatising and disempowering when used directly with customers (see section 2.3).

2.1.4 The role of markets in triggering or exacerbating vulnerability

A growing number of regulators and other bodies now recognise the role of markets in causing or exacerbating vulnerability. They distinguish between:

- individual-based vulnerability, where vulnerability arises from particular personal circumstances, and
- market-based vulnerability, where features of markets or poorly designed products or services place any consumer at risk of vulnerability.

This is explicit in the concepts of vulnerability/vulnerable customer used by ASIC, the OECD, the CMA and Ofwat, and is apparent, though less express, in the FCA's definition (which notes a person can be particularly susceptible to detriment if a firm is not acting with appropriate levels of care). Other concepts of vulnerability avoid a reference to the role of markets; for example, the Australian banking and insurance industry codes focus on people's personal circumstances as causes of vulnerability.

Some regulators and other institutions are focusing on market factors in their vulnerability strategies. Ofgem and the UK Commission for Customers in Vulnerable Circumstances both emphasise the role of markets in their recent vulnerability strategies, with Ofgem having recognised market-based vulnerability since at least 2013.⁴⁰ The CMA's work has a particular focus on market-specific vulnerability, including market studies into care homes and funeral services, enforcement action against online gambling firms, and a loyalty penalty 'super-complaint' investigation, which examined the premiums paid by longstanding customers in markets that are subscription-based or which have auto-renewal or roll-over contracts (e.g. mobile phones and home insurance). The European Commission also discusses the role of market-based drivers of vulnerability in its overview of European approaches to consumer vulnerability.⁴¹

37. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 19.

38. Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 49.

39. Fernando, N. (1 November 2018) When's the Right Time to Talk About Money? Financial 'Teachable Moments' for Women Affected by Family Violence, WIRE Women's Information, 4, 74-75.

40. Ofgem (4 July 2013) Consumer Vulnerability Strategy – Final Decision, 17-18.

41. European Commission (January 2016) Consumer Vulnerability Across Key Markets in the European Union – Final Report, 217-220.

Businesses can exacerbate existing consumer vulnerability or place someone who was previously coping at risk. This can happen in several ways, including:

- deliberately complex market structures or pricing, which can include confusing price structures that make comparisons difficult (including understanding the basis on which prices are calculated), a lack of clarity around price changes (e.g. price jumps soon after contracting), complex and lengthy terms and conditions, product/service bundling, a large number of competitors or product/service choices, and significant barriers to leaving a contract
- poor product and service design, such as communication methods that are not inclusive of all consumers, and a lack of training and systems to identify and support vulnerable customers
- information asymmetries and power imbalances between businesses and customers—for example, the Financial Services Royal Commission observed that ‘entities and individuals acted in the ways they did because they could. Entities set the terms on which they would deal, consumers often had little detailed knowledge or understanding of the transaction and consumers had next to no power to negotiate the terms’
- conflicting incentives and interests of service providers, their intermediaries and customers—again, the Financial Services Royal Commission observed that ‘in almost every case, the conduct in issue was driven not only by the relevant entity’s pursuit of profit but also by individuals’ pursuit of gain, whether in the form of remuneration for the individual or profit for the individual’s business. Providing a service to customers was relegated to second place. Sales became all important’
- deliberate exploitation of behavioural biases that constrain people’s ability to choose between alternative products, including inertia (sticking with the status quo), loss aversion, and heuristics (relying on mental shortcuts to make difficult decisions quicker and easier, e.g. assuming a discounted product is the cheapest product)
- exclusion of vulnerable customers from competitive markets (‘market segmentation’)—for example, if these customers are more expensive to serve, are a higher debt risk to the business, or it is not cost-effective for the business to meet vulnerable customers’ needs
- targeted exploitation of particular customers, such as people with low English language skills or disadvantaged people in Aboriginal communities
- restricting competition and access to affordable products.⁴²

The Australian energy market has several of these characteristics. The ACCC’s inquiry found ‘energy retailers have ... played a major role in poor outcomes for consumers’, by making pricing structures confusing and using discounting strategies that are opaque and not comparable. Standing offers have been priced excessively to facilitate this, which has left inactive customers with higher bills. Pay-on-time discounts are ‘excessive and punitive for those customers who fail to pay bills on time’. The ACCC’s research showed vulnerable consumers tend to pay more for energy than the general population, with low-income households paying the highest rates for electricity before concessions are applied.⁴³

Similarly, vulnerable customers in the UK energy market are the most likely to remain on more expensive tariffs. The UK Commission for Customers in Vulnerable Circumstances considers the increasing choice of energy suppliers has been a mixed blessing, with vulnerable customers the least likely to switch and benefit from cheaper deals elsewhere.⁴⁴

42. Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 49; Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions, 4-6; Financial Conduct Authority (February 2015) Consumer Vulnerability – Occasional Paper No. 8, 18; Centre for Consumers and Essential Services (July 2014) Tackling Consumer Vulnerability: Regulators’ Powers, Actions and Strategies, Research report for Citizens Advice, University of Leicester, 10; Commonwealth of Australia (2019) Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry – Final Report, vol 1, 1-2.

43. Australian Competition and Consumer Commission (June 2018) Restoring Electricity Affordability and Australia’s Competitive Advantage: Retail Electricity Pricing Inquiry – Final Report, v, 293-294.

44. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 29.

Wide-ranging reforms are being implemented as a result of the ACCC's inquiry, including a regulated default tariff (the 'Default Market Offer') and restrictions on retailers' conditional discounting practices, where the level of the discount would be limited to a retailer's reasonable cost savings (e.g. the savings when a person pays on time). This is designed to avoid punitive extra costs where people cannot comply with discount conditions, and make it easier to compare the value of competing energy deals.⁴⁵

When considering how markets can trigger or exacerbate vulnerability, regulators are grappling with the issue of consumer engagement. Engaging with a market will not necessarily protect all consumers against vulnerability. For example, a customer may ostensibly engage in the energy market by regularly comparing deals and switching, but still pay higher prices than necessary because of the confusing pricing structures described by the ACCC and the exploitation of behavioural biases common to all consumers.

The expectation of consumer engagement in competitive markets can also be unrealistic, conflicting with people's needs and working against their interests. 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 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.⁴⁶

Market-based vulnerability may become an even more salient issue as the energy market transitions to clean, decentralised generation and distribution, and includes new actors and technologies. Existing vulnerabilities may be exacerbated, and new types of vulnerability may emerge, with the growth of intermediaries, open use of personal energy data, the rise of smart home energy technology, household generation and demand management, and the move to electric vehicles. For regulators, the interaction of individual- and market-based vulnerabilities could become more important to their work:

When we look at changes in society alongside the changes taking place in the energy sector, it is crucial to consider the interplay between the two. There is a real risk that the opportunities created by a transformed energy sector will be inaccessible to the very people who most need them. It could entrench, and indeed widen, existing divides in society. Although it is difficult to predict exactly what a transformed energy market will look like, what is clear is that we must keep vulnerable groups in the sharpest possible focus. They must receive the protections they depend on, while also being able to access in full the new opportunities on offer.⁴⁷

Regulators and government need to monitor any barriers to participation in the changing energy market and prevent any unequal distribution of costs. For example, a lack of access to home solar by renters and some low-income homeowners⁴⁸ prevents people reducing their energy costs and potentially requires them to pay higher network charges. Cost-reflective pricing provides more opportunities for some people than others. Ofgem is concerned that some customers will be unable to take advantage of more competitive tariffs, such as time-of-use tariffs, due to their inability to shift energy use. Ofgem is exploring what impact this may have on people reliant on medical equipment, social housing residents, and people on low incomes who are unable to afford supporting technology that allows them to manage the timing of their energy use.⁴⁹

45. See Australian Energy Market Commission (1 August 2019) Consultation Paper: National Energy Retail Amendment (Regulating Conditional Discounting) Rule.

46. Centre for Consumers and Essential Services (July 2014) Tackling Consumer Vulnerability: Regulators' Powers, Actions and Strategies, Research report for Citizens Advice, University of Leicester, 85.

47. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 30.

48. Australian Council of Social Service, Brotherhood of St Laurence and the ANU Centre for Social Research and Methods (October 2018) Energy Stressed in Australia, 8.

49. Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 37.

2.2 Identifying priority areas

As the overview above shows, most definitions of vulnerability are very broad, particularly where a regulator or other body has moved away from specifying particular groups of people and now seeks to capture any circumstance placing a person at risk of detriment, whether individual-based or market-based.

On the one hand, this allows a more inclusive approach to vulnerability, a more accurate understanding of people's experiences as consumers, and attention to good product, service and market design that can benefit all consumers and help avoid or reduce later difficulties.

On the other hand, the recognition that 'vulnerability affects us all' means well-known issues of chronic vulnerability and disadvantage could be neglected. A broad definition of vulnerability can also be difficult to operationalise when dealing with a large group of customers.⁵⁰ From a UK perspective, the FCA considers the number of people in potentially vulnerable circumstances is large and rising, and that 'prioritisation is vital to achieve a realistic approach'.⁵¹

Some regulators have sought to manage these issues by focusing on people with more severe needs or those facing more significant detriment. For example, Ofgem's vulnerability definition focuses on people who are significantly less able than a 'typical' customer to protect their own interests, and significantly more likely to experience substantial detriment. The FCA also focuses on people who are especially susceptible to detriment.

Ofgem starts with a wide lens, 'looking at issues broadly, then looking at levels of risk within situations and the causes, and then deciding whether more targeted interventions are needed on the basis of these analyses'.⁵² Similarly, the UK Money Advice Trust proposes a 'traffic light' model in their guide to vulnerability and debt collection, comprising three different types of vulnerable customer groups:

- 'potentially vulnerable': customers that are currently able to manage their finances and make informed financial decisions, but this could change in future due to, for example, an unexpected health condition, caring obligations, or the actions of business
- 'vulnerable': 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. The detriment could also be far more serious in terms of its negative impact on the customer's situation, and could be far more imminent.⁵³

This triage-style approach may be useful if an organisation has already developed a good capacity to identify vulnerable customers and has a fairly sophisticated ability to categorise customers in this way.

Some regulators are initiating their own research to inform priority areas for vulnerability strategies, as shown in the following case study.

50. Graham, C. (2018) 'Tackling Consumer Vulnerability in Energy and Banking: Towards a New Approach' Vol. 40(2) *Journal of Social Welfare and Family Law* 241, 258.

51. Financial Conduct Authority (February 2015) *Consumer Vulnerability – Occasional Paper No. 8*, 19.

52. Centre for Consumers and Essential Services (July 2014) *Tackling Consumer Vulnerability: Regulators' Powers, Actions and Strategies*, Research report for Citizens Advice, University of Leicester, 34.

53. University of Bristol Personal Finance Research Centre, Money Advice Trust, Plymouth Focus Advice Centre (March 2017) *Vulnerability: A Guide for Debt Collection – 21 Questions, 21 Steps*, 9.

Case study: understanding people's experiences of financial services markets

The FCA conducts its own research—including the extensive Financial Lives Survey—to collect information about consumer vulnerability and harm and target its work in this area. The Financial Lives Survey is a very significant data-gathering project. The 2017 survey involved nearly 13,000 online and face-to-face interviews to collect information about people's behaviour and experiences when engaging with financial services firms and buying their products. The FCA plans to run the survey every two years. The first survey has informed 30 FCA projects so far, including a paper on the ageing population and financial services. One of the most significant findings from the 2017 survey was that 50 per cent of UK adults display one or more characteristics of potential vulnerability, such as limited financial resilience, low financial capability, suffering a recent life event such as redundancy or divorce, or a health-related problem that significantly affects day-to-day life.⁵⁴

In 2018, the FCA decided to focus on sectors and products predominantly used by consumers with low resilience (e.g. high-cost, short-term credit), and prioritise the most vulnerable and least resilient consumers in supervisory, enforcement and redress work.⁵⁵

The CMA is focusing on four areas of vulnerability in 2019, based on their own experience and previous research: mental health problems, physical disability, age and low income.⁵⁶ As a next step, the CMA is investigating linking price and other transaction data to a recurring survey that contains comprehensive information about people's demographic and other characteristics, such as the Understanding Society Survey (a large, annual longitudinal survey of 40,000 households across the UK) or the Living Costs and Food Survey (another large survey conducted throughout the year across the UK). This is intended to enable the CMA to compare outcomes across markets over time and identify whether some groups of consumers are experiencing poor outcomes in several markets; discern patterns and trends in vulnerability; provide a baseline for regulators; and establish a foundation for measuring the poverty premium and whether too much is paid by other customers in vulnerable circumstances.⁵⁷

Geographic-based needs mapping can also be useful for regulators and businesses. In Victoria, the Consumer Policy Research Centre conducted quantitative analysis for AusNet Services to identify the types and locations of households within the AusNet electricity network that are experiencing disadvantage. Combining data from the 2016 Census and the Household, Income and Labour Dynamics in Australia survey, CPRC identified the suburbs in the AusNet area that contain high proportions of households with key measures of disadvantage: poverty, socio-economic disadvantage, persistent heating inability, low-income/high expenditure on energy, and/or persistent bill payment difficulty. This analysis showed there are 17 suburbs in the AusNet area that appear on all five measures of disadvantage, helping to inform AusNet's outreach and engagement work to support households with significant needs.

A further example of geographic-based analysis is described in the following case study.

54. Financial Conduct Authority 'Financial Lives Survey' (<https://www.fca.org.uk/publications/research/understanding-financial-lives-uk-adults>).

55. Financial Conduct Authority (2018) FCA Mission: Approach to Consumers, 28; Financial Conduct Authority 'Financial Lives Survey' (<https://www.fca.org.uk/publications/research/understanding-financial-lives-uk-adults>).

56. Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions.

57. *Ibid* 25-27.

Case study: pinpointing postcodes with high rates of energy disconnection

St Vincent de Paul Society has mapped the locations of electricity disconnections in South Australia, Victoria, New South Wales and South East Queensland, finding there are significant differences between states. Victorian and New South Wales postcodes with a high rate of disconnections are mainly in regional areas, while in South Australia they are mostly in middle suburbs. In South East Queensland, postcodes with high numbers of disconnections are mainly in fast-growing outer suburbs. The socio-economic characteristics of postcodes with high disconnection rates also vary between states. In Victoria, for example, the largest group at risk has low incomes, high unemployment, housing affordability issues and often includes sole-parent families, predominantly located in regional areas but also in middle and outer suburbs. Other key at-risk groups include communities with an older population and low incomes in rural and regional areas; postcodes with high levels of housing affordability issues in rural areas and fast-growing outer suburbs; and middle and fast-growing outer suburbs with high proportions of sole-parent families. St Vincent de Paul Society recommends local governments develop outreach programs in areas of high risk, in collaboration with energy retailers, ombudsmen, consumer and welfare organisations and others to ensure people are aware of support measures and can access local assistance.⁵⁸

A regulator will need to consider how best to focus their vulnerability work and allocate policy, outreach, compliance and enforcement and other resources. For an individual market regulator such as the AER, the approaches of Ofgem, the CMA and the FCA may offer useful guides, and could be explored with these regulators.

2.3 From vulnerability to customer inclusion?

Another issue regulators are considering is whether the concept of vulnerability is entirely adequate or appropriate to support customers at risk of harm, detriment or disadvantage. While regulators, business and consumer advocates have traditionally used this concept, new ways of thinking provide an opportunity to reframe customer services and support measures.

'Consumer vulnerability' may be a useful shorthand term for regulators, industry participants and consumer advocates, but can be alienating when used directly with customers. The term can be disempowering and stigmatising, and fail to reflect a person's own identity, strengths and capabilities. The UK Commission for Customers in Vulnerable Circumstances received feedback that people were uncomfortable with the term, due to the perceived stigma that goes along with it. They note that 'many customers who are classified by others as "vulnerable" simply don't see themselves in this way'.⁵⁹ This makes it difficult to obtain support if services are directed at 'vulnerable customers' rather than people's actual identities, needs and aspirations.

Dr Yvette Maker and others have critiqued the reliance on a 'vulnerability' approach in consumer support for people with cognitive disabilities. They argue this approach disadvantages both those labelled as vulnerable and those who are not. People with cognitive disabilities designated as 'vulnerable' can end up being treated as 'subjects of a benevolent protective scheme rather than holders of rights ... and people with individual experiences and expertise who are entitled to full social and economic inclusion.' This, in turn, risks ignoring the difficulties faced by all other consumers—the 'average' or 'non-vulnerable' consumers—in their market dealings.

58. Alvis Consulting and St Vincent de Paul Society (August 2019) Households in the Dark II: Mapping Electricity Disconnections in South Australia, Victoria, New South Wales and South East Queensland.

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

All consumers face a power imbalance when engaging with markets, as they have less information about the product or service than the business does. Bargaining power is further reduced by factors such as family disruption, illness, financial hardship and time pressures. Maker and others therefore suggest that:

convenient labels such as ‘vulnerable’ to identify those in need of protection should be avoided. The label perpetuates the undesirable distinction between ordinary and other types of consumers. It therefore risks diverting attention from what should be the substantive inquiry into the circumstances of consumers at the time of transacting.⁶⁰

Vulnerability strategies have traditionally emphasised the individual circumstances that place consumers at risk of detriment, rather than looking at flaws in the systems they use. Some regulators and academics are therefore flipping the perspective from one of customer vulnerability to one of customer inclusion, or building the concept of inclusion into their vulnerability strategies. This means that instead of asking ‘what is “wrong” with this person?’, businesses and regulators ask, ‘what is wrong with the service if a person cannot access it?’.⁶¹ This approach aligns with the growing focus on market-based vulnerability.

The UK Citizens Advice organisation takes this approach, aiming for essential services to be inclusive, treat people fairly, take account of personal circumstances, and avoid putting customers in vulnerable situations.⁶² Similarly, the Centre for Consumers and Essential Services argues that inclusive services should be the ultimate aim of regulators and business:

It provides a framework for ensuring that services and products are designed and provided in ways that meet the wide range and diversity of consumers’ needs, including consumers in vulnerable circumstances. It conveys a message that all parts of the companies and regulators involved in these sectors have a role in providing inclusive service. Inclusive service should become the norm and therefore part of everyday business. If we are serious about tackling consumer vulnerability in these essential services, this is where we need to be.⁶³

The concept of customer inclusion is also appearing in regulatory strategies. For example, Ofwat’s vulnerability work focuses on whether a customer:

due to personal characteristics, their overall life situation or due to broader market and economic factors, is not having reasonable opportunity to access and receive an *inclusive* service which may have a detrimental impact on their health, wellbeing or finances (our emphasis).⁶⁴

The FCA’s 2018 customer strategy contains four high-level visions for a well-functioning market that works for consumers, one of which is inclusion. This is defined as where the financial needs of all consumers, including vulnerable consumers, are taken into account when accessing financial products. According to the FCA, in markets where consumers are fairly included:

- fair treatment and fair risk pricing mean consumers are not unduly excluded
- all consumers can access basic financial services
- the needs of all consumers, including vulnerable consumers, are taken into account.⁶⁵

The new Australian Banking Code of Practice also focuses on inclusion, aiming to provide banking services that are inclusive of all people including older customers, people with disability and Aboriginal people, including in remote locations. The Code also commits to training staff to ‘treat our diverse and vulnerable customers with sensitivity, respect and compassion’.⁶⁶

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

61. George, M., Graham, C. and Lennard, L. (2016) Consumer Vulnerability – Mainstream, not Marginal, Centre for Consumers and Essential Services, University of Leicester, 9.

62. Citizens Advice Bureau (January 2015) Treating Consumers Fairly: Flexible and Inclusive Services for All.

63. George, M., Graham, C. and Lennard, L. (2016) Consumer Vulnerability – Mainstream, not Marginal, Centre for Consumers and Essential Services, University of Leicester, 2.

64. Ofwat (February 2016) Vulnerability Focus Report, 20.

65. Financial Conduct Authority (2018) FCA Mission: Approach to Consumers, 8.

66. Australian Banking Association (1 July 2019) Banking Code of Practice.

To achieve greater customer inclusion, some regulators and businesses are embracing inclusive design principles (see section 4.3.1). Inclusive design involves designing products and services to be as accessible and usable by as many people as possible, by making them work for ‘edge users’ (for example, people with impaired vision or hearing). Perhaps somewhat counterintuitively, these ‘one-size-fits-one’ solutions often benefit and are embraced by consumers well beyond the target group.⁶⁷

Inclusive design means getting the front-end right—i.e. enabling informed consumer decision-making and easy access to quality products and services that enhance, rather than compromise, wellbeing. As Citizens Advice notes, much previous work on vulnerability has centred on after-the-event responses to customer problems, particularly debt and energy disconnection, rather than looking at how vulnerability can be mitigated across the entire customer journey.⁶⁸

In this respect, inclusion can include proactively identifying customers at risk of, or experiencing, vulnerability. Given people in vulnerable circumstances can face stigma or shame in self-reporting, business practices and regulator approaches need to factor in some likelihood of limited self-disclosure, and establish additional ways of identifying and supporting people in vulnerable circumstances.

If regulators and businesses decide to aim for customer inclusion, they will necessarily consider the potential for customer exclusion, as the FCA’s work shows. For example, the British Standard for Inclusive Service Provision requires no-one to be inappropriately excluded from a service. Citizens Advice encourages businesses to consider:

- if and how their service is unavailable or difficult to access by certain potential consumers
- which consumers are benefitting from the way they are pricing goods and providing services and who is losing out.⁶⁹

This partly means re-examining customer segmentation—a feature of competitive markets—and considering how people’s exclusion from essential products and services can be avoided.

2.4 The diverse circumstances of Australian consumers

Whether a regulator focuses on consumer vulnerability, inclusion or another indicator, it will have to understand the differing needs, preferences, capabilities and personal circumstances of consumers in the sector it regulates.

Significant social changes are shaping people’s experience as consumers, including the ageing population, the prevalence of mental illness, and changes in the labour market. Outlined below are some of the main circumstances affecting people’s interaction with markets, particularly the energy market. These circumstances are grouped into four categories—health and disability, resilience, life events and capability—which are the risk factors for vulnerability used by the FCA. As the FCA notes, these categories are not exhaustive, but can help regulators and business understand the situations—both permanent and transient—that can indicate vulnerability.⁷⁰

Many of the circumstances described below are being taken into account by UK regulators and other bodies in their vulnerability strategies, including the ageing population, the growth of precarious work, prevalence and awareness of mental illness, and loneliness and isolation.⁷¹

To build a good understanding of the circumstances that can make people vulnerable as consumers, there is a need for targeted research about people’s experiences and outcomes in markets. While the circumstances described below can help map the broad contours of potential vulnerability, a regulatory strategy requires a more precise understanding of who is at risk in a particular market.

67. Centre for Inclusive Design (May 2019) *The Benefits of Designing for Everyone*; Waller, S. et al (2015) ‘Making the Case for Inclusive Design’ Vol. 46 *Applied Ergonomics* 297.

68. Citizens Advice Bureau (January 2015) *Treating Consumers Fairly: Flexible and Inclusive Services for All*, 3.

69. Citizens Advice Bureau (January 2015) *Treating Consumers Fairly: Flexible and Inclusive Services for All*, 22.

70. See Financial Conduct Authority (2018) *FCA Mission: Approach to Consumers*, 25.

71. See Ofgem (13 June 2019) *Draft Consumer Vulnerability Strategy 2025*; Competition and Markets Authority (February 2019) *Consumer Vulnerability: Challenges and Potential Solutions*; Commission for Customers in Vulnerable Circumstances (2019) *The Commission for Customers in Vulnerable Circumstances Final Report*.

Table 2: Circumstances of Australian consumers affecting use of the energy market

Australian consumers' circumstances	How does this affect use of the energy market?
Health and disability	
<p>Twenty per cent of Australians have a disability. Disability is a feature of our lives. At birth, we can expect to live, on average, over one-fifth of our lives with some level of disability.⁷²</p> <p>Just over half (55 per cent) of all Australians have at least one long-term vision disorder, and 14 per cent have at least one long-term hearing disorder.⁷⁴</p>	<p>Depending on the nature of the disability, people with disability and people in caring roles may find it difficult to:</p> <ul style="list-style-type: none"> • search for and assess energy deals (e.g. if the disability affects cognitive capacity, or if carers have less time and headspace to engage with markets) • communicate with energy retailers • keep energy use to an affordable level (e.g. because of a need to charge wheelchairs and communication devices, or because of additional cooling or heating needs) • pay bills on low incomes—people with disability are more likely to be in poverty and unemployed than people without disability, and can face high disability-related living costs.⁷³
<p>Mental illness is common, with just under half of the community (45 per cent) experiencing a common mental disorder in their lifetimes. Women experienced a higher prevalence of mental disorders in the preceding 12 months than men (22.3 per cent compared with 17.6 per cent).⁷⁵</p> <p>In 2019, 20 per cent of callers raising an energy issue with the National Debt Helpline were also experiencing mental health problems.⁷⁶</p>	<p>Mental health problems can affect our ability to manage energy and other essential services, including where people have:</p> <ul style="list-style-type: none"> • reduced attention span, making it more difficult to understand bills or complete long forms • unreliable memory, making it harder to remember passwords, what was agreed in phone calls or when bills are due • increased impulsivity, making it difficult to control frustration resulting from fear or confusion • reduced planning and problem-solving abilities, making it harder to find solutions with energy retailers • a lack of motivation, including to check for better deals or ensure a bill is correct, which can be compounded by a confusing market • social anxiety and communication phobias, meaning mail can go unopened or people will struggle to ask for help.⁷⁷
<p>Half of all Australians have at least 1 of 8 chronic diseases, such as asthma, cardiovascular disease and cancer.⁷⁸</p>	<p>People with chronic health conditions are more likely to face energy hardship than other people. Health conditions such as asthma and cardiovascular disease can require extra heating or cooling, and more time spent at home.</p>

72. Australian Institute of Health and Welfare (19 October 2017) Australia's Welfare 2017: In Brief; Australian Institute of Health and Welfare (2017) Life Expectancy and Disability in Australia: Expected Years Living with and without Disability, cat. no. DIS 66.

73. Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions, 14-16; Victorian Council of Social Service (2018) Empowered Lives: Securing Change for Victorians with Disability, 50, 53-54; Public Interest Advocacy Centre (2012) More Power to You: Electricity and People with Physical Disability.

74. Australian Institute of Health and Welfare (2016) Australia's Health 2016: Vision and Hearing Disorders, cat. no. AUS 199.

75. Australian Institute of Health and Welfare (2019) Mental Health Services: In Brief 2019, cat. no. HSE 228, 1.

76. Consumer Action Law Centre (July 2019) Energy Assistance Report: Tracking How Victoria's Changing Energy Policies are Impacting Households in the State, 33.

77. Holkar, M., Evans, K. and Langston, K. (2018) Access Essentials: Giving People with Mental Health Problems Equal Access to Vital Services, Money and Mental Health Policy Institute, 8.

78. Australian Institute of Health and Welfare (March 2019) Chronic disease (<https://www.aihw.gov.au/reports-data/health-conditions-disability-deaths/chronic-disease/overview>).

Australian consumers' circumstances	How does this affect use of the energy market?
Health and disability	
Just over 10 per cent of Australians live in housing that is likely to reduce their physical and mental wellbeing. Those most affected include public housing residents, young people and people with disability. ⁸⁰	Housing that is hard to heat or cool, damp or mouldy increases physiological stress on older people and young children and can cause respiratory illness. ⁷⁹
Family violence is a major health and welfare issue: 1 in 6 women have experienced physical and/or sexual violence by a current or previous partner. One woman is killed every nine days by a partner. Financial abuse often occurs alongside other abuse and can continue post-separation. ⁸¹	Family violence victim-survivors may need additional support from service providers, including where they: <ul style="list-style-type: none"> • have experienced economic abuse, e.g. do not have access to money, have had debts accumulated in their name, or have been left with responsibility for energy debts • have difficulty affording energy and other essential services • require additional account security to protect personal information, such as new address details.⁸²
Twenty-five per cent of Australians are lonely, meaning they feel socially isolated or experience difficulties with social interactions. Twenty-two per cent of people rarely or never feel they have someone to talk to. ⁸³	While the effect of loneliness on the use of essential services has not been examined to date, loneliness is associated with factors that could make interacting with markets more difficult, including: <ul style="list-style-type: none"> • higher levels of anxiety around personal interactions • greater difficulty with household and self-care tasks • more likelihood of feeling a burden, worthless and less confident • lower energy levels and feeling less able to cope with problems • not working or working less regularly • greater tendency to suppress emotions, and less likely to think differently about a difficult situation.⁸⁴

79. Victorian Council of Social Service (November 2018) *Battling On: Persistent Energy Hardship*, 22-23.80. Baker, E. et al (2019) 'An Australian Geography of Unhealthy Housing' Vol. 57(1) *Geographical Research* 40.81. Australian Institute of Health and Welfare (2019) *Family, Domestic and Sexual Violence in Australia: Continuing the National Story*, cat. no. FDV 3; Fernando, N. (1 November 2018) *When's the Right Time to Talk About Money? Financial 'Teachable Moments' for Women Affected by Family Violence*, WIRE Women's Information.82. Essential Services Commission (22 May 2019) *Energy Retail Code Changes to Support Family Violence Provisions for Retailers: Final Decision*; Fernando, N. (1 November 2018) *When's the Right Time to Talk About Money? Financial 'Teachable Moments' for Women Affected by Family Violence*, WIRE Women's Information.83. Australian Psychological Society and Swinburne University of Technology (2018) *Australian Loneliness Report: A Survey Exploring the Loneliness Levels of Australians and the Impact on their Health and Wellbeing*.84. *Ibid.*

Australian consumers' circumstances	How does this affect use of the energy market?
Resilience	
<p>Eleven per cent of Australians experience high or severe financial stress and vulnerability, while 55 per cent experience low financial stress and vulnerability. A minority (34 per cent) enjoy financial security.⁸⁵ Thirty per cent of people have savings of less than one month's income or none at all, placing them only a few pays away from financial difficulty.⁸⁶</p>	<p>People experiencing financial stress are less able to handle unexpected expenses and financial shocks, and are more likely to be affected by changes to the cost of living, including increased energy costs.⁸⁷</p>
<p>Median annual household income is lower than most people think, at \$46,748 after tax (after adjusting for household size).⁸⁸</p>	<p>People tend to perceive themselves as having middle incomes regardless of their actual income percentile, meaning poorer people overestimate their position and richer people underestimate their position.⁸⁹ This may influence essential services providers' views of people's capacity to pay.</p>
<p>People on the lowest incomes (the bottom 20 per cent income group) mostly rely on social security for their income. People in the second 20 per cent income group mostly rely on earnings for their income (62 per cent).⁹⁰</p> <p>One in four households receiving income support live below the poverty line. People on the Newstart Allowance and Youth Allowance experience the highest rates of poverty.⁹¹ One survey found 66 per cent of Newstart and Youth Allowance recipients cannot afford to use heating in winter, and 64 per cent cannot afford cooling in summer.⁹²</p>	<p>People relying on social security are particularly at risk of financial hardship and falling behind with debt such as utility bills. Social security recipients are more likely to experience longstanding debt problems of five years or more.⁹³</p> <p>People on low incomes can be more aware of their finances and manage bills better than higher income earners, but may face barriers to market engagement and pay a poverty premium because of:</p> <ul style="list-style-type: none"> • constrained finances, leaving people less likely to take risks because there are fewer or no savings to meet an unexpected cost • preoccupations with pressing financial stresses about housing, food etc., leaving less cognitive bandwidth to guide choice and action • a need to defer expenses even if this means paying more over the long term (e.g. high-interest purchase schemes) • a higher risk of indebtedness, which can reduce access to cheaper deals • less access to enabling services like internet or digital devices • the correlation of low income with other vulnerabilities such as poor mental health and disability.⁹⁴

85. Centre for Social Impact and NAB (December 2018) Financial Security and the Influence of Economic Resources: Financial Resilience in Australia 2018, 20.

86. Ibid 20.

87. Ibid 15-16.

88. Australian Bureau of Statistics, Household Income and Wealth, Australia, 2017-18, cat. no 6523.0.

89. Hoy, C. and Toth, R. (April 2019) 'A False Divide? Correcting Beliefs About Inequality Aligns Preferences for Redistribution Between Right and Left-wing Voters' Society for the Study of Economic Inequality Working Paper Series.

90. Australian Council of Social Service and UNSW Sydney (2018) Inequality in Australia 2018, 33.

91. Australian Council of Social Service and UNSW Sydney (2018) Poverty in Australia 2018, 15.

92. Australian Council of Social Service (2019) 'I regularly don't eat at all': Trying to get by on Newstart (<https://www.acoss.org.au/wp-content/uploads/2019/07/190729-Survey-of-people-on-Newstart-and-Youth-Allowance.pdf>).

93. Bourova, E., Ramsay, I. and Ali, P. (2019) 'The Experience of Financial Hardship in Australia: Causes, Impacts and Coping Strategies' Vol. 42 Journal of Consumer Policy 189, 211-217.

94. Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions, 16-18; Solomon, L. and Martin-Hobbs, B. (2018) Five Preconditions of Effective Consumer Engagement: A Conceptual Framework, Consumer Policy Research Centre, 12.

Australian consumers' circumstances	How does this affect use of the energy market?
Resilience	
<p>Over a third of people in poverty rely on a job as their main source of income.⁹⁵</p> <p>The labour market is changing:</p> <ul style="list-style-type: none"> • underemployment (i.e. working but looking for more hours) is high at 8.7 per cent of the labour force • secondary jobs have grown, particularly among women and young people • job precariousness has increased, particularly among men.⁹⁶ 	<p>People who are either underemployed or unemployed are some of the most vulnerable groups in Australia in terms of financial resilience. A job does not ensure financial security and the ability to pay bills on time or in full.⁹⁷</p>
<p>Just under one third of Australians rent. More people are renting, for longer, and at multiple stages of their lives, including as they have children and age.⁹⁸</p> <p>More than half (54 per cent) of low-income renters face rental stress, which is increasingly likely to last for several years.⁹⁹</p>	<p>Renters are at greater risk of persistent energy hardship than homeowners. Renters are more likely to live in homes with poor energy efficiency, and have less capacity than homeowners to make their homes more energy efficient.¹⁰⁰</p>
<p>Australians are carrying an unprecedented level of household debt, at around 190 per cent of household income.¹⁰¹</p>	<p>People with high debt levels are more vulnerable to financial shocks and have less capacity to manage unexpected expenses if savings and/or incomes are low. One in five people feel over-indebted or just managing to keep up their repayments.¹⁰²</p>
<p>More people are approaching retirement with housing debt: 47 per cent of people aged 55 to 64 have mortgage debt (an increase from 14 per cent in 1990).¹⁰³</p>	<p>Outright homeowners can achieve a much higher standard of living than most renters and mortgage-holders because their housing costs are lower.¹⁰⁴</p>
<p>Older, single women are more at risk of financial hardship than any other group. They have less superannuation and are more likely to live in poverty than older men. Homelessness has increased among older women, as has private renting. As a result of accumulated gender inequality and discrimination throughout the life course, 'Australia is facing a tsunami of poverty amongst ageing female baby boomers'.¹⁰⁵</p>	<p>Older, single women on low incomes, particularly those who rent, are financially vulnerable and may have little money for energy costs. The Newstart Allowance, Age Pension and Commonwealth Rent Assistance payment are often inadequate to cover rent and post-housing living costs.¹⁰⁶</p>

95. Australian Council of Social Service and UNSW Sydney (2018) Poverty in Australia 2018, 15.

96. Bankwest Curtin Economics Centre (April 2018) Future of Work in Australia: Preparing for Tomorrow's World, Focus on the States Series, No. 6/18; Australian Bureau of Statistics (October 2019) Labour Force, Australia, September 2019, cat. no. 6202.0; Australian Bureau of Statistics (12 March 2019) Labour Account Australia, Quarterly Experimental Estimates, December 2018, cat. no. 6150.0.55.003.

97. Centre for Social Impact and NAB (December 2018) Financial Security and the Influence of Economic Resources: Financial Resilience in Australia 2018, 17.

98. Martin, C., Hulse, K. and Pawson, H. (January 2018) The Changing Institutions of Private Rental Housing: An International Review, Australian Housing and Urban Research Institute.

99. Pawson, H. 'Growing Numbers of Renters are Trapped for Years in Homes They Can't Afford' (21 October 2019) The Conversation (<https://theconversation.com/growing-numbers-of-renters-are-trapped-for-years-in-homes-they-cant-afford-125216>).

100. Victorian Council of Social Service (November 2018) Battling On: Persistent Energy Hardship, 20-21.

101. Reserve Bank of Australia (October 2019) The Australian Economy and Financial Markets: Chart Pack, 7.

102. Centre for Social Impact and NAB (December 2018) Financial Security and the Influence of Economic Resources: Financial Resilience in Australia 2018, 7.

103. Ong, R. and Wood, G. (12 June 2019) 'More People are Retiring with High Mortgage Debts: The Implications are Huge' The Conversation (<https://theconversation.com/more-people-are-retiring-with-high-mortgage-debts-the-implications-are-huge-115134>).

104. Australian Council of Social Service and UNSW Sydney (2018) Poverty in Australia 2018, 19.

105. National Older Women's Housing and Homelessness Working Group (August 2018) Retiring into Poverty: A National Plan for Change – Increasing Housing Security for Older Women; Russell, R. et al (November 2018) Financial Wellbeing: Older Australians, RMIT University and ANZ, 16.

106. Councils of Social Service (2015) Payment Adequacy: A View from those Relying on Social Security Payments; Council on the Ageing (29 April 2019) 'Anglicare's Rental Snapshot Paints Stark Picture of Housing Affordability for Pensioners'.

Australian consumers' circumstances	How does this affect use of the energy market?
Resilience	
<p>Aboriginal and Torres Strait Islander people can experience higher levels of energy bill stress and barriers to accessing assistance. One study of Aboriginal households in Victoria found 86 per cent were renters, mainly living in housing more than 20 years old with low insulation levels. 13 per cent of households had no fixed heating.¹⁰⁷</p>	<p>Aboriginal people can be at greater risk of payment difficulty, higher debts and disconnection.¹⁰⁸ Energy inefficient rental homes drive up bills, contributing to payment difficulty.¹⁰⁹</p>
Life events	
<p>Over a third of couple families have children living at home. Sole-parent families have increased, from 6.5 per cent of families in 1976 to 10.2 per cent in 2016.</p> <p>Households with extended family members such as parents and grandparents are also a feature of Australian society, at 8.3 per cent of households. Extended households are more common among Aboriginal and some migrant households.¹¹⁰</p>	<p>Households with children (particularly sole-parent households) are at greater risk of energy hardship than those without children. Larger households with dependent children tend to have more difficulty paying energy bills than smaller households. Caring for children requires more energy for cooking, bathing, washing and drying, heating, cooling and education. Households with children often have inflexible energy needs that cluster in peak price periods.¹¹¹</p>
<p>Australia's population is ageing. In 2017 people aged 65 and over comprised 15 per cent of the population, up from 9 per cent in 1977. The number and proportion of older Australians is expected to grow over the century.¹¹²</p>	<p>Particularly when combined with low incomes, older people can face a greater risk of energy hardship and barriers to market engagement because of:</p> <ul style="list-style-type: none"> • multiple health conditions that make communication and understanding information more difficult, including sensory impairment, disability and cognitive impairment • digital exclusion and limited digital capability • extra energy requirements, including health-related heating, cooling and lighting needs, and due to more time spent in the home • a susceptibility to hidden energy hardship, i.e. energy under-consumption rather than bill payment difficulty.¹¹³

107. Consumer Utilities Advocacy Centre (December 2011) Wein, Paen, Ya Ang Gim: Victorian Aboriginal Experiences of Energy and Water; Bedggood, R. et al (2017) 'The Living Conditions of Aboriginal People in Victoria' Vol. 121 Energy Procedia 278.

108. Consumer Utilities Advocacy Centre (December 2011) Wein, Paen, Ya Ang Gim: Victorian Aboriginal Experiences of Energy and Water.

109. Bedggood, R. et al (2017) 'The Living Conditions of Aboriginal People in Victoria' Vol. 121 Energy Procedia 278.

110. Australian Institute of Family Studies, 'Population and Households' (<https://aifs.gov.au/facts-and-figures/population-and-households>).

111. Victorian Council of Social Service (November 2018) Battling On: Persistent Energy Hardship, 18-20.

112. Australian Institute of Health and Welfare (September 2018) Older Australia at a Glance, cat. no. AGE 87.

113. Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions, 12-14; Victorian Council of Social Service (November 2018) Battling On: Persistent Energy Hardship, 26.

Australian consumers' circumstances	How does this affect use of the energy market?
Life events	
<p>Bereavement can occur at younger and older ages, and is particularly experienced by women. Some 10 to 20 per cent of bereaved people experience persistent psychiatric difficulties.¹¹⁴</p>	<p>Bereavement has a major effect on people's emotional, physical, social, cognitive and financial wellbeing. Bereaved people may need to express a range of emotions such as anger, frustration and fear. A person grieving the death of a partner may:</p> <ul style="list-style-type: none"> • be left in a worse financial position and/or need breathing space while insurance, superannuation, government payments and bank accounts are accessed • need time to get on top of household finances if they did not previously manage the finances, including identifying debts and assets • have to contact energy retailers and other service providers about accounts held in the deceased partner's name.¹¹⁵
Capability	
<p>Australia is very culturally diverse. Nearly half of the population was either born overseas or has at least one parent who was born overseas. One fifth of Australians speak a language other than English at home. English is not the first language for 15 per cent of people.¹¹⁶</p>	<p>The complexity of the energy market is 'exponentially greater' for people with language barriers. In one study, the majority of culturally and linguistically diverse customers did not contact their retailers to negotiate a contract and their trust of energy suppliers was low. Many knew about payment assistance but few had used it. People who have recently arrived in Australia know less about and are less active in the energy market than others.¹¹⁷</p>
<p>Just under half (44 per cent) of all Australians have low literacy levels, i.e. below what is considered enough to get by in everyday life.¹¹⁸</p>	<p>Many customers will find it hard to understand communications such as websites, bills and emails unless they are designed with regard to Australian literacy levels. The Australian Government advises aiming communications at an age 9 reading level.¹¹⁹</p>

114. Aoun, S. et al (2015) 'Who Needs Bereavement Support? A Population Based Survey of Bereavement Risk and Support Need' Vol. 10(3) PLoS One e0121101.

115. Council on the Ageing (May 2018) Death of a Partner: A Practical Guide for Partners and Family (<https://www.moneysmart.gov.au/media/561071/death-of-a-partner-v3pdf.pdf>).

116. Australian Institute of Health and Welfare (2018) Australia's Health 2018: Culturally and Linguistically Diverse Populations, cat. no. AUS 221.

117. Ethnic Communities Council of New South Wales (April 2016) Experiences of Energy Consumption for Culturally and Linguistically Diverse (CALD) Communities.

118. Australian Bureau of Statistics (2013) Programme for the International Assessment of Adult Competencies, Australia, 2011-12, cat. no. 4228.0.

119. Australian Government, Digital Guides (<https://guides.service.gov.au/content-guide/writing-style/#readability>).

Australian consumers' circumstances	How does this affect use of the energy market?
Capability	
<p>Digital inclusion is improving in Australia, but some groups remain less included than others, including people on low incomes, older people, people without a job, people with disability, and those living in regional Australia.¹²⁰ People experiencing homelessness have higher rates of mobile phone ownership than other people in Australia, but most find it difficult to fund mobile phone usage and a third are often disconnected.¹²¹</p>	<p>People who are digitally excluded (i.e. those who cannot afford digital devices, internet access and/or do not have the capability to use digital services):</p> <ul style="list-style-type: none"> • cannot access online resources like comparison tools • are excluded from cheaper online-only deals • may pay extra for paper bills or Australia Post payments • cannot access energy consumption and bill management tools (e.g. apps and network customer portals) • may be less able to access information about payment difficulty support, concessions etc. • face broader financial vulnerability if they cannot engage with Centrelink and other government services online.¹²²

120. Barraket, T. et al (2018) Measuring Australia's Digital Divide: The Australian Digital Inclusion Index 2018.

121. Humphry, J. (August 2014) Homeless and Connected: Mobile Phones and the Internet in the Lives of Homeless Australians, Australian Communications Consumer Action Network and University of Sydney.

122. Sarah Wise (September 2013) Trying to Connect: Telecommunications Access and Affordability Among People Experiencing Financial Hardship, Anglicare Victoria and Australian Communications Consumer Action Network, 3; South Australian Council of Social Service and Australian Communications Consumer Action Network (November 2016) Connectivity Costs: Telecommunications Affordability for Low Income Australians, 9-11.



3. Current regulatory arrangements

When deciding how to respond to consumer vulnerability, regulators will consider which types of regulatory instruments should be used to pursue vulnerability measures and the varying degrees of enforceability offered by different instruments. Regulators will also consider whether existing regulatory arrangements are adequate to implement vulnerability strategies or whether new arrangements are needed.

This section outlines:

1. examples of major **regulatory instruments** relating to consumer vulnerability in Australia
2. the current **regulatory arrangements in the energy sector** (principally the National Electricity Market) in relation to consumer vulnerability
3. the **institutions and actors** through which vulnerability measures can be advanced.

3.1 Regulatory instruments

In Australia to date, vulnerability strategies have been pursued through three main mechanisms: legislative and statutory instruments; industry codes of practice; and regulatory guidance. A non-exhaustive list of examples is set out below.

Figure 1: Examples of Australian regulatory instruments relating to consumer vulnerability



Legislative and statutory instruments

- *Competition and Consumer Act 2010* (Cth) including the Australian Consumer Law
- National Energy Customer Framework (NECF):
 - National Energy Retail Law
 - National Energy Retail Rules
 - AER guidelines, e.g. *Customer Hardship Policy Guideline*, *Life Support Registration Guideline*
- Electricity Retail Code
- Victorian Energy Retail Code
- *Disability Discrimination Act 1992* (Cth)
- *National Consumer Credit Protection Act 2009* (Cth) (NCCP Act)
- *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth)



Industry codes of practice

- Banking Code of Practice
- General Insurance Code of Practice (forthcoming obligations relating to vulnerable customers)
- Life Insurance Code of Practice
- Insurance in Superannuation Voluntary Code of Practice
- Telecommunications Consumer Protections Code
- Telecommunications Industry Guideline: Assisting Customers Experiencing Domestic and Family Violence



Regulatory guidance

- ACCC, “Don’t Take Advantage of Disadvantage: A Compliance Guide for Businesses Dealing with Disadvantaged or Vulnerable Customers”
- ASIC regulatory guides on consumer education, protection and debt collection
- AER compliance and enforcement policy and priorities
- ACCC compliance and enforcement policy and priorities

At the highest level there are cross-sector and sector-specific **legislative and statutory instruments** protecting all consumers from particular forms of harm. This includes prohibitions on unfair contracts, misleading or deceptive conduct and unconscionable conduct (Australian Consumer Law), irresponsible lending (NCCP Act), and discrimination on the basis of disability in the provision of goods and services (Disability Discrimination Act). Sectors such as energy and telecommunications include enforceable obligations on industry in relation to hardship policies (NECF), and minimum standards of assistance for people in payment difficulty and those affected by family violence (Victorian Energy Retail Code).¹²³

There do not appear to be any legislated definitions of vulnerability in Australia and the UK, and few express legislative obligations on regulators in respect of vulnerable customers. The Victorian Essential Services Commission has to have regard to low income and vulnerable consumers in promoting the long-term interests of Victorian consumers.¹²⁴ In relation to Great Britain, Ofgem has a statutory duty to have regard to the interests of people who are disabled, chronically sick, of pensionable age, on low incomes or living in rural areas.¹²⁵ Ofcom must have regard to the needs of people with disabilities, or who are elderly or on low incomes.¹²⁶ These regulators can consider other vulnerable groups of people as necessary.

The UK also imposes enforceable obligations on energy suppliers in respect of vulnerable customers. As part of their licences, energy suppliers must identify and respond to the needs of customers in vulnerable situations and treat all domestic customers fairly.¹²⁷

Industry codes of practice tend to be a more restrained form of regulation. In Australia, several sectors use codes of practice to set standards of customer service and care. Some of these codes contain measures to assist vulnerable customers, such as the Banking Code of Practice and most of the insurance industry codes. The Insurance Council of Australia has recommended the General Insurance Code of Practice be amended to include a new section on consumers experiencing vulnerability.¹²⁸ The enforceability of industry codes varies; often, the consequences of code non-compliance are not as severe as legislative non-compliance.

Regulatory guidance is a more informal mechanism still, and can serve as an adjunct to enforceable obligations under legislative and statutory instruments. For example, ASIC's regulatory guides provide direction to regulated entities by explaining when and how ASIC will exercise legislative powers and how they interpret the law, and provide practical guidance on how industry can meet its obligations.

The AER and the ACCC provide guidance about areas of regulatory concern through their compliance and enforcement policies and priorities. Vulnerable and disadvantaged consumers are an ongoing priority for the ACCC, and two of the five priorities for the AER in 2019-20 are ensuring customers in financial difficulty receive assistance, with a focus on the new hardship guidelines, and ensuring customers using life support equipment are protected through the new life support requirements.¹²⁹

123. The family violence assistance standards commence on 1 January 2020.

124. *Essential Services Commission Act 2001* (Vic) s 8A.

125. *Utilities Act 2000* (UK) ss 9, 13.

126. *Communications Act 2003* (UK) s 3.

127. Ofgem (October 2017) Licence Guide: Standards of Conduct.

128. Insurance Council of Australia (June 2018) Final Report: Review of the General Insurance Code of Practice, 16.

129. Australian Energy Regulator 'Compliance & Enforcement Policy & Priorities' (<https://www.aer.gov.au/about-us/compliance-enforcement-policy-priorities>); Australian Competition and Consumer Commission 'Compliance & Enforcement Policy & Priorities' (<https://www.accc.gov.au/about-us/australian-competition-consumer-commission/compliance-enforcement-policy-priorities>).

3.2 Regulatory arrangements in the energy sector

The National Energy Customer Framework (NECF) is the principal source of consumer protections in the National Electricity Market, alongside the Australian Consumer Law. The NECF applies in all jurisdictions of the National Electricity Market other than Victoria, which has its own regulatory arrangements. The NECF comprises the National Energy Retail Law and the National Energy Retail Rules.

The Retail Law and the Retail Rules contain a number of protections for vulnerable customers, principally relating to financial difficulty and hardship. Energy retailers must develop and maintain a customer hardship policy in line with the AER's enforceable *Customer Hardship Policy Guideline*, offer payment plans, and follow the principle that disconnection in cases of hardship should be a last resort. The AER's Sustainable Payment Plans Framework provides additional guidance to retailers on good practice principles and actions for affordable, sustainable payment plans; however, the Framework is not enforceable against retailers.

The NECF also includes protections for people requiring energy for life support equipment, and general measures designed to increase the transparency and comparability of energy deals for all customers, including retail pricing information guidelines, which were updated in 2018.

The Australian Energy Market Commission (AEMC) is currently undertaking a scheduled examination of whether the energy consumer protections framework is sufficient in a changing energy market, particularly as more people generate their own electricity through solar PV and sell electricity back to the grid. The AEMC is examining how to help people address problems with new energy products and services (namely home solar and batteries), and how people can be helped to participate in the supply and storage of electricity.¹³⁰ New energy services can have particular implications for vulnerable customers, such as those targeted by exploitative door-to-door sales of solar panels. It is important these customers are able to access new energy services like solar without being made more vulnerable through the use of unsuitable financial products or poor-quality energy products and services.¹³¹

The new Energy Charter is a further tool in the energy sector for guiding the behaviour of industry participants and encouraging good customer outcomes. The Charter is industry-led and has signatories from across the energy supply chain, including retailers and network businesses. The Charter comprises five principles to improve energy pricing and service delivery, one of which is supporting customers facing vulnerable circumstances. The Charter is not enforceable but signatories must publicly disclose how they are delivering against the principles, and these disclosures are reviewed and reported on by an independent accountability panel. The first disclosures were made in October 2019.¹³²

3.3 Institutions and actors

When developing a vulnerability strategy, regulators also need to consider whether to pursue the strategy independently of, or in conjunction with, other regulators and government bodies, industry and consumer organisations.

Alongside the AER, the main Australian regulators addressing consumer vulnerability are the ACCC, ASIC, the Australian Communications and Media Authority, state-based regulators such as the Victorian Essential Services Commission, fair trading/consumer affairs agencies, and ombudsmen such as the NSW and Victorian energy and water ombudsmen and the newly created Australian Financial Complaints Authority. To date, there appears to have been little cross-sector vulnerability work by Australian regulators.

130. Australian Energy Market Commission (12 September 2019) 'Consumer Protections Needed as Energy Technology Changes' (<https://www.aemc.gov.au/news-centre/media-releases/consumer-protections-needed-energy-technology-changes>).

131. Consumer Action Law Centre (April 2019) Sunny Side Up: Strengthening the Consumer Protection Regime for Solar Panels in Victoria.

132. See The Energy Charter Independent Accountability Panel (<https://theenergycharterpanel.com.au/>).

Several regulators have mechanisms for regular consumer input into regulatory activity and decision-making, including from the perspective of vulnerable consumers. For example, the AER's Consumer Challenge Panel provides advice on network pricing determinations. The panel advises on whether the network businesses' proposals are in the long-term interests of consumers, and the effectiveness of businesses' engagement with customers. The AER Customer Consultative Group provides the AER with advice about issues affecting different groups of energy consumers and comments on energy market developments affecting consumers. The needs of vulnerable consumers are a particular focus of the group's advice.¹³³

UK regulators perhaps have a more longstanding role addressing vulnerability, through agencies such as Ofgem, Ofwat, the FCA and Ofcom. The UK Regulators Network undertakes cross-sector vulnerability work, including making better use of data to identify vulnerable customers.¹³⁴

The UK also uses industry-based groups to pursue vulnerability strategies, such as the Commission for Customers in Vulnerable Circumstances formed by Energy UK, the energy industry association. The Commission is independently chaired and includes commissioners from industry, charity and consumer organisations. The Commission explores how standards of care can be improved to support customers in vulnerable circumstances, and is developing a new Vulnerability Charter to be used by industry.

Australia's Thriving Communities Partnership (TCP) is another industry-led institution for addressing vulnerability, operating across multiple sectors including utilities, financial services, telecommunications and transport. It mainly comprises industry members and is chaired by an independent secretariat. TCP provides a central platform for industry and community organisations to share information and work on joint projects to combat vulnerability.¹³⁵ Industry-led work on Financial Inclusion Action Plans also provides an opportunity for cross-sector collaboration in Australia.¹³⁶

These types of cross-sector bodies are important for addressing the intersecting vulnerability issues that arise across essential services. People in financial hardship often have multiple problems across several services, or debt problems in one area create vulnerabilities in other areas, e.g. difficulty paying for food, utilities, education or insurance, and/or a need to borrow money.¹³⁷ Cross-sector collaboration will also grow in importance as more essential services are bundled, such as energy and telecommunications.

133. Australian Energy Regulator 'Consumer Challenge Panel' (<https://www.aer.gov.au/about-us/consumer-challenge-panel>); Australian Energy Regulator 'Customer Consultative Group' (<https://www.aer.gov.au/about-us/customer-consultative-group>).

134. UK Regulators Network (1 November 2018) 'Making Better Use of Data to Identify Customers in Vulnerable Situations: A Follow-up Report'.

135. Thriving Communities Partnership (<https://thriving.org.au/>).

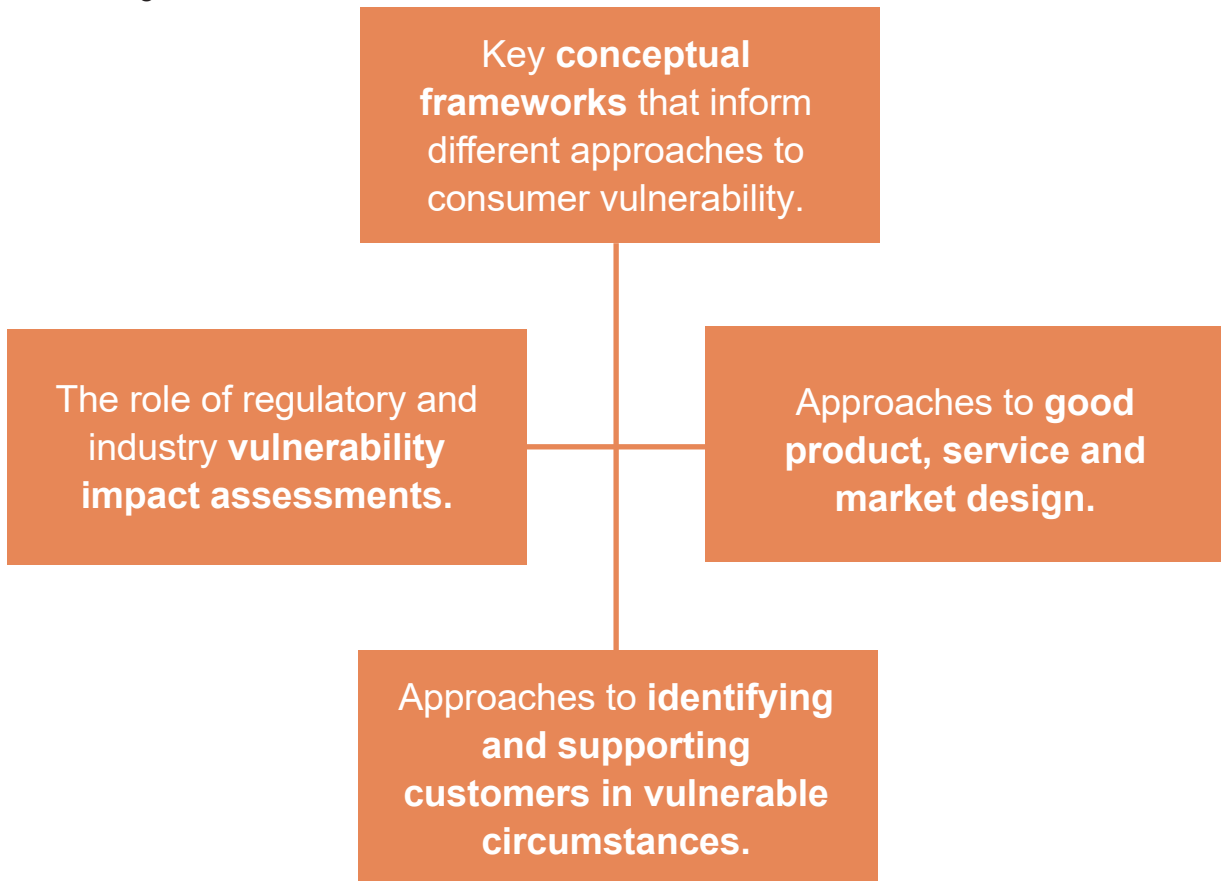
136. Centre for Social Impact 'The Financial Inclusion Action Plan' (<https://www.csi.edu.au/research/project/financial-inclusion-action-plan/>).

137. Bourova, E., Ramsay, I. and Ali, P. (2019) 'The Experience of Financial Hardship in Australia: Causes, Impacts and Coping Strategies' Vol. 42 Journal of Consumer Policy 189, 203-206.

4. Supporting vulnerable consumers

Responding to consumer vulnerability is not only about supporting customers facing debt and payment difficulty. While this type of support is vital, current approaches to consumer vulnerability are also increasingly focused on pre-emptive measures that seek to avoid people being made vulnerable in the first place through poor product, service and market design, which can make it difficult for anyone to secure good consumer outcomes and expose them to detriment.

This section outlines the main types of measures for addressing consumer vulnerability in Australia and the UK, covering four areas:



When developing a vulnerability strategy, regulators can adopt a mix of conceptual frameworks and regulatory approaches—it is not necessarily a matter of choosing one or the other. For example, ASIC’s 2018-19 vulnerable customer business plan includes projects to drive good general consumer outcomes, including in relation to responsible lending, credit limits, direct sale of life insurance and consumer credit insurance. It also includes projects aimed specifically at vulnerable consumers, such as unconscionable or unfair sales to Indigenous Australians, and initiatives for older consumers such as monitoring of retirement products and new super products, and targeted MoneySmart content for older consumers.¹³⁸

This section examines measures that might form part of a regulatory vulnerability strategy; it does not consider wider government policies for addressing vulnerability, disadvantage and inequality, including (in the energy sector) concessions and other forms of payment support, housing standards and energy efficiency programs.

138. Australian Securities and Investments Commission 'ASIC's Corporate Plan 2018-22' (<https://asic.gov.au/about-asic/what-we-do/our-role/asics-corporate-plan-2018-22/>).

4.1 Conceptual frameworks

The programs and approaches outlined below are informed by different perspectives on what behaviour should be expected of consumers in competitive markets for essential services, and how to best support customers in vulnerable circumstances while facilitating competitive processes. There is debate over whether regulators should pursue:

- consumer empowerment or consumer protection measures
- targeted measures for vulnerable customers or customer-wide measures.

A regulator will likely need to engage with these differing views in developing a vulnerability strategy, and consider whether one particular approach should be preferred over the other, or whether it can pursue a mix of approaches, i.e. a balance of empowerment and protection measures, and targeted and customer-wide measures.

4.1.1. Consumer empowerment or consumer protection

Until recently, consumer strategies have tended to focus on empowering people with information and assisting them to engage with markets, make better choices and drive competition. A market with effective competition presupposes sustained consumer engagement to discipline market participants. The active, empowered consumer is therefore the model consumer in retail energy markets.¹³⁹

However, recent Australian and UK reviews have found the energy market has played out differently in practice. A two-tier market has emerged, which benefits people who can engage and disadvantages those who cannot. In its review of the retail electricity market, the ACCC concluded:

Those customers who have been active in the market, regularly reviewing options and switching between offers, have been the beneficiaries of competition. These customers are likely to be paying less than the average cost to retailers of supplying electricity. The full extent of costs associated with attracting and retaining customers are therefore borne by inactive or loyal customers and those unable to navigate the complexities of the market. The gap between the best and worst offers in the market has been widening, effectively acting as a tax on disengaged customers, whether a customer is disengaged by choice or because of unnecessary complexity.¹⁴⁰

In the UK, the CMA's loyal penalty 'super-complaint' investigation similarly found that longstanding customers can end up paying more in markets which are subscription-based or have auto-renewal or roll-over contracts, such as mobile, broadband, cash savings, home insurance and mortgages. Some people are less able to negotiate or switch due to inertia and information and choice overload, or because the process is too time-consuming or difficult. Loyalty penalty pricing is a particular problem if the service is essential.¹⁴¹ In recognition of the premiums paid by 'inactive' customers, the UK introduced an energy default tariff price cap in 2019, which will be in place until 2023 at the latest. Ofgem is monitoring the price cap to consider the case for future protection, particularly for specific vulnerable groups.¹⁴²

Some consumer organisations question the feasibility of the 'active consumer' model and the traditional focus on customer empowerment and improved engagement. For example, the UK-based Centre for Consumers and Essential Services suggests reliance on this model has not proven to be a solution for consumers in the UK.¹⁴³

139. Ioannidou, M. (2018) 'Effective Paths for Consumer Empowerment and Protection in Retail Energy Markets' Vol. 41 Journal of Consumer Policy 135, 144.

140. Australian Competition and Consumer Commission (June 2018) Restoring Electricity Affordability and Australia's Competitive Advantage: Retail Electricity Pricing Inquiry – Final Report, xi.

141. Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions, 6.

142. Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 26.

143. Centre for Consumers and Essential Services (July 2014) Tackling Consumer Vulnerability: Regulators' Powers, Actions and Strategies, Research report for Citizens Advice, University of Leicester, 12.

The Money and Mental Health Policy Institute notes that while competition remains central to essential services delivery, it is increasingly recognised that some people are less able to navigate the market than others and that everyone should be able to get a reasonable outcome, regardless of their circumstances. This means looking beyond information remedies to encourage switching, and instead exploring safeguard mechanisms for people less able to engage.¹⁴⁴

Recent Australian energy market reforms reveal some of these differences in conceptual approach. Jurisdictions such as Victoria are taking a more interventionist and protection-led approach, via measures such as the Victorian Default Offer, while the National Electricity Market, through the Australian Energy Market Commission (AEMC), appears to rely more on empowerment measures such as improving awareness of consumer support programs, alongside better identifying people in need of payment support.¹⁴⁵

4.1.2 Targeted or customer-wide measures

There are also different perspectives on whether customers in vulnerable circumstances are best assisted by targeted measures or customer-wide measures. Targeted measures have traditionally been preferred in deregulated essential services markets, to avoid inhibiting competitive processes. For example, some commentators suggest market-wide price regulation discourages engagement and switching and therefore hinders competition, and that targeted price regulation for vulnerable customers is preferable.¹⁴⁶ On the other hand, price regulation can potentially drive competition if a regulated price provides a reference point for all customers to compare pricing and assess the value of competing deals.

A regulator's view of targeted or customer-wide measures will be informed by:

- how they consider effective competition is best achieved
- how they understand consumer vulnerability in the sector they are regulating, including its prevalence, nature, and the risk of detriment for certain groups
- at which points of business and regulatory processes they consider consumer vulnerability is best addressed, including whether good product, service and market design for all customers has a role.

More regulators in the UK are considering customer-wide vulnerability measures, such as inclusive design and customer care, in recognition of the breadth of vulnerability issues confronting people in the UK, and the perception that what is good for vulnerable customers is good for all customers, as discussed in section 4.3.1.

4.2 Vulnerability impact assessments

Before proceeding with a specific vulnerability measure, or a policy or technology affecting all customers, regulators and industry could consider its distributional impact and whether it may cause or exacerbate vulnerability.

Importantly, supporting vulnerable consumers is not only about improving business practices, but ensuring regulatory bodies do not cause harm—'regulatory policies, decisions and interventions on aspects such as markets, competition and financial matters can have profound repercussions for people in vulnerable circumstances'.¹⁴⁷

Ofgem considers the distributional impact of its proposed regulation, including the impact on different socio-economic groups, whether a regulatory option directly or indirectly causes or exacerbates consumer vulnerability, and the positive effects of a proposal empowering consumers in vulnerable situations.¹⁴⁸

144. Holkar, M., Evans, K. and Langston, K. (2018) Access Essentials: Giving People with Mental Health Problems Equal Access to Vital Services, Money and Mental Health Policy Institute, 37.

145. Australian Energy Market Commission (28 June 2019) 2019 Retail Energy Competition Review, 207-222.

146. Ioannidou, M. (2018) 'Effective Paths for Consumer Empowerment and Protection in Retail Energy Markets' Vol. 41 Journal of Consumer Policy 135, 506.

147. George, M., Graham, C. and Lennard, L. (2016) Consumer Vulnerability – Mainstream, not Marginal, Centre for Consumers and Essential Services, University of Leicester, 1.

148. Ofgem (2016) Impact Assessment Guidance, 20.

As part of its draft 2025 vulnerability strategy, Ofgem is proposing to create an analytical framework to consistently assess the impact of its policies on particular groups of consumers in vulnerable circumstances. It intends to assess at-risk groups in a more targeted way and propose tailored remedies.¹⁴⁹

Australian energy market regulators are currently grappling with a range of policy issues that may raise vulnerability risks and could benefit from vulnerability impact assessments, including cost-reflective pricing, the integration of distributed energy resources, and energy data sharing. If the distributional impact of these types of policies is not assessed, a vulnerability strategy could be inadvertently undermined by the wider work of the regulator.

4.3 Good product, service and market design

The right product, service and market design can help protect against or ameliorate the vulnerabilities experienced by customers. Poorly designed products and services can disadvantage all customers, but have more severe and far-reaching consequences for customers in vulnerable circumstances.¹⁵⁰ This section discusses:

- inclusive design
- product design and intervention powers
- best interests and clear advice obligations
- default offers and best in show measures
- market literacy schemes.

4.3.1 Inclusive design

There is an emerging focus in the UK and Australia on inclusive front-end product and service design, rather than relying almost exclusively on back-end vulnerability measures that seek to address harm after the fact, once it is more entrenched or advanced.

In its review of the UK financial services industry, the FCA found products and services were inflexibly designed for a standardised perfect customer and did not factor real-life events into the design that enabled a flexible response.¹⁵¹ The FCA asked what 'good' looks like for vulnerable customers, and realised this is actually what works for all customers, including:

- clear and easy to understand products
- a choice of means and times to communicate
- feeling that a business will treat you as an individual
- knowing there is a flexible response if your circumstances change
- being able to talk to someone who will take the time to listen, let the conversation take its natural course and spot signs of vulnerability
- being referred to someone who has authority to tailor an approach, including specialist services
- knowing the business will protect individual privacy
- making proactive contact about suspected difficulties.¹⁵²

149. Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 43.

150. George, M., Graham, C. and Lennard, L. (2016) Consumer Vulnerability – Mainstream, not Marginal, Centre for Consumers and Essential Services, University of Leicester.

151. Financial Conduct Authority (February 2015) Consumer Vulnerability – Occasional Paper No. 8, 11.

152. Ibid.

Ofwat adopts a similar starting point of good product and service design in its vulnerability focus report. One of Ofwat's three principles of good practice for customers in vulnerable circumstances is ensuring excellent care *for all customers*, in addition to using data to understand, identify and support those customers whose circumstances make them vulnerable. In its consultations, Ofwat discovered many water companies and third-party organisations had found 'assisting customers in a situation of vulnerability could frequently be addressed by working to ensure excellent outcomes for all customers'.¹⁵³ For Ofwat, inclusive customer care includes:

- flexible communication channels, payment options and access to information
- clear and transparent communication
- a tailored approach, but one that does not treat customers in vulnerable circumstances as a separate group
- training staff to watch for and recognise customers in difficulty
- empowering and incentivising staff to use their judgement in this process, including making referrals
- sensitivity of approach
- reaching out to customers in vulnerable circumstances proactively.¹⁵⁴

One way of making products and services work for all customers—including customers in vulnerable circumstances—is to use an inclusive design methodology. As described earlier in section 2.3, inclusive design involves adjusting the norm and designing products and services to meet the needs of edge users, rather than asking those at a disadvantage to find another way or do something special to access an essential service. The solution for the edge user can benefit all consumers, and may be the most pragmatic approach in any case, given the scale of potential vulnerability among consumers.¹⁵⁵

Inclusive design is appearing in regulators' vulnerability strategies. It is one of the five high-level principles adopted by the CMA to develop remedies for vulnerable consumers. Ofgem also promotes an inclusive design approach, and points to the British Standard for Inclusive Service Provision as an example of how it can be implemented. Ofgem's draft vulnerability strategy for 2025 encourages positive and inclusive innovation, warning vulnerable consumers may otherwise be excluded or unable to benefit from energy market reforms and new energy technologies such as home generation. Ofgem is attempting to encourage more social innovation; for example, by providing a £30m use-it-or-lose-it allowance for gas distribution companies to design new initiatives for customers in vulnerable circumstances.¹⁵⁶

Citizens Advice considers an inclusive essential service requires a better understanding of:

- the realities consumers face
- the multiple factors and competing demands that influence consumers' experiences and decision-making
- the consequences of being excluded from a specific product or service
- accessibility.¹⁵⁷

153. Ofwat (February 2016) Vulnerability Focus Report, 34.

154. Ibid 34-35.

155. Holkar, M. and Evans, K. (2017) Levelling the Playing Field: How Regulators can Support Consumers with Mental Health Problems, Money and Mental Health Policy Institute, 14.

156. Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions; Ofgem (2018) Vulnerable Consumers in the Energy Market: 2018, 11; Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 38.

157. Citizens Advice Bureau (January 2015) Treating Consumers Fairly: Flexible and Inclusive Services for All, 7-8.

This approach therefore requires regulators and business to have a good understanding of how people actually go about using essential services in the context of their lives. Products and services cannot be designed inclusively unless this understanding is in place. A human-centred design methodology can assist in this process. Human-centred design works with the actual people who use service systems to identify user requirements when they use these systems, identify opportunities for redesign, and shortlist potential remedies for testing. A major part of human-centred design involves understanding people's needs and observing how they use services in their everyday lives. Human-centred design is already being used in areas such as law and justice.¹⁵⁸ This type of approach is outlined in the case study below.

Case study: designing retailer guidance to support people with cognitive disabilities

The University of Melbourne and the Thriving Communities Partnership have developed a guide for retailers to improve the accessibility of their services, and to support consumer decision-making by people with cognitive disabilities. The guidelines were heavily informed by research with people with cognitive disabilities, which used a participatory, human-rights based methodology. This process created a forum for people with cognitive disabilities to identify necessary changes to processes and practices; enabled in-depth discussion and exploration of the forms of support for consumer transactions identified in an earlier pilot study; and explored what people thought was needed to make their interactions with service providers easier and better.¹⁵⁹

To date, inclusive design in essential services markets has tended to focus on multi-channel communication methods. There is now a widely held view that people need a range of options to communicate with service providers, including telephone, mail, web-based communications, text messaging and mobile apps.¹⁶⁰ Multi-channel communications help accommodate transient circumstances of vulnerability. People can need different communication methods because of changes in health, finances, relationships or other circumstances.¹⁶¹ For example, real-time written word services like text messaging can work well for people experiencing mental health issues, as discussed in the case study below.

Case study: inclusive services for people experiencing mental health problems

The Money and Mental Health Policy Institute recommends essential services offer text messaging, mobile apps and web-based interactions, which generally cause less stress for people with and without mental health problems. The challenges associated with phone calls can particularly affect people with mental health problems, but also affect a much broader group of customers, including:

- call avoidance
- anxiety increasing during lengthy call centre queues
- difficulty navigating phone menus
- difficulty articulating needs over the phone
- feeling pressured and unable to say no
- forgetting key information after a stressful call.

Communication tools designed for edge users can therefore benefit all consumers and encourage contact with essential services providers when things get difficult.¹⁶²

158. See Hagan, M. (2018) 'A Human-centred Design Approach to Access to Justice: Generating New Prototypes and Hypotheses for Intervention to Make Courts User-Friendly' Vol. 6(2) Indiana Journal of Law and Social Equity 199.

159. See Maker, Y. et al, Improving Access and Support for Consumers with Cognitive Disabilities: A Guide for Retailers, University of Melbourne and Thriving Communities Partnership.

160. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 5; Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions, 29.

161. Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions, 53.

162. Holkar, M., Evans, K. and Langston, K. (2018) Access Essentials: Giving People with Mental Health Problems Equal Access to Vital Services, Money and Mental Health Policy Institute, 19.

People with disability can also benefit from a choice of communication methods. For example, in the UK, Western Power Distribution offers a two-way texting service to all their 98,000 deaf and hearing impaired customers, allowing easy and immediate interaction between the company and customers. Even if other platforms such as websites, social media and apps are available, many vulnerable customers do not use or have access to these or simply prefer to use text messaging. Following positive feedback, Western Power Distribution is extending the service to all customers.¹⁶³

4.3.2 Product design and intervention powers

A more interventionist approach to product and service design involves imposing design and marketing obligations on industry participants, and giving a regulator the power to remove products from a market where there is a risk of consumer harm.

These tools are now available to ASIC. The design and distribution obligations will require financial services providers to identify, in advance, the consumers for whom their products are appropriate, and to direct distribution to that target market. According to Treasury, ‘the effect of these obligations is that if an issuer designs a product that does not meet the likely objectives, financial situation and needs of any customers—or only does so for such a narrow target market, so as to be commercially unviable—the issuer is effectively precluded from offering that product’.¹⁶⁴

The product intervention power allows ASIC to ban or amend harmful financial products where there is a risk of significant consumer detriment. ASIC will be able to take into account the nature and extent of the detriment, the actual or potential financial loss to consumers resulting from the product, and the impact of the detriment on consumers. In its first use of the power, ASIC has banned a particular model of short-term credit that charges borrowers excessive collateral fees for administration of the loan. In some cases, ASIC found these fees can add up to almost 1000 per cent of the loan amount. This credit is being provided at high cost to vulnerable customers, including those on low incomes or in financial difficulty.¹⁶⁵

Design and distribution and product intervention powers are a ‘fundamental shift away from relying predominantly on disclosure to drive good consumer outcomes’,¹⁶⁶ placing greater onus on businesses—rather than consumers—to ensure products and services meet consumer needs.

4.3.3 Best interests and clear advice obligations

Best interests and clear advice obligations are another emerging measure that places the onus on business to better meet consumer needs from the outset and avoid creating, or exacerbating, vulnerability.

Victorian energy retailers are now required to provide clear advice to people when they enquire about energy deals, particularly the estimated cost impact of terms and conditions, and any other offers that the retailer considers might be better suited to the customer, based on their consumption and payment history or other factors. Energy retailers must also regularly notify customers of their best offer (based on a person’s consumption history), and are obliged to provide best offer information if a customer requests this.¹⁶⁷

Financial services are also being reformed to ensure customers receive products and services that are in their interests.

163. Sustainability First (2018) *Energy for All—Innovate for All*, Project Inspire Summary Report.

164. Commonwealth of Australia (2019) *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry – Final Report*, vol 1, 293; *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* (Cth); Australian Securities and Investments Commission (4 April 2019) ‘ASIC welcomes approval of new laws to protect financial services consumers’.

165. Australian Securities and Investments Commission (July 2019) *Using the Product Intervention Power: Short Term Credit*, Consultation Paper 316; Australian Securities and Investments Commission (12 September 2019) ‘ASIC makes product intervention order banning short term lending model to protect consumers from predatory lending’.

166. Australian Securities and Investments Commission (4 April 2019) ‘ASIC welcomes approval of new laws to protect financial services consumers’.

167. Essential Services Commission (30 October 2018) *Building Trust through New Customer Entitlements in the Retail Energy Market: Final Decision*.

In its four high-level observations on Australia's financial services markets, the Financial Services Royal Commission emphasised the breakdown of existing best interests obligations across several industries, including banking, superannuation and financial advice:

The evidence given to the Commission showed how those who were acting for a client too often resolved conflicts between duty to the client, and the interests of the entity, adviser or intermediary, in favour of the interests of the entity, adviser or intermediary against the interests of the client. Those persons and entities obliged to pursue the best interests of clients or members too often sought to strike some compromise between the interests of clients or members and their own interests or the interests of a related third party (such as the person's employer, or the entity's owner). A 'good enough' outcome was pursued instead of the best interests of the relevant clients or members.¹⁶⁸

Consumers were found to be particularly at risk when relying on intermediaries, who are in many cases paid by, or may act in the interests of, the product or service provider. In the case of mortgage brokers, the Royal Commission recommended brokers be required to act in the best interests of a prospective borrower.¹⁶⁹

Best interests obligations may become more pressing in the light of increasing evidence on the inadequacy of disclosure and information-based measures, which place the onus on consumers to assess strategically complex products and services and make the best decisions for them. Recent research by ASIC and the Dutch Authority for Financial Markets found disclosure is insufficient to drive good consumer outcomes, can place an unrealistic and onerous burden on consumers, and can backfire in unexpected ways (for example, by increasing rather than decreasing trust in advisers who declare conflicts of interest).¹⁷⁰ The FCA also found the mere provision of customer information can be of limited use, and that service providers should more proactively meet customers' needs and interests. Some people in vulnerable circumstances cannot adequately process written information, are overwhelmed by the quantity of material they receive, find it difficult to prioritise, and develop a short-term outlook when making decisions.¹⁷¹

Associated with the shift to best interests and clear advice obligations are bans on unsolicited sales, which create risks of consumers buying products they do not want, cannot afford, or that do not meet their needs. The Victorian Government has committed to banning door-to-door and telemarketing energy sales, while ASIC is proposing to ban unsolicited telephone sales of life insurance and consumer credit insurance. In addition, the new Banking Code of Practice stipulates that banks will not make unsolicited offers to increase credit limits on existing credit cards.¹⁷² The ACCC has taken action against unlawful door-to-door sales in recent years, including conduct involving the deliberate deception and exploitation of vulnerable consumers.¹⁷³

4.3.4 Default offers and best in show measures

Regulators and other bodies are also moving towards default offers and 'best in show' measures in recognition of the limits of consumer engagement and understanding, the complexity of energy and financial services markets, and the need to contain egregious or unfair pricing that can otherwise go unchecked. These measures involve varying degrees of market intervention, and there is debate about which approaches are most effective to support customers in vulnerable circumstances, while maintaining and promoting competition.

168. Commonwealth of Australia (2019) Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry – Final Report, vol 1, 3.

169. *Ibid* 2, 73.

170. Australian Securities and Investments Commission (October 2019) Disclosure: Why it Shouldn't Be the Default: A Joint Report from the Australian Securities and Investments Commission and the Dutch Authority for Financial Markets.

171. Financial Conduct Authority (February 2015) Consumer Vulnerability – Occasional Paper No. 8, 77.

172. Victorian Labor (20 November 2018) 'Time is up for energy retailers ripping off Victorians'; Australian Securities and Investments Commission (18 July 2019) 'ASIC proposes to ban unsolicited telephone sales of life insurance and consumer credit insurance'; Australian Banking Association (1 July 2019) Banking Code of Practice, 40.

173. Australian Competition and Consumer Commission (30 March 2015) 'Origin to pay \$2 million for unlawful door-to-door sales tactics'.

Australian and UK energy regulators have adopted various forms of default offers that are intended to act as price constraints and comparators, and as safety nets for people who cannot engage with the market; namely, the Default Market Offer in the National Electricity Market, the Victorian Default Offer, and the UK price caps for customers on standard variable tariffs or default tariffs, and those using prepayment meters.¹⁷⁴

The Commission for Customers in Vulnerable Circumstances recommends Ofgem consider whether price protection should be provided to vulnerable customers once the default tariff price cap ends in 2023, and whether a social tariff should complement or replace the Warm Home Discount. Ofgem is considering the case for future price protection, particularly for vulnerable groups. The CMA endorses price caps where they are ‘an effective and proportionate remedy to address harm, for example to a particular subset of consumers’.¹⁷⁵

Best in show measures provide a somewhat different form of protection, by taking on searching and comparison tasks that traditionally fall to consumers. For example, in the superannuation sector, the Productivity Commission has recommended Australia adopt a ‘best in show’ mechanism that identifies good value superannuation funds. The best in show funds would be decided by independent experts based on criteria such as performance and fees. According to the Grattan Institute, this type of mechanism helps promote competition, while better protecting the many consumers who struggle to decipher complex superannuation information: ‘Best in show would improve returns as funds compete to make the shortlist and stay there. Market discipline would come from experts with the time, resources and expertise to decide which funds to shortlist, rather than individuals that don’t’.¹⁷⁶

4.3.5 Market literacy schemes

Market literacy schemes offer another way for vulnerable customers to access the products and services they need, especially following reforms to energy and other markets that create new customer protections; for example, the Victorian energy best offer entitlement outlined above.

In its 2019 retail competition review, the AEMC recommended retailers collaborate with governments and community organisations to promote consumer awareness of the support available, including concessions, rebates and payment difficulty measures.¹⁷⁷ The ACCC similarly recommended in its retail electricity market inquiry that governments fund grant schemes for community and consumer organisations to deliver support to vulnerable customers to improve energy literacy, modelled on the Switched On Communities program run by the Queensland Council of Social Service. The ACCC envisages this would ‘assist vulnerable consumers to participate in the retail electricity market and choose an offer that suits their circumstances’.¹⁷⁸

Market literacy measures rely more on consumer engagement than the strategies outlined above. While they can play an important role informing people about concessions and payment assistance, comparison tools, and predatory practices (e.g. in financial services markets), there is a risk literacy initiatives can place too much burden on the individual, and fail to protect vulnerable consumers if a regulatory system otherwise allows exploitative practices or inadequately enforces existing regulation.¹⁷⁹ Market literacy initiatives also have the potential to over-burden financial counsellors and community workers, especially if workers are not properly supported to understand and translate complex markets. However, as shown in the case study below, regulatory intervention can be enhanced by ensuring that consumers are aware of and supported to access new measures. Regulators should therefore consider how market literacy schemes can best complement other measures in a vulnerability strategy.

174. Australian Energy Regulator (April 2019) Final Determination: Default Market Offer Prices 2019-20; Australian Competition and Consumer Commission (June 2018) Restoring Electricity Affordability and Australia's Competitive Advantage: Retail Electricity Pricing Inquiry – Final Report, 247-252; Essential Services Commission (3 May 2019) Victorian Default Offer to apply from 1 July 2019: Advice to Victorian Government.

175. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 65; Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 26; Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions, 35.

176. Daley, J. and Coates, B. (11 June 2019) ‘Three retirement income priorities for the returned Morrison Government’ (<https://grattan.edu.au/news/three-retirement-income-priorities-for-the-returned-morrison-government/>).

177. Australian Energy Market Commission (28 June 2019) 2019 Retail Energy Competition Review, 219-220; Australian Energy Market Commission (28 June 2019) ‘Greater support needed for vulnerable energy consumers’.

178. Australian Competition and Consumer Commission (June 2018) Restoring Electricity Affordability and Australia's Competitive Advantage: Retail Electricity Pricing Inquiry – Final Report, xxiii.

179. Blue, L. (5 July 2018) ‘Royal commission scandals are the result of poor financial regulation, not literacy’ The Conversation (<https://theconversation.com/royal-commission-scandals-are-the-result-of-poor-financial-regulation-not-literacy-99441>).

Case study: EnergyInfoHub Project and the Energy Affordability Training Partnership

The Victorian Department of Environment, Land, Water and Planning has funded a new EnergyInfoHub Project and Energy Affordability Training Partnership, in conjunction with CPRC. These initiatives will communicate Victoria's recent energy reforms to vulnerable consumers, to help them better understand and engage with the energy market and reduce the cost of their energy bills.

CPRC, in partnership with Community Information and Support Victoria (CISVic), is training 600 emergency relief workers across the CISVic consortia. Emergency relief workers are an essential point of contact for households experiencing financial crisis but often lack the expertise to support clients facing difficulties with their energy bills. The Energy Affordability Training Partnership will deliver a tailored training package to enable emergency relief workers to support vulnerable clients to better understand and reduce their energy costs.

Launched on 1 August 2019, the new EnergyInfoHub website is available to all community workers to access independent, expert information on energy. The EnergyInfoHub resource library will contain materials to support community workers and their clients to access energy concessions, secure better energy offers, save energy and understand the range of new consumer entitlements provided by the payment difficulty framework.¹⁸⁰

4.4 Identifying and supporting customers in vulnerable circumstances

Alongside good product, service and market design for all customers, Australian and UK approaches to vulnerability include specific measures to identify and support customers in vulnerable circumstances.

These measures tend to focus on payment difficulty and debt management. In Australia, the AER has introduced a revised *Customer Hardship Policy Guideline*, which was published on 29 March 2019.¹⁸¹ Retailers were required to implement their updated hardship policies by 2 October 2019 at the latest. The AER is closely monitoring energy retailers' conduct to ensure the strengthened protections are implemented by retailers. Enforcement of the new hardship guidelines is one of the AER's five compliance and enforcement priorities for 2019-20.

The Victorian Essential Services Commission recently concluded a long review of energy retailers' payment difficulty support. Under the new payment difficulty framework, which commenced on 1 January 2019, disconnection is a measure of last resort and people are able to nominate payment plans that are affordable for them and suit their circumstances.¹⁸² The framework provides two types of assistance:

- 'standard assistance' available to all residential customers – entitling people to options that help them avoid getting into debt, including the ability to pay smaller amounts more often, changing how often bills are paid, delaying bill payment (once per year) and paying in advance¹⁸³
- 'tailored assistance' available to residential customers who have an unpaid bill of \$55 or more – entitling people to a payment plan of up to two years (or longer, at the discretion of energy retailers), information on lowering energy use, and advice on government concessions and other assistance. People who cannot afford their ongoing energy use are also entitled to additional help, including a pause on debt payments for six months, the ability to pay less than the full cost of energy use, practical help to reduce energy bills (for example, use of energy efficient appliances), and access to a more affordable energy deal.

180. <https://energyinfohub.org.au/>.

181. Australian Energy Regulator (March 2019) AER Customer Hardship Policy Guideline Version 1.

182. See Essential Services Commission (1 July 2019) Energy Retail Code, Version 13, Part 3.

183. Retailers must make at least three of these options available.

To receive assistance, people do not have to prove that they are in financial hardship. When providing assistance and before deciding to disconnect a customer, retailers must consider the individual circumstances of the customer, such as what they can realistically and affordably repay towards their energy debts, and circumstances that can make it difficult to make payments on time or in full, such as family violence and major health problems.

While the new payment difficulty framework has only been operating since 1 January 2019, early findings by the Consumer Action Law Centre show no disconnections among National Debt Helpline callers since the new requirements started, compared to one every two days on average in the previous sample (based on samples of calls from two days of each month from July 2017 to May 2019). At this stage, it is unclear whether these results can be attributed to the new framework or other factors.¹⁸⁴

The Energy and Water Ombudsman Victoria (EWOV) reports that credit cases for 2018-19 (which relate to payment difficulty, disconnection and payment collection) are down 25 per cent from 2017-18, which EWOV states has been driven by the introduction of the payment difficulty framework.¹⁸⁵

The Essential Services Commission (ESC) is monitoring the implementation of the payment difficulty framework and is intending to review the framework after at least two years of operation.¹⁸⁶ ESC data shows energy disconnections between January and June 2019 have decreased by 53 per cent compared to the same six-month period in 2018 (equal to 15,545 fewer disconnections). The ESC notes the reduction in energy disconnections coincides with the introduction of the payment difficulty framework.¹⁸⁷

The AER is also monitoring the effectiveness of its new *Customer Hardship Policy Guideline* and the impact of the Victorian payment difficulty framework. The AER aims to identify the measures most effective at assisting customers and potential changes to regulatory frameworks.¹⁸⁸

While support for customers in vulnerable circumstances tends to focus on payment difficulty, there are also emerging measures to meet the needs of customers facing particular circumstances such as family violence and mental health problems. The key features of contemporary payment difficulty and other support measures are:

- proactive identification and early intervention
- accessible support
- flexible, tailored services
- industry partnerships with specialist service providers
- support beyond payment difficulty.

4.4.1 Proactive identification and early intervention

It is now widely recognised by regulators, consumer organisations and many industry members that people facing financial and other difficulty need to be identified and supported as soon as possible, to ensure they can access essential services in an affordable way, and to prevent problems in one area snowballing into much larger problems.

The Consumer Action Law Centre and the National Debt Helpline have found energy debts are the 'canary in the coalmine' for financial hardship and lead to other debts if not addressed through early intervention. A delay in support can make it much harder for people to meet energy costs over the long-term and pay for other essentials such as housing, food and schooling.¹⁸⁹ The AEMC recommended in its 2019 retail competition review that energy retailers in the National Electricity Market implement better early identification programs to identify people struggling with energy bill payments.¹⁹⁰

184. Consumer Action Law Centre (July 2019) Energy Assistance Report: Tracking how Victoria's Changing Energy Policies are Impacting Households in the State.

185. Energy and Water Ombudsman Victoria (October 2019) Annual Report 2019, 7; Energy and Water Ombudsman Victoria (September 2019) EWOV's Affordability Report, January-June 2019, 5-6.

186. Essential Services Commission (26 February 2019) Victorian Energy Market Report 2017-18; Essential Services Commission (10 October 2017) Payment Difficulty Framework: Final Decision.

187. Essential Services Commission (26 September 2019) Victorian Energy Market Update: September 2019, 5.

188. Australian Energy Regulator (March 2019) Notice of Final Instrument: AER Customer Hardship Policy Guideline Version 1.

189. Consumer Action Law Centre (July 2019) Energy Assistance Report: Tracking how Victoria's Changing Energy Policies are Impacting Households in the State.

190. Australian Energy Market Commission (28 June 2019) 2019 Retail Energy Competition Review, 220-221; Australian Energy Market Commission (28 June 2019) 'Greater support needed for vulnerable energy consumers'.

Similarly, the AER's revised *Customer Hardship Policy Guideline* requires retailers to take active steps to identify customers experiencing hardship as early as possible, given customers are acquiring increasingly high levels of debt.¹⁹¹

It can be difficult, however, to identify customers who are at risk of, or experiencing, vulnerability. People may be reluctant to make their circumstances known due to a fear of disbelief, distrust in the way sensitive information could be handled, doubt about whether it will make any difference to the service they receive, or fear of discrimination or disadvantage, i.e. that disclosure could lead to exclusion or reduced access to services.¹⁹²

It is also unlikely people will self-identify as 'vulnerable'. Customers may be able to communicate their needs in other ways; for example, by identifying the type of support they need, such as more time to pay, some breathing space, or communication via a third party or a particular mode of communication.

The quality of staff training has a major influence on whether vulnerable customers are identified by businesses and consumer services such as ombudsmen and community organisations.¹⁹³ For example, a review of three consumer services by the UK-based Citizens Advice organisation (covering Citizens Advice's own consumer services and the Ombudsman energy service) found the right staff training was crucial to identify or elicit evidence of vulnerability, and that staff need 'soft skills' to assist customers in these circumstances. The art of conversation was of equal or greater importance than other skills in identifying vulnerability, to reveal more nuanced indicators of potential risk. This requires listening skills, appropriate phone and questioning techniques, guidance on the style and format of questions, and empathy and conflict call training.¹⁹⁴ The FCA similarly 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.¹⁹⁵

Case study: identifying customers in vulnerable circumstances

Various methodologies exist to help identify potentially vulnerable customers. For example, the UK-based Money Advice Trust provides guidance to businesses on managing vulnerability in the context of debt collection. This is a particularly sensitive area as people are at risk of very significant harm if debt management is badly handled, including the risk of suicide. The Money Advice Trust encourages businesses to:

- facilitate *self-disclosure* of vulnerable circumstances
- look for *limitations* in mental capacity using the BRUCE protocol:
 - B – behaviour and talk – are there limitations in behaviour or speech?
 - R – remembering – are there signs of memory or recall problems?
 - U – understanding – does the customer understand the information being given?
 - C – communicating – can the customer communicate what they want?
 - E – evaluating – can the customer weigh up the different options available?
- look for *red flags*, including:
 - individual factors – e.g. a passing mention of illness or contact with the health sector or social care
 - wider circumstances – e.g. higher living costs, time in hospital or prison, or job loss
 - business actions – things that 'have been done' like a change in mode of communication, or things that 'haven't been done' like allowing a third party or carer to communicate or use of different payment methods.¹⁹⁶

191. Australian Energy Regulator (March 2019) AER Customer Hardship Policy Guideline Version 1.

192. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 49; Holkar, M. and Evans, K. (2017) Levelling the Playing Field: How Regulators can Support Consumers with Mental Health Problems, Money and Mental Health Policy Institute, 22-23.

193. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 50.

194. Citizens Advice Bureau (January 2015) Treating Consumers Fairly: Flexible and Inclusive Services for All, 5-7, 38.

195. Financial Conduct Authority (February 2015) Consumer Vulnerability – Occasional Paper No. 8, 12.

196. University of Bristol Personal Finance Research Centre, Money Advice Trust, Plymouth Focus Advice Centre (March 2017) Vulnerability: A Guide for Debt Collection – 21 Questions, 21 Steps, 18-21. Consumer Policy Research Centre

In another example, E.ON energy in the UK has developed a Care and Assessment Tool that includes tailored prompts and questions and social support information. The system flags to a staff advisor that a customer may be experiencing payment difficulty based on changes in customer behaviour, and prompts a conversation about issues a customer may not otherwise raise.¹⁹⁷

There are also moves to better utilise data to identify customers at risk of vulnerability. The AEMC has previously found that a few retailers have introduced programs that seek to predict and promptly identify customers who may be at risk of falling into payment difficulty. These retailers proactively notify customers about the support and assistance available to them.¹⁹⁸ In Victoria, the CitiPower, Powercor and United Energy distribution networks are investigating a project to analyse consumption data from periods of extreme heat to help identify customers who are self-rationing energy use, potentially to their detriment. In the UK, the Commission for Customers in Vulnerable Circumstances has recommended smart meter data be used to help suppliers and government identify whether a household is self-rationing or self-disconnecting.¹⁹⁹

The UK Regulators Network is working on an initiative that allows energy and water companies to share data about customers in their Priority Services Registers (PSRs). Water UK and the Energy Networks Association are planning to share PSR data between the energy and water sectors by 2020, with the aim that customers would only have to register for the PSR once with either their energy supplier, network or water supplier.²⁰⁰

In Australia, the Thriving Communities Partnership is developing a cross-referral hub that would allow industry, community and government partners to identify a person's wider financial and essential services needs and refer a person to other businesses and services to receive support. This type of service would minimise the need for repeat disclosure of sensitive or upsetting personal circumstances, which creates a barrier to seeking help and accessing support.²⁰¹

4.4.2 Accessible support

Given the breadth of potential vulnerability in the community and difficulties with self-disclosing financial and other personal circumstances, regulators and businesses in Australia and the UK are making their support programs more accessible.

A wide range of circumstances may make someone vulnerable to detriment in a market, necessitating broad eligibility for support. In the UK for example, regulators and other bodies note a number of structural changes are reducing energy affordability and affecting a wider group of customers, including more restrictive welfare measures, the rise of 'zero hours' contracts, irregular incomes, the growth of the working poor, increasing living costs, low wages and high debt levels.²⁰² The range of personal circumstances outlined in Table 2 similarly underscores the breadth of vulnerability risks faced by Australian consumers.

Traditionally, measures such as hardship programs have had restrictive eligibility criteria, requiring people to jump through hoops and disclose personal circumstances to justify assistance. However, payment support programs are now being made more accessible in order to capture all people in need, encourage early intervention, minimise debt build-up and reduce any stigma associated with accessing help. For example, prior to the introduction of Victoria's payment difficulty framework on 1 January 2019, Victorian energy retailers were permitted to define the criteria for entry into hardship programs. These varied between retailers, creating inconsistent experiences among customers, and were based on arbitrary assessments of what constituted hardship. Victorian energy customers did not have equitable access to predictable, consistent support.²⁰³ Under the new payment difficulty framework, people are not required to disclose personal circumstances or demonstrate hardship to receive payment difficulty support.

197. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 50.

198. Australian Energy Market Commission (28 June 2019) 2019 Retail Energy Competition Review, 207.

199. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 58.

200. Ofgem and Ofwat (November 2018) Making Better Use of Data to Identify Customers in Vulnerable Situations: A Follow-up Report.

201. Thriving Communities Partnership 'One Stop One Story Hub' (<https://thriving.org.au/what-we-do/projects/the-one-stop-one-story-hub>).

202. Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 23; Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 28-29.

203. Essential Services Commission (10 October 2017) Payment Difficulty Framework: Final Decision, 11-13, 21.

The AER's revised *Customer Hardship Policy Guideline* precludes unreasonable entry conditions for retailer hardship programs, including a requirement to attend financial counselling, be represented by a third party such as a financial counsellor, submit to an energy audit, make a lump sum payment or a certain number of instalments towards the debt, accept a payment extension, or pay bills on time.²⁰⁴

4.4.3 Flexible, tailored services

There is an emerging consensus on the need for flexible, tailored services that respond to people's needs at particular times in their lives, including financial shocks, job loss, health conditions, mental health problems, family violence, housing stress and other circumstances. Research by the Consumer Action Law Centre shows life events are a significant factor in energy-related calls to the National Debt Helpline, arising in 45 per cent of calls in 2019. These life events can include job loss, a new baby, a workplace accident or the death of a family member. Mental health is another contributor to energy-related issues. Between 2017 and 2019 there was an increase in energy-related calls where a mental health issue was noted, doubling from 10 per cent to 20 per cent of calls.²⁰⁵

Regulators such as Ofgem, the FCA, Ofwat and the Victorian Essential Services Commission all emphasise the importance of flexibility and individualised support for customers in need.²⁰⁶ Some industry members are also adopting this approach; for example, Westpac's Customer Vulnerability 2020 Action Plan contains three focus areas, one of which is helping people with their individual needs by training staff to respond flexibly to the needs of customers, including those in vulnerable circumstances.²⁰⁷

Flexible payment support is a particular focus, given recent increases in energy prices and wider factors affecting affordability, such as inadequate income support, insufficient work, and high household debt levels (see Table 2). In the UK, the Commission for Customers in Vulnerable Circumstances concluded that it is increasingly important for energy suppliers to offer flexible payment schemes to accommodate short-term payment difficulties, given the rise of the gig economy, zero hours contracts and a growing number of households with unpredictable incomes. While these labour market changes are matters for government policy and are not within the control of essential services providers, the Commission considers energy suppliers should 'recognise the realities of affordability, fuel poverty and indebtedness and the positive impact they can make with help to manage debt and to maximise income through benefit [concession] checks'.²⁰⁸

Principles- or outcomes-based regulation can give regulators and businesses more incentive and scope to flexibly respond to people's circumstances. A focus on customer outcomes, rather than strict rules and regulatory box-ticking, might be able to better deliver the support people actually need, provided it is accompanied by clear and enforceable minimum standards of conduct. The CMA considers principles-based regulation:

has a role to play in enshrining the fair treatment of consumers in business practices. This approach has the advantage of avoiding the need for complicated prescriptive rules that can be gamed and potentially lead to perverse incentives. The challenge is to be able to define the principle sufficiently clearly that it provides a practical, consistent (and enforceable) steer to businesses without the need for detailed rules.²⁰⁹

The Victorian Essential Services Commission pursues a principles/outcomes-based approach under its new payment difficulty framework, to ensure disconnection is a measure of last resort. Energy retailers' obligations are focused on outcomes rather than strict processes, and retailers are given some discretion as to how they achieve customer outcomes. For example, customers in arrears are entitled to minimum standards of flexible and practical assistance that makes it easier for them to pay for their ongoing energy use, repay their arrears and lower their energy costs.²¹⁰

204. Australian Energy Regulator (March 2019) AER Customer Hardship Policy Guideline Version 1.

205. Consumer Action Law Centre (July 2019) Energy Assistance Report: Tracking how Victoria's Changing Energy Policies are Impacting Households in the State, 33-34.

206. Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 32-33; Financial Conduct Authority (February 2015) Consumer Vulnerability – Occasional Paper No. 8; Ofwat (February 2016) Vulnerability Focus Report; Essential Services Commission (10 October 2017) Payment Difficulty Framework: Final Decision.

207. Westpac Group, Customer Vulnerability 2020 Action Plan (https://www.westpac.com.au/content/dam/public/wbc/documents/pdf/aw/sustainability/Customer_Vulnerability_Action_Plan.PDF).

208. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 7, 63.

209. Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions, 34.

210. Essential Services Commission (10 October 2017) Payment Difficulty Framework: Final Decision.

Minimum standards of customer care are one way of building accountability, consistency and enforceability into principles- or outcomes-based regulation. Minimum standards can apply to customers in specific circumstances—such as payment difficulty or family violence—or to vulnerable customers more generally.

The CMA considers minimum standards could support vulnerable consumers by ‘establishing a baseline for the types of engagement and outcomes in markets that consumers with different forms of vulnerability should be able to expect’.²¹¹ In the UK, minimum standards have been proposed for consumers experiencing mental health problems, and the Money and Mental Health Policy Institute has developed accessibility standards for essential services providers, though these are voluntary and not enforceable. As of June 2019, Lloyds Bank is the first major organisation to sign up to the ‘Mental Health Accessible’ standards.²¹²

Citizens Advice also recommends joint work by the FCA, Ofcom, Ofgem and Ofwat to establish consistent minimum support standards for people experiencing mental health problems, including in relation to debt support, accessible services (i.e. different communication channels, direct links to specialist staff and written follow-ups on important points agreed on in calls), and being able to easily appoint a trusted person to manage accounts during difficult periods.²¹³

Similar measures could be investigated by Australian regulators. In its submission to the Victorian Mental Health Royal Commission Terms of Reference, the Consumer Action Law Centre noted that people with mental health problems can be particularly disadvantaged by automated business processes that do not respond to their life experiences. Consumer Action observed that many clients experiencing mental health issues struggle to make telephone calls, open mail, navigate complex forms and engage in debt recovery processes.²¹⁴

The Commission for Customers in Vulnerable Circumstances suggests energy suppliers adopt an independently monitored Code of Conduct that sets out standards of care for all customers in vulnerable circumstances, covering identification and support of vulnerable customers, communication channels, debt management practices and other matters. The Commission found that with the expansion in energy suppliers, new market entrants vary considerably in competence and resources to serve vulnerable customers.²¹⁵ This may be an issue to watch in Australian energy markets.

4.4.4 Industry partnerships with specialist service providers

Many regulators encourage industry participants to partner with community organisations, to enable referrals to specialist services and to help identify people in vulnerable circumstances. Some industry members have had partnerships in place with community organisations for several years; for example, NAB has worked with Uniting for some time to train staff and establish referral mechanisms.²¹⁶

Given community sector organisations are commonly under-resourced, regulators and industry should carefully consider how they design these types of systems. If established partnerships and resources are not in place, services can be placed under pressure and used inefficiently.²¹⁷ People can become lost in the system and made more vulnerable if they are referred to a third-party service and face a long wait time to receive support.

In the jurisdictions reviewed, partnerships and referral pathways are not regarded as a substitute for other vulnerability measures. They can be complemented with product, service and market design that lessens the need for third-party support, and allows problems to be resolved or mitigated by the business as far as possible.

211. Competition and Markets Authority (February 2019) *Consumer Vulnerability: Challenges and Potential Solutions*, 33.

212. *Ibid* 33-34; see Money and Mental Health Policy Institute, ‘Mental Health Accessible’ (<https://www.moneyandmentalhealth.org/mentalhealthaccessible/>).

213. Citizens Advice (22 August 2019) ‘People with mental health problems need minimum standards of support’ (<https://wearecitizensadvice.org.uk/people-with-mental-health-problems-need-minimum-standards-of-support-7db023dc4c25>).

214. Consumer Action Law Centre (25 January 2019) *Submission to Royal Commission into Mental Health Terms of Reference*.

215. Commission for Customers in Vulnerable Circumstances (2019) *The Commission for Customers in Vulnerable Circumstances Final Report*, 4, 35-38.

216. NAB, ‘How Uniting stops financial hardship before it hits’ (<https://www.nab.com.au/about-us/more-than-money/customers-community/supporting-communities/uniting-carer>); NAB paid content, ‘Hardship can strike at any age says financial counselling pioneer’ *The Guardian* (<https://www.theguardian.com/nab-meet-the-changemakers/2016/jun/21/hardship-can-strike-at-any-age-says-financial-counselling-pioneer>).

217. Commission for Customers in Vulnerable Circumstances (2019) *The Commission for Customers in Vulnerable Circumstances Final Report*, 6, 55-57.

Good use of partnerships and referral pathways might include where:

- a customer can benefit from holistic support to address multiple needs—for example, Uniting VIC/TAS runs the CareRing program nationally in partnership with utilities and financial institutions, which delivers wrap-around support services such as financial counselling, energy advice, family support and housing support²¹⁸
- an organisation can help identify vulnerable customers and connect people to the right services in a business—for example, British Gas and ScottishPower have a partnership with the cancer charity CLIC Sargent, which provides the charity's social workers with direct access to customer care staff to help manage family energy bills when a child has cancer. The referral process ensures suppliers know about the situation a family is facing and review their energy needs. The charity found almost half of families with a child with cancer see energy bills increase, but only a minority seek help²¹⁹
- an organisation can provide expert advice that is beyond the capability of a business, including on sensitive issues—for example, the Victorian Essential Services Commission's minimum standards of family violence assistance require energy retailers to help customers access specialist family violence assistance, and to take into account whether it is safe, respectful and appropriate before doing so.²²⁰

The Commission for Customers in Vulnerable Circumstances recommends developing a framework to facilitate partnerships, and identifying the types of partnerships that are effective and the principles that underlie them.²²¹

4.4.5 Support beyond payment difficulty

While flexible payment support and debt management will remain a central part of consumer vulnerability strategies, it is apparent from the vulnerability measures reviewed above that supporting vulnerable customers is not just about payment difficulty and financial matters. It can also mean, for example, supporting people experiencing mental health issues by providing more accessible products or forms of communication, supporting family violence victim-survivors with security and privacy measures or utility connections in a new home, and providing advice about energy consumption to people with health- or disability-related energy needs.

In the energy sector, another emerging area of support is energy underconsumption or self-disconnection. People who are under-using energy can fly under the radar, as they often continue to pay bills and not seek payment difficulty assistance. In Victoria, for example, the majority (53.6 per cent) of people with persistent heating inability do not report persistent payment difficulty. Because these people mostly or always pay bills on time—but do so by restricting or foregoing energy use—their circumstances can be hidden from energy retailers, community organisations and government services. It is therefore important to ensure that support services are not always centred on payment difficulty.²²²

Self-disconnection is a major concern for Ofgem, which is pushing for energy suppliers to better support customers at risk of self-disconnection by monitoring smart meter data and offering proactive support when a customer's usage changes.²²³

218. Uniting, 'CareRing' (<https://www.unitingkildonan.org.au/programs-and-services/financial-support/caring/>).

219. Ofgem (2018) *Vulnerable Consumers in the Energy Market*: 2018, 14. See also Ofwat (February 2016) *Vulnerability Focus Report*, 36.

220. Essential Services Commission (22 May 2019) *Energy Retail Code Changes to Support Family Violence Provisions for Retailers: Final Decision*.

221. Commission for Customers in Vulnerable Circumstances (2019) *The Commission for Customers in Vulnerable Circumstances Final Report*, 56-57.

222. Victorian Council of Social Service (November 2018) *Battling On: Persistent Energy Hardship*, 5, 14.

223. Ofgem (13 June 2019) *Draft Consumer Vulnerability Strategy 2025*, 26-27.

5. Conclusion

The time is ripe for the AER to undertake in-depth and sustained consumer vulnerability work. Regulators in Australia—and particularly the UK—are developing long-term strategies to understand and respond to consumer vulnerability in individual sectors such as energy and financial services and across multiple markets, as shown by agencies such as the CMA.

Consumer vulnerability will always be present to some degree in essential services markets, as a result of the common and often unpredictable circumstances we encounter as we move through life. In that way, regulators and business have little choice but to commit to vulnerability strategies. Significant structural issues require a regulatory response, even if responsibility for directly addressing those issues does not reside with essential services regulators, such as the impact of low or irregular incomes and high housing costs on energy affordability. Very significant consequences can arise from not properly addressing consumer vulnerability in the energy sector, ranging from inadequate energy use for health and wellbeing, to the snowballing effect of energy debts on other areas of life (such as the affordability of food, housing and children's education), to the risk of further harm to family violence victim-survivors.

While taking full account of the personal circumstances that can make it difficult to use markets, there is also much regulators can do to tackle particular forms of product, service and market design that create or exacerbate vulnerability. This approach has the potential to deliver deeper, more comprehensive changes to business practice and consumer outcomes. The AER is well-placed to address these issues following major reviews of energy markets and increasingly sophisticated analysis of how experiences of mental health problems, family violence, disability and the realities of complex markets require different forms of product, service and market design.

A vulnerability strategy would give the AER the opportunity to define its role in addressing vulnerability, delineate regulatory and government responsibilities, and promote joint activities by regulators, government, business and consumer and community organisations to enable easier, fairer and more equitable access to energy. A vulnerability strategy will only grow more important as the energy market transitions to clean, decentralised generation and supply and the potential for new vulnerabilities emerge, if some households are better placed than others to generate and sell their own energy. The AER can take a leadership role in this area, addressing these and more traditional issues of consumer vulnerability head-on, and delivering meaningful change for Australians when accessing one of the most fundamental services in their lives.





Level 14, 10-16
Queens Street

Melbourne
Victoria 3000

T 03 9639 7600
F 03 9639 8966

cprc.org.au
ACN 100 188 752



**Consumer
Policy Research
Centre**