ESSENTIAL SERVICES COMMISSION

Sensitive and appropriate engagement with consumers experiencing vulnerability

Guidance and principles for action

31 January 2021

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Report summary

This report reviews existing resources and proposes **10 principles for effective, sensitive and appropriate engagement with consumers** experiencing vulnerability by essential services regulators through a 'universal' and 'inclusive' approach.

The report has been prepared for the Essential Services Commission (the commission) as part of its one-year project to develop a consumer vulnerability strategy. The proposals in this report also build on the commission's Charter of Consultation and Regulatory Practice and Stakeholder Engagement Framework.

Consumer vulnerability has received increasing attention from Australian regulators and regulated businesses in recent years. There has been growing discussion of the role of markets in creating or exacerbating vulnerability — meaning 'harm, detriment or disadvantage' — and the role of regulators in addressing this.

The concept of 'vulnerability' has evolved over time, moving from a definition based on static and defined categories of 'vulnerable consumers' to a definition that recognises that vulnerability is complex and flexible, and is a consequence of one or more structural, individual and market-based circumstances. Major events like the 2019-20 Australian bushfires and the COVID-19 pandemic have **heightened awareness that vulnerability can affect all consumers** and highlighted **the need for a coordinated response** to consumer vulnerability.

Engagement directly with consumers experiencing vulnerability and those who represent and/or work with them, **is essential for understanding and promoting the interests of this diverse and dynamic consumer group**. Consumer engagement can bridge the gap between regulators and the community and bring value and legitimacy to regulatory processes and outcomes.

Regulators' standard approaches to engaging with stakeholders (including consumers) **may not be designed to ensure that all consumer perspectives are heard and considered**, especially in times of disruption or more widespread health or economic crisis. In addition, if engagement is not designed and conducted sensitively and appropriately, it **may exacerbate existing vulnerability** and negatively affect consumers' wellbeing.

To be effective, consumer engagement must be **accessible, available and appropriate** for the full range of current and potential consumers of essential services.

Engagement **processes must be developed in collaboration with consumers**, and engagement activities must both contemplate the involvement of a wide range of people and be **flexible enough to be tailored** to the requirements of those involved.

This requires, for example, engagement that:

- has little or no cost to participants

- is conducted in local, familiar and friendly environments

- recognises and responds empathetically to participants, including where they are experiencing stress or distress

- is culturally appropriate for Aboriginal and Torres Strait Islander people and people from all cultural and linguistic backgrounds

- is accessible to people with disabilities, older persons, people with limited literacy and numeracy, and people who do not have access to the internet or digital tools.

Regulators, governments and other public bodies, researchers and consumer and community organisations have all published **guidance on how to design and run engagement activities** with these features. Some, but not all, of this guidance was developed through engagement with consumers and other community members. It emphasises that **regulators must adapt their existing engagement strategies** to include the full range of consumers, rather than developing separate strategies and procedures for engaging with some groups.

It suggests four considerations for regulators when they are planning, designing and running inclusive engagement:

a) Developing **an organisational culture of inclusive, diverse and representative engagement** by establishing inclusive and universal engagement as part of mainstream practice and allocating resources and staff to build capacity, develop and implement strategies and collaborate across sectors.

b) Understanding **why consumer engagement is needed and what approach to take** by mapping the consumer interest and determining the required level of input, consultation and collaboration with consumers.

c) **Identifying and reaching consumers for engagement**, including considering the value of engagement with individual consumers (alongside 'indirect' engagement with consumer advocacy bodies and others who work with consumers) and identifying and reaching the full range of participants.

d) **Designing and conducting inclusive engagement activities** that are available to and appropriate for all participants by asking consumers and communities what they need before engagement commences, designing accessible, approachable and appropriate activities, and

using, reporting and evaluating consumers' contributions after engagement processes conclude.

Drawing on this work, this report proposes 10 principles to guide regulators' development, design and conduct of universal and inclusive consumer engagement.

These principles address matters such as inclusivity, collaboration and co-design, diversity, transparency, investment of time and resources, respect, flexibility and willingness to reflect, adapt and improve.

The next step will be to **test and revise these principles in consultation with consumers** and their representative organisations. This will ensure that the principles are appropriate, current and comprehensive.

Principles for universal consumer engagement

1. Be inclusive

Adapt your standard engagement processes to include all consumers. Do not create separate or 'add on' processes for some individuals or groups. Develop a range of engagement techniques that are suitable for the diverse characteristics and needs of consumers.

2. Collaborate and co-design with consumers

Develop engagement strategies, plans and techniques in consultation, partnership or co-design with consumers. This builds trust and buy-in, and is more likely to lead to diverse and representative participation in engagement. As 'experts by experience', consumers can also play a valuable role in facilitating or supporting engagement activities.

3. Treat engagement as an ongoing process based on relationships

Engagement will be effective and appropriate where it is supported by strong relationships with consumers, consumer groups and advocates. Relationships and networks can help identify consumer issues, recruit the right consumers, and design appropriate and accessible engagement processes. Developing honest and trust-based relationships requires time and resources.

4. Have a clear purpose

Understand — and clearly explain — why you want to engage with consumers. Consider matters including the required level of engagement with consumers, the information or other input you require, the desired outcomes, and who you should engage with.

5. Reflect community diversity

Make sure engagement participants represent the diversity of the community and the consumer body. This will ensure you hear representative and reliable perspectives. Develop a sophisticated understanding of the consumer community, its interests and needs. Acknowledge and value difference, and remember that one person cannot speak for all members of their community.

6. Invest in engagement

Effective universal engagement is only possible with the investment of time and resources. This includes resources to facilitate consumers' participation (such as travel costs, childcare and

remuneration for time spent) and adequate resources to design engagement activities that are appealing, appropriate and accessible for a broad range of consumers.

7. Be transparent and offer genuine involvement

Give all consumers who are involved in engagement equal access to decision-makers and a genuine opportunity to influence outcomes. Recognise and acknowledge the expertise of consumers and ensure that all engagement processes are accessible and appropriate for consumers. Be honest and transparent about the influence that consumers will and do have over decisions and processes. Discuss your expectations and the expectations of participants. Publicly report on the influence of consumer input on final outcomes, and provide this information in multiple formats, styles, and languages.

8. Show respect for individuals, their knowledge and expertise

Ensure that all interactions with consumers are founded on respect for their contributions, expertise, circumstances, and needs. Use respectful language, offer multiple and diverse opportunities to participate, seek and respond to feedback, acknowledge and deal with disagreements or mistakes, and challenge biases.

9. Use methods that are universal and flexible

Design engagement with a wide diversity of consumers in mind. Build considerations like accessibility, cultural awareness, cultural safety, adequate resourcing, and comfort and flexibility of timing and approach into every engagement process. Ask potential and actual participants what they need and ensure you have the resources and flexibility to provide it.

10. Reflect, adapt, improve

Invite, and act on, feedback from consumers involved in engagement processes. Establish clear processes for participants to ask questions and give feedback during engagement processes, and respond and adapt where necessary. Conduct formal evaluation processes (following the same principles as engagement processes) to assess whether the stated aims and principles of the engagement were met.

Summary of guidance on engaging with consumers experiencing vulnerability

Regulators, government bodies and others have published guidance on how to conduct consumer engagement that includes the full range of consumers. The guidance can help regulators at four stages:

    a. Developing an organisational culture of inclusive, diverse and representative engagement.

    b. Understanding why consumer engagement is needed and what approach to take.

    c. Identifying and reaching consumers for engagement.

    d. Designing and conducting inclusive engagement activities.

A. Developing an organisational culture of inclusive, diverse and representative engagement (see pages 37-39)

- Regulators should develop an organisational culture that values diversity, inclusivity and representativeness.

- Regulators should treat inclusive engagement as part of usual practice. Stakeholder and consumer engagement strategies should be adapted to be inclusive and universal, rather than 'adding on' separate processes for some groups.

- Embedding inclusive and universal engagement requires resources to:

  B. develop formal consumer engagement strategies and approaches

  C. conduct research

  D. train staff

  E. establish dedicated teams to coordinate efforts and share knowledge and expertise across the organisation

  F. engage experts

  G. conduct inclusive and universal engagement activities (such as meetings, roundtables, interviews, focus groups, and written and online consultations).

B. Understanding why consumer engagement is needed and what approach to take (see pages 40-44)

- Having a clear purpose and plan for consumer engagement can help regulators to identify and reach the right people and design inclusive, universal activities.

- Regulators should consider the need for, and purpose of, consumer engagement at an early stage in any project.

- Frameworks or tools like the Ofcom Consumer Panel toolkit can help regulators:
  - think about the implications of regulatory policy and processes for consumers
  - decide what input they need from consumers, including consumers experiencing vulnerability or other groups.

- Regulators should also consider the appropriate form of consumer engagement, for example:

- whether they will ask consumers to give feedback on a draft policy or decision

- whether consumers will have input at earlier stages of devising or drafting policy or regulatory responses

- whether consumers will be partners in defining the problem and devising a solution.

- Tools like the International Association for Public Participation (IAP2) public participation spectrum can help regulators to design engagement and select tools according to the level of input and influence they want consumers to have over the final outcome, such as:
  - Informing: giving consumers information to help them understand the problem, alternatives and/or solutions.
  - Consulting: getting feedback from consumers on analysis, alternatives and/or solutions.
  - Involving: working with consumers throughout the process to ensure their concerns and aspirations are understood and considered.
  - Collaborating: partnering with consumers on each element of the decision, including developing alternatives and/or solutions.
  - Empowering: putting final decision-making power in consumers' hands.

C. Identifying and reaching consumers for engagement (see pages 45-51)

- Regulators should understand who they need to engage with, and how to identify and reach all relevant participants.

- Regulators commonly engage with organisations that work with consumers or advocate for them.
  - This *indirect* engagement is conducted in a variety of ways, including roundtables, working groups, advisory committees, data and information sharing, or receiving written submissions.
  - Indirect engagement can give regulators the 'big picture' view of consumer issues, provide comprehensive, cross-sector data on consumer issues, and present a coherent consumer voice.

- Indirect engagement is unlikely to give regulators the full picture.
  - It offers a 'filtered' version of the consumer perspective and is unlikely to be representative of the views of all consumers (including, for example, people who are excluded from the market altogether and those who cannot access advocacy or support services).

- It does not give consumers the opportunity to have a voice and participate directly in public processes.

- Regulators should also engage *directly* with individual consumers and groups of consumers.

  - Direct engagement can also take multiple forms, including consumer committees or panels, advisory boards, roundtables, written submissions, focus groups, interviews, and vox pops.

  - Direct engagement gives regulators access to information that is not held by consumer organisations, demonstrates respect for individuals' experiences and perspectives, and can enable regulators to ensure they hear from a diverse and representative sample of consumers.

  - Consumer research can be a valuable complement to direct consumer engagement, especially where it provides insights into population-level issues and consumer behaviour.

- Regulators must ensure that direct engagement involves a diversity of consumers, including consumers experiencing vulnerability. This means regulators must:

  - know who the relevant consumers are and how diverse they are

  - have a clear plan for finding and connecting with consumers.

- Stakeholder mapping, researching the community, and drawing on existing networks and relationships within the community can help regulators to identify and connect with the full range of potential participants.

- Regulators should build relationships with specific groups of consumers and involve community groups when planning engagement. Some government bodies have developed guidelines for engaging appropriately and respectfully with some groups, such as people with disabilities and Victorian Traditional Owners.

- Regulators should remember that one individual cannot represent the views of an entire population group.

- Representative and advocacy organisations run by and for consumers may advocate for the views of multiple members, although their contributions will not replace direct engagement.

- Regulators should also recognise diversity within consumer groups and take an intersectional approach in doing so. For example, engagement with older people should include older people with disabilities, older people from Culturally and Linguistically Diverse backgrounds, older Aboriginal and Torres Strait Islander people, and older LGBTI people.

D. Designing and conducting inclusive and universal engagement activities (see pages 52-67)

- Regulators should tailor consumer engagement activities — like working groups, roundtables, advisory board meetings, focus groups, community forums, interviews, or invitations to make submissions — to the people and communities involved.

- Regulators need both resources and time to run inclusive and universal engagement activities.

- Designing and conducting inclusive and universal engagement activities has three stages:

  a) Preparing for consumer engagement
  b) Designing inclusive activities

c) Using, reporting and evaluating consumers' contributions.

- Checklist: Preparing for consumer engagement

1. Ask individuals and groups how they would like to be engaged with.

- Do your research about participants' potential needs and devise a plan to meet those needs before you approach them for their input.

- Some community groups and organisations have published guidance about 'how to engage' with them.

2. Use language that reflects how the community sees themselves.

3. Clearly define the scope and purpose of engagement, and develop clear, easy-to-understand explanations.

4. Make sure the terms of engagement are appropriate to the audience (for example, translate technical matters into plain language).

5. Ask participants whether they have access to the resources (financial and otherwise) they need to participate.

    a. Offer low- or no-cost opportunities to participate (for example, telephone consultations or activities in participants' local area).

    b. Offer to cover participants' travel costs and other costs of participation, such as childcare or disability support. Ask participants if and how they would like to be reimbursed.

    c. Develop a remuneration policy to help decide if and when participants should be paid for their time and expertise; discuss remuneration with participants early in the process.

6. Ensure all written communication is clear and accessible.

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

    - Test communication materials with different audiences to make sure they are appropriate and accessible.

    - Advertise through multiple channels including community networks, local media, local radio, ethnic media and social media.

7. Ensure all person-to-person communication is clear and accessible.

    - Ask participants up-front about their communication needs.

    - Arrange language interpreters or other necessary services.

    - Be aware of cultural norms and protocols that may require you to communicate through nominated individuals or intermediaries.

    - Create clear and accessible communication channels between participants and staff, and among staff within the regulator.

8. Understand and address cultural considerations in partnership with local communities.

   – Invest time and resources into building ongoing, mutually beneficial relationships and rapport with Elders, Traditional Owners and community leaders in a collaborative and culturally safe manner.

   – Engage Elders and community leaders in planning, development and delivery of engagement processes and activities.

   – Understand and respect governance and decision-making structures within communities, groups and families.

   – Prioritise culture and respect for Aboriginal knowledge and expertise, and develop cultural competence and a culturally safe environment.

   – Acknowledge and tell the truth about our history and the struggle for rights and self-determination of Aboriginal and Torres Strait Islander peoples since colonisation.

   – Reflect on the impact of your own culture (for instance, the power and privilege associated with membership of the dominant culture).

   – Be mindful that there may be cultural sensitivities around certain topics and discuss these with Elders and community leaders prior to engagement, and ensure activities are culturally appropriate.

   – Follow cultural protocols, and seek advice when you are not sure.

   – Seek permission before photographing or filming participants.

   – Use plain language.

   – Make sure you are genuinely understood by all participants if language interpreters are not present.

   – Use images and other materials that reflect the diversity of the community and participants.

     'Think diversity': do not assume that all people from the same cultural or linguistic background share the same characteristics or perspectives; and include a diverse range of people from each group.

   – Checklist: Designing inclusive activities

Regulators should address the following considerations when designing engagement activities:

✓ Offer multiple and diverse opportunities to participate in engagement.

   – Use a range of tailored engagement tools (such as interviews, focus groups, vox pops, and digital engagement) and consider creative techniques. Guides like Capire Consulting Group's *Inclusive Community Engagement Matrix* offer advice on selecting engagement tools.

- – Use multiple engagement platforms including in-person and digital approaches. Recognise that not all people have access to digital participation and provide extra support for those who do want to participate in this way (for example, live IT assistance and tutorials).

✓ Help participants to prepare for engagement activities with clear information about what will happen and what is expected of them. Make sure participants can contact someone to ask questions and give feedback prior to the day.

✓ Choose locations and venues that are comfortable, familiar and accessible to the participants. This will often mean running different activities in different locations.

- – Choose venues that are familiar and local to participants. Where possible, go where people are rather than expecting them to travel to you.

- – Choose venues that are warm, welcoming and comfortable (for example, ensure there is appropriate lighting, heating/cooling and seating).

- – Choose venues that are accessible to a wide range of people (for example, older people, wheelchair users, people with vision impairment and people who are Deaf or having a hearing impairment).

- – Avoid venues that have a negative history or association (for example, former institutions).

- – Choose venues with good access to public transport and parking.

- – Make sure the path of travel from the road and carpark is clearly signed and accessible.

- – Consider the layout of seating, use of lecterns and stages, and other things that might be intimidating or reinforce power differences between facilitators and participants.

✓ Build accessibility for people with disabilities into all aspects of engagement.

- – Provide written information in multiple accessible formats (including plain language, large print, Easy English, Braille, audio, video, PDF and RTF). Make sure the content is clear, brief and set in its wider context.

- – Provide all formats simultaneously.

- – Make webpages compliant with the Web Content Accessibility Guidelines.

- – Ask individuals about their communication preferences and accessibility requirements, including support requirements, when you first make contact.

- – Ask all participants to list their accessibility requirements at the RSVP point for activities and events. Provide multiple options for responding to invitations, for example, email, telephone, and in-person.

- – Where a person identifies accessibility requirements, contact them as soon as possible to discuss and confirm how their requirements will be met.

- – Describe accessibility measures in invitations to events and activities. This should include detailed information about the address of the venue; transport and way-finding; measures that will or can be made available (including Auslan interpreting, an audio loop and live captioning); and what activities are planned and the agenda for the event.

- – Encourage and support the attendance of personal assistants or support workers (or informal supporters) where these are requested. Check whether participants require funding to pay for the support person's attendance. People should choose their own support person.

- – Choose venues and digital platforms that are accessible to the widest possible range of people, regardless of whether you expect people with particular requirements to attend.

✓ For physical venues, confirm the availability of:

- – public transport, parking and passenger drop-off points

- – properly accessible, clean and available toilets (including toilets on the same level of the building as the event)

- – continuous pathways

- – a front entrance (not side/back entrance) that is wheelchair accessible

- – multiple seating options for wheelchair users (rather than one allocated space for wheelchairs)

- – for long meetings, a quiet room where people can rest, lie down or have a break (with staff available to provide directions and assistance)

- – enough space inside the venue to move around easily

- – tables and stages that are suitable for wheelchair users

- – accessible face-to-face interactions including, for example, looking directly at participants who are Deaf or hard of hearing when addressing them and identifying yourself when approaching participants with vision impairment.

✓ Ensure activities are accessible by:

- – providing large-print name tags

- – ensuring any videos have captions and that the facilitator describes and explains any videos, slides or other visual materials

- – collecting information in a transparent, accurate and accessible manner (such as recording feedback on butcher's paper or in large font on-screen)

- – including regular breaks (for example, every 45 or 90 minutes) and breaks that are long enough to permit people to get refreshments and use the facilities

- – making sure the speed and content is clear and easy to follow.

✓ Ensure that facilitation or group management is open, non-judgmental, respectful and flexible.

- – Staff should receive training on inclusive facilitation and group management.

- – Facilitators should be open to a range of contributions in a range of forms and should be honest and accountable to participants.

- – Facilitators should be prepared to change tack if an activity is not working.

- Facilitators should be equipped to respond to participants who are experiencing stress, distress, grief or trauma, including by demonstrating empathy, asking if it is the right time to engage, and giving participants plenty of time.

- It may be appropriate to engage external facilitators where the regulator does not have the necessary expertise in-house. These might include facilitators with experience of inclusive engagement and/or facilitators from the community or communities being engaged (such as disability advocates or domestic violence survivor advocates).

Attendance by senior staff and decision-makers can demonstrate respect for consumers' perspectives.

- ### Checklist: Using, reporting and evaluating consumers' contributions

Regulators should acknowledge participants' contributions. Feedback, reporting and evaluation processes should be designed according to the following considerations:

✓ Regulators should ask participants whether they would like to receive feedback about the outcomes of the engagement activity and how they would like to receive it (for example, their preferred formats and communication channel).

✓ Where participants have indicated that they would like to receive feedback, regulators should send participants:

- a summary of what was discussed during the engagement activity shortly after the activity was conducted

- a summary of how consumers' feedback was used and the influence it had on the process and final outcomes (including acknowledging feedback that was not incorporated)

- copies and accessible summaries of final reports and other publications.

✓ Community feedback sessions may be an appropriate way to discuss and explain the role of consumers in decisions.

✓ Regulators should evaluate their consumer engagement processes, including:

- seeking feedback from participants on what worked well and what did not

- reflecting on whether the engagement activity was inclusive and whether feedback was received and acted on during the process

- engaging with the wider community of consumers to consider who was missing and plan for improvements in the future

sharing experiences and reflections with colleagues within and beyond their organisation.

Section 1: Introduction

This report reviews existing resources and proposes 10 principles for universal and inclusive consumer engagement by essential services regulators. These principles encompass sensitive and appropriate engagement with 'consumers experiencing vulnerability'. This report has been prepared for the Essential Services Commission (the commission) as part of its wider body of work to develop a strategy to address consumer vulnerability and ensure that all consumers have equitable access to essential services. The proposed principles also complement and build on the commission's Stakeholder Engagement Framework, which already addresses important matters such as inclusivity and accessibility.[1]

In performing its functions and exercising its powers, the commission's objective (established in legislation) is to 'promote the long term interests of Victorian consumers'.[2] In pursuing this objective, the commission must have regard to 'the benefits and costs of regulation' for 'consumers and users of products or services (including low income and vulnerable consumers)'.[3] Direct engagement with consumers experiencing vulnerability, and those who represent and/or work with them, is essential for understanding and promoting the interests of this diverse and dynamic consumer group.

Context

Consumer vulnerability has received increasing attention from Australian regulators and regulated businesses in recent years. There has been growing discussion of the role of markets in creating or exacerbating vulnerability — that is, 'harm, detriment or disadvantage'[4] — and the role of regulators in addressing this. Several regulatory bodies have published discussion papers or strategies addressing the needs of particular 'vulnerable' groups or consumer vulnerability more generally. Much of this work is influenced by prior developments in the United Kingdom (UK), as well as local processes such as the Victorian Royal Commission into Family Violence and the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.[5]

Earlier definitions of vulnerability were based on static and defined 'categories' of vulnerability. More recently, vulnerability has been reconceptualised as a complex and flexible phenomenon that occurs within a range of structural, individual and market-based circumstances. Major events in recent years, including the 2019–20 Australian bushfires and the unfolding COVID-19 pandemic, have heightened awareness that anyone can be affected by a range of stressors. This highlights the need for a coordinated response to both new and long-standing sources of vulnerability.

Developing alongside this focus on vulnerability has been a growing emphasis on consumer engagement as a standard (often legislatively mandated) practice of essential services regulators. In the past, engagement tended to focus on industry and professional stakeholders while keeping the community at arm's length. An increasing focus on the consumer interest and consumer wellbeing has led to the recognition of the importance of direct engagement with consumers. This focus has also highlighted that some consumers — including some consumers experiencing vulnerability — are not well-served by mainstream approaches to engagement.

Consumer engagement bridges the gap between regulators and the community and can bring value and legitimacy to regulatory processes and outcomes. It has a range of purposes and benefits, including:

- providing regulators with necessary information and evidence to develop regulatory policy, improve regulatory processes, and make better decisions
- ensuring that regulators understand consumer interests and the consumer experience
- enabling regulators to be more responsive to consumer perspectives and consumer need
- enhancing the perceived legitimacy of regulatory processes and decisions and the accountability of regulators
- providing consumers with information that helps them to understand regulators' work and to access and use regulated services more effectively.[6]

This report reviews existing guidance on why and how regulators should engage with a diversity of consumers, including consumers experiencing vulnerability and others whose participation is not generally prioritised or facilitated in engagement processes. It analyses policy and research documents produced by regulatory bodies, government and other public bodies, researchers, community organisations and organisations that specialise in community engagement (including not-for-profit bodies and consultancies) in order to develop a set of principles to guide the implementation of effective 'universal' and 'inclusive' consumer engagement.

Report outline

The report is in five sections. This first, introductory section explains the background, context and structure of the report.

Section 2 sets out the meaning and purpose of regulators' engagement with consumers, including the reasons for ensuring that engagement is inclusive, diverse and representative of the wider community. These include enhanced quality and legitimacy of regulatory processes and decisions, responsiveness to changes in the consumer base and regulated markets, and enhanced accountability of regulators. It concludes with a discussion of the commission's current approach to consumer engagement and its alignment with the purposes described.

Section 3 describes contemporary approaches to conceptualising and responding to consumer vulnerability for a range of regulatory purposes, including consumer engagement. It discusses Australian and UK regulators' efforts to define consumer vulnerability and to develop strategies to respond to vulnerability, as well as the role of consumer engagement in these processes.

Section 4 includes a review and analysis of existing approaches and guidance on engagement with community members and consumers experiencing vulnerability. This includes engagement with people who might be considered to be 'hard to reach' and others whose involvement is not usually facilitated in engagement processes. It describes four considerations that regulators should address when designing consumer engagement.

They are:

- ✓ Developing an organisational culture of inclusive, diverse and representative engagement
- ✓ Understanding why consumer engagement is needed and what approach to take
- ✓ Identifying and reaching consumers for engagement
- ✓ Designing and conducting inclusive engagement activities.

The latter addresses a range of considerations including disability-related accessibility, social and cultural considerations, language, literacy, and digital literacy considerations. Other considerations relate to the impacts of trauma, such as family violence, and environmental and health crises including bushfires and pandemics.

The fifth and final section sets out 10 principles for effective community engagement that is 'universal' and 'inclusive'. The principles offer a practical guide for the commission and other essential services regulators on designing and conducting universal engagement for a range of regulatory purposes.

Appendix A describes the scope and methodology of the review. Appendix B discusses how the proposed universal engagement principles fit with, and may augment, the commission's Charter of Consultation and Regulatory Practice and Stakeholder Engagement Framework.

The importance of language: vulnerability, inclusivity and universality

In the essential services sector, the term 'vulnerable consumers' is the most common way of describing consumers (or potential consumers) of essential services who, for one or more reasons, do not have equitable access to services or are experiencing another detriment in relation to those services. Similar terminology is used in the community engagement field, where discussions may refer to 'vulnerable' or 'hard to reach' people.[7]

This language has been criticised for implying that some people's personal characteristics or failings — rather than a failure of markets, regulators and wider society to ensure that everyone

has equal access and equal rights — are the reason for a person's disadvantage.[8] This can have a significant influence on how issues are represented,[9] with solutions based on individual vulnerability tending to focus on individuals adapting to make themselves less vulnerable or regulators and businesses producing separate or 'special' measures to protect them.

Adopting the term 'consumers experiencing vulnerability' has been suggested as a way to avoid some of these problems. This is because it focuses attention on the circumstances that create detriment or disadvantage for consumers, rather than implying that vulnerability is inherent to the person.

However, consumers who might be experiencing one or more circumstances of vulnerability are unlikely to use the language of 'vulnerability' to describe themselves.[10] This means **its use can still be offensive, and in practical terms may not actually help regulators to identify and reach consumers for engagement**. Some alternative concepts have been proposed. For example, concepts such as 'inclusive design', 'universal design' and 'design for all' are premised on the idea that buildings, information, products and services should be designed to be accessible and usable to all, and that this is only possible if diverse users are considered and involved in the design process.[11] These concepts are becoming especially popular in regard to the design of products and services by regulated business, but they can apply equally to activities of essential services regulators, including the design and conduct of consumer engagement.[12]

In this report, where we quote or refer to others' work, we use the language they use. The term **'inclusive engagement' is used most frequently** to refer to engagement that involves a diversity of community members, including those who are typically excluded from these processes. In proposing the set of principles for improved engagement in section 5, **we use the more expansive term 'universal engagement'**, because it suggests the need for all engagement processes and activities to be designed with the broadest range of circumstances and requirements in mind. This does not mean that regulators should ignore the existence or consequences of consumer vulnerability. It will still be necessary and appropriate to identify and engage specifically with consumers who are experiencing vulnerability where, for instance, a regulator is developing a vulnerability strategy or conducting other business that raises vulnerability issues.

The universal principles incorporate many considerations aimed at ensuring that consumers experiencing vulnerability are identified and that they can access consumer engagement processes. The proposed principles also emphasise the need for all interactions with consumers to be based on openness and responsiveness to people's circumstances and needs. Designing engagement activities according to these principles will, by definition, make them appropriate and accessible for consumers experiencing vulnerability.

Section 2: The meaning and purpose of regulator engagement with consumers

Key points

- Obligations to consider the consumer interest now complement traditional regulatory objectives of consumer protection in relation to competition and predation.

- Consumer engagement is fundamental to regulators' ability to meet their consumer-focused objectives and ensure that processes reflect contemporary expectations and values about public participation.

- Consumer engagement, a form of public participation, refers to the practice of bringing the voices of the community into decisions that affect, impact or interest them.

- Four purposes of regulators' engagement with consumers are to:

  - establish and maintain legitimacy by being responsive to consumers and increasing citizen empowerment and involvement

  - engage in sound regulatory decision-making informed by the consumer perspective

  - demonstrate accountability through the genuine involvement of consumers in decision-making

  - recognise the diversity of consumer experiences and needs, ensuring that the evidence base for decision-making is comprehensive and promoting equity and fairness in participation.

- Current approaches to engagement are often based on an assumed 'active customer' who is engaged with the market, makes rational decisions based on available information and has the resources and motivation to participate in engagement processes.

- These approaches may not be effective in ensuring that regulatory decisions and other processes are informed by evidence from a diverse range of consumer voices, especially in times of disruption or a more widespread health or economic crisis. This raises concerns in regard to the legitimacy, inclusivity and diversity of decisions and the accountability of regulators, suggesting the need for a more inclusive approach.

The consumer interest and the role and functions of the Essential Services Commission

The commission regulates the electricity and gas, water, and transport sectors in Victoria, as well as the Victorian Energy Upgrades program. The commission also administers the rate-capping system for the local government sector.[13]

The sectors regulated by the commission have been described as 'critical for security, well-being and social participation, which magnifies the impact of potential harm faced by vulnerable consumers'.[14] They concern daily and essential activities relating to mental and physical health, hygiene and infection control, access to food and water, mobility, and community participation.

The commission performs a range of functions in relation to these sectors, including:

- setting or monitoring prices
- setting and reporting on service standards and market conduct
- monitoring and enforcing consumer protections
- ensuring compliance and enforcement of regulatory obligations
- granting, approving and withdrawing licences or applications for variations
- conducting inquiries
- providing advice to government.[15]

The commission also has legislative functions that relate to consumers and the community. These include:

- advising government on economic regulation issues in regulated industries or on other issues as requested
- conducting inquiries on matters within regulated industries or essential services, including inquiries into systemic issues relating to reliability of supply
- conducting public education programs to promote long term consumer interests and other objectives, or in relation to significant regulatory changes
- publicly reporting on the market structure and performance of a regulated industry.[16]

The outcomes of these functions can have significant implications for consumers across economic, physical, psychological and social dimensions.[17]

The commission's obligations and functions are all directed towards achieving its statutory objective to 'promote the long term interests of Victorian consumers' in performing its functions and exercising its powers.[18] In the pursuit of this objective, the commission must have regard to the 'price, quality and reliability of essential services'[19] as well as 'the interests of consumers and users of products or services (including low income and vulnerable consumers)'.[20]

Consumer-focused obligations like these are commonly found in legislation governing the operations and procedures of regulators in Australia and the UK. This reflects a progression from traditional concepts of regulation that focused primarily on consumer protection against competitive and predatory practices to more contemporary ideals of principles-based or responsible regulation that focuses on consumer rights in terms of access to services, health, wellbeing, and the 'ability to lead a good life'.[21] Researchers have argued that this cannot be achieved without consumer

engagement, and that a failure to engage with consumers exposes regulators to the possibility of not meeting their fundamental regulatory objectives.[22]

The rationales for effective consumer engagement in the regulatory context

Consumer engagement in a changing regulatory landscape

'Public participation' and 'community and/or stakeholder engagement' are often used interchangeably to describe '[t]he practice of actively bringing community voices into decisions that affect, impact or interest them'.[23] Engagement with actual or potential consumers of essential services is increasingly recognised as a core aspect of essential services regulators' functions and processes.

The growing regulatory focus on consumer engagement sits within a broader government and industry culture recognising community and stakeholder engagement as a 'standard component of any significant project as much as traditional disciplines such as planning, development and implementation'.[24] This is consistent with more recent global recognition of effective communication and community engagement as 'a critical component of the response… in humanitarian settings' to the COVID-19 pandemic, a health and economic crisis that has significant implications for consumers of essential services.[25]

In the regulatory context, it is also increasingly accepted that direct engagement by regulators and regulated businesses should not be limited to professional and industry stakeholders and groups that advocate for or represent consumers. It has been observed in the UK context that:

> Growing customer engagement is a topic whose time seems to have come. Across regulated industries, regulators are proposing different forms of customer engagement … the ideas about customer engagement are hardly novel — what is novel … is the encouragement for regulated firms to directly engage with their (various) customers.[26]

Research on 'effective consumer engagement'[27] in the regulatory context has identified the importance of engagement for:

- achieving fundamental objectives relating to consumer interests and wellbeing
- properly reflecting the public participatory dimensions of regulatory processes.

This section discusses the rationales and justifications for regulators' engagement with consumers, and with other stakeholders regarding consumer issues.

Purposes and value of consumer engagement

Regulatory engagement with consumers is perceived to have value for a range of reasons. It:

- provides regulators with the evidence necessary to improve regulatory processes, make better decisions and develop regulatory policy (by, for example, ensuring legitimacy, ensuring buy-in, and testing implications of policy for different people)

- is a tool for gathering reliable and crucial information that can be employed as part of general sector monitoring, or for assisting regulators to understand, address or prevent 'vulnerability'

- helps ensure that consumers and the general public are informed about regulators' work and that consumers are empowered to make consumer decisions

- can give consumers confidence that regulators have their interests at heart and give regulated businesses comfort that regulators are making evidence-based decisions

- ensures that regulators perform their legislative functions

- ensures that existing regulatory obligations, particularly those focused on vulnerability, are effective and/or are effectively monitored and enforced.

In summary, the four main purposes of regulators' engagement with consumers are to:

- establish and maintain legitimacy

- engage in sound regulatory decision-making

- demonstrate accountability

- ensure inclusivity and diversity.[28]

These are explored in turn.

Legitimacy

Legitimacy is a fundamental concept in regulation. Growing calls for consumer engagement have been characterised as a response to a legitimacy crisis in regulation, both in terms of the weakening and wearing down of processes and a broader uncertainty regarding the nature and quality of the entire regulatory state with respect to consumers.[29]

The idea that decisions or policies will only be accepted if they are perceived to be legitimate has been emphasised in various theoretical and policy contexts. The 'acceptance factor' – which refers to the likelihood of an idea being accepted by many at the same time[30] – has been described in the engagement context as being a 'crucial part in any adoption of a reform idea'.[31] Theories of procedural justice similarly include the suggestion that individuals' perception of the qualities of a process, including fairness and legitimacy, influence their perceptions of the outcome of that process.[32]

Heims and Lodge suggest four rationales for community engagement that are connected to the legitimacy-based aspects of regulation. They are:

1. **Enhanced responsiveness:** offering a novel perspective that compels regulators to be responsive to customers as a way of dealing with growing disillusionment and fatigue about existing regulatory arrangements.

2. **Enhanced regulatory decision-making:** increasing the information regulators rely on to make decisions, and providing a more effective way to monitor consumer complaints and participation in place of heavy monitoring of regulated businesses. This can improve the quality of decision-making processes.

3. **Enhanced decentralisation:** empowering consumers to engage directly with regulated businesses and act in their own best interests, such that consumer engagement is a means to reducing or removing the role of regulatory agencies in decision-making.

4. **Enhanced publicness and citizen involvement:** entrenching citizen involvement and interests in regulated processes, signalling a rejection of dominant economy-driven analysis and well-established stakeholder interests in favour of the public nature and quality of essential services regulation.[33]

Sound regulatory decision-making

Effective consumer engagement can enhance the *processes* of regulatory decision-making by ensuring that there are pathways for gathering information and monitoring that is necessary for making decisions that achieve regulatory objectives.

The regulatory agenda is increasingly focused on issues of consumer affordability and sustainability and less on 'detailed issues of economic price regulation'.[34] Associated with this, contemporary regulatory approaches are more participatory, consensual and positive than traditional processes, which have been characterised as negative, controlling, directing and dominating and which distanced regulation from the community.[35] In the contemporary perspective, regulation is reframed as a positive force, with a greater connection to the community, and one that can enhance wellbeing, as well as protecting consumers and safeguarding security and rights.[36]

Concerns have been expressed that traditional regulatory policies, designed to protect consumers from harmful choices[37] may inhibit consumer engagement and participation. Regulatory policies that perceive consumer decision-making abilities to be 'limited' in some way may over-emphasise the need to protect consumers from their own decisions.[38] It is suggested that a 'paternalistic' approach — with a heavy focus on consumer protection — can widen the concept of consumer harm, while narrowing the concept that consumers of all abilities can consent to and participate in market decisions. A contemporary approach that focuses more on communicating with and supporting consumers to genuinely participate and deliberate when selecting and using services may be more effective in gaining and maintaining legitimacy.[39]

A consumer focus is now considered to be the primary driver of what constitutes 'good' evidence for sound regulatory decision-making,[40] with consumer interests and needs lying at the heart of good quality outcomes. This necessitates a broad approach to consumer consultation and engagement, underpinned by five 'meta-trends':[41]

1. Digital communications are changing the way consumers and regulators communicate and have created greater consumer expectations about the availability and responsiveness of regulators and providers.

2. Smart technologies are changing the way some consumers use essential services. These developments may put pressure on regulators' standard interactions with consumers as well as fragmenting the 'monolithic customer base',[42] giving rise to greater variation in wants and needs and additional considerations in terms of consumer protection, including in regard to consumers experiencing vulnerability (discussed further in section 3, below).

3. Social changes have led to a demand for services that are more 'social, mobile and local' and consumers are more likely to compare their experiences across sectors and services. New forms of communication and interaction have amplified voices that have previously not been heard, creating new opportunities for engagement.[43]

4. A growing focus on market-led solutions to regulatory policy issues, in preference to state-led and bureaucratic processes, necessitates new ways of capturing and incorporating the collective 'citizen' perspective, as distinct from the individual consumer perspective.

5. A decline in trust and confidence in regulated sectors has raised challenges for regulated services in maintaining their social licence to operate and in ensuring frameworks can legitimately regulate these services.[44]

All of these changes signal a move away from traditional and narrow approaches (formal, indirect and group-based) to innovative and varied approaches (flexible, direct and individual) to engagement that, by their nature, should be more capable of being inclusive.[45] In this context, regulatory engagement mechanisms may need to adapt to be:

> more bespoke and tailored … take a far less sector by sector approach and … become more customer- and community-centric … [which] can also help overcome problems around 'consultation fatigue.'[46]

Accountability

The growth of interest in how citizens can participate in regulation has been described as a 'direct response to a perceived lack of accountability'.[47] Ensuring regulator accountability requires genuine consumer involvement in decision-making,[48] meaning regulators are honest and transparent about the actual involvement of customers and consumers, the representativeness of

those involved, and the impact their participation can and does have on the regulator's decision-making.[49]

Inclusivity and diversity

Inclusivity in relation to consumer engagement means more than having targeted strategies to identify, bring in or 'access' groups of excluded consumers. It means avoiding an approach where some consumers are allocated to groups or categories that are considered to be 'mainstream' while others are allocated to groups or categories at the margins due to actual or perceived circumstances (including those of vulnerability) or membership of demographic or identity groups.[50]

Inclusivity is also linked to the broader trend of enhanced 'publicness', where regulators recognise that some regulatory issues, particularly in the area of essential services, have significance not only to existing 'consumers' but to the public generally.[51] This means regulators must also be 'inclusive' in the sense of adopting a broad and flexible perspective when defining and investigating the consumer interest.

Diversity is a fundamental principle that recognises the need to ensure that the people who participate in regulator engagement are 'legitimate' representatives of consumer, community and/or citizen voices.[52] Diversity refers to the range of experiences, circumstances, backgrounds, approaches, and relationships of consumers and the public more generally within the regulatory landscape.[53] Ensuring diversity is necessary to ensure that the evidence base derived from engagement activities is reliable in terms of its representativeness of the full range of perspectives and experiences,[54] as well as more fundamental considerations of equity and fairness.

Approaches to consumer engagement in the regulatory context

The role of consumers and other stakeholders in engagement processes will vary depending on the nature of the particular project and the meaning and purpose of engagement in that particular context. This means regulators should exercise 'professional agility and intellectual flexibility' in their approach.[55]

Regulators generally engage with consumers in four key areas of activity:

1. providing information to consumers about regulatory work
2. helping consumers to use regulated services
3. engaging consumers in developing policy by seeking and gathering information or input from consumers, for example, on preferences
4. gathering 'consumer-related intelligence' on an ongoing basis to feed into sector monitoring for signs of consumer detriment.[56]

Current approaches to engagement activities are often based on an assumed 'active consumer' who:

- is engaged with the market

- makes rational decisions based on available information

- has the resources and motivation to participate in engagement processes.[57]

Such approaches may not be effective in ensuring that regulatory decisions and other processes are informed by evidence from a diverse range of consumer voices, especially in times of disruption or a more widespread health or economic crisis.

This raises concerns regarding the legitimacy, inclusivity and diversity of regulators' processes and decisions, and the accountability of regulators in performing their functions. The extent to which regulators capture and address the needs and experiences of consumers experiencing vulnerability — and indeed the wider question of the role and purpose of consumer engagement in identifying and addressing circumstances of vulnerability — has not been explored in detail, despite growing recognition of its significance.

Section 3: Who are 'consumers experiencing vulnerability?'

Key points

- Just as the concept and purpose of regulators' engagement with consumers has evolved, so too have fundamental concepts of 'consumer vulnerability'.

- Traditional approaches to defining and responding to consumer vulnerability involved identifying groups of people whose personal, individual features were thought to make them more 'vulnerable' to poor consumer outcomes.

- There have been moves away from this 'category-based' approaches in favour of an understanding that vulnerability is fluid and complex. It has many possible causes, may be temporary or long-term, and can affect anyone at one or more points in life.

- Circumstances of vulnerability may be permanent or transient and will have varying levels of severity. They can also be multi-dimensional, overlapping and compounding. Characteristics of the market, and of regulation, can cause or exacerbate consumer vulnerability. This means they require a flexible and tailored response.

- Inadequate responses to vulnerability can result in direct or indirect financial hardship and disadvantage, the creation or exacerbation of health conditions or disabilities, and difficulties participating in, or being completely shut out of, markets. Exclusion from markets or services can lead to other forms of exclusion and isolation.

- Policy organisations, researchers and advocacy groups have challenged the use of the label 'vulnerable consumers' — often employed as a shorthand — on the basis that it is inaccurate, misleading, and unhelpful.

- There have been efforts to define more useful and appropriate concepts, such as 'consumer vulnerability' and 'consumers experiencing vulnerability' for a range of regulatory purposes.

- Operationalising a broad and encompassing definition of consumer vulnerability has proven challenging. One approach has been to identify 'priority areas' in order to make the best use of limited resources.

- 'Inclusive design', 'human-centred design' and 'universal design' adopt a different perspective, focusing on developing products, services and consumer-related processes that meet the requirements and needs of the full range of potential users, rather than addressing vulnerability directly.

- The question of how to define 'consumers experiencing vulnerability' for the purpose of consumer engagement — and whether this is necessary — has not been a focus of regulators' efforts to date.

From categories to circumstances of vulnerability

> [C]onsumer 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.[58]

Just as the concept and purpose of regulators' engagement with consumers has evolved, so too have fundamental concepts of 'consumers'[59] and 'vulnerability'.[60] This section describes the changes to regulators' understanding of, and approach to, consumer vulnerability and discusses how this relates to consumer engagement more broadly.

There has been a 'welcome'[61] change in the way regulators and providers of essential services engage with the issue of consumer vulnerability. The fact that some consumers or groups of consumers are at greater risk of 'harm, detriment or disadvantage'[62] than others is not a new realisation. However, there has been a marked shift in the understanding of what causes such 'vulnerability' and what regulators and industry must do to respond to and prevent it.

Traditional approaches to consumer vulnerability involved identifying groups of people whose personal, individual features were thought to make them more 'vulnerable' to poor consumer outcomes.[63] In the Australian context, these groups included, for example, people with disabilities, people from Culturally and Linguistically Diverse backgrounds, Aboriginal and Torres Strait Islander people, older people, and people with mental health conditions.[64]

Regulators in the UK and Australia have begun to move away from this 'category-based' approach in favour of an understanding that vulnerability has many possible causes, may be temporary or long-term, and can affect anyone at one or more points in life. This means recognising that vulnerability is 'a fluid state that needs a flexible, tailored response'.[65] A focus on these 'circumstances of vulnerability' is apparent, to some extent, in definitions of vulnerability adopted by the Australian Competition and Consumer Commission,[66] the Australian Securities and Investments Commission,[67] and UK regulatory bodies including the Competition and Markets Authority,[68] Ofwat[69] and Ofgem.[70]

In this broad understanding, risks of harm, detriment or disadvantage may be associated with one or more of a range of factors, including:

1. personal or social circumstances (such as low literacy, vision impairment or low household income)

2. a change in circumstances or major life event (such as loss of employment, bereavement, domestic and family violence or natural disaster)

3. characteristics of the market (such as lack of choice and competition in rural and regional areas)[71]

4. actions of businesses (such as complicated pricing structures, unclear information, or targeted selling of inappropriate or flawed products and services).[72]

Such circumstances of vulnerability may be permanent or transient and will have varying levels of severity. They can also be multi-dimensional, overlapping and compounding. For example, a person who is recently bereaved may be the target of pressure-selling[73] or a person with a chronic health condition who has higher electricity and gas usage than the average consumer may be reliant on minimal JobSeeker payments.[74]

If circumstances of vulnerability are not recognised and addressed, consequences for consumers can include:

• direct or indirect financial hardship and disadvantage

• the creation or exacerbation of health conditions or disability[75]

• difficulties participating in, or being completely shut out of, markets.[76]

Exclusion from particular markets or services may also lead to other forms of exclusion and isolation. For example, financial exclusion has been linked to social exclusion in the consumer credit market.[77] Inadequate knowledge of the 'effect of consumers entering [service] contexts with differing vulnerability conditions' and inadequate regulator responses to consumer vulnerability can have wide-ranging effects beyond the individual consumer, affecting 'individual, communal, national and even global well-being'.[78]

Circumstances of vulnerability in Australia

Studies have highlighted the existence and consequences of consumer vulnerability in Australia.[79] A report published by the Australian Energy Regulator in 2020 summarises the broad range of circumstances that may contribute to consumer vulnerability, either separately or in interaction. These include low incomes and underemployment, financial stress, high household debt, disability, mental health issues, low literacy, domestic and family violence, speaking a language other than English at home, social isolation, chronic disease, digital exclusion, and insecure housing.[80]

Many of these circumstances are connected with wider social and economic factors, such as the prevalence of insecure work and underemployment, low wage growth, declining home ownership, the declining value of income support, and the ageing population.[81] In 2020, the widespread and serious impacts of the COVID-19 pandemic have exposed many Australians to sudden declines in their business or personal incomes, higher energy bills and other shocks that are causing new vulnerability or exacerbating existing vulnerability.[82]

The characteristics of markets, such as a lack of meaningful choice in small or uncompetitive markets, and technological and structural changes in transitioning energy markets, may also

worsen these circumstances or create new vulnerabilities for Australian consumers.[83] The activities of businesses also create or exacerbate vulnerability where, for example, they:

- fail to provide information, products and services that are accessible, affordable and suitable[84]
- offer overly complex pricing structures or contract terms
- deliberately target people in vulnerable circumstances with inappropriate products or services[85]
- exploit behavioural or cognitive biases when, for example, imposing 'loyalty penalties' on long-standing customers.[86]

From 'vulnerable consumers' to 'consumers experiencing vulnerability'

Policy organisations, researchers and advocacy groups have challenged the use of the label 'vulnerable consumers' — often employed as shorthand — on the basis that it is inaccurate, misleading and unhelpful.

It is *inaccurate* because it erroneously implies that there is a definable, static group of people who are vulnerable. This can result in both 'over-inclusion' and 'under-inclusion' by, on the one hand, incorrectly assuming a person is vulnerable because of their group membership (over-inclusion) or, on the other hand, failing to identify circumstances of vulnerability affecting people who do not fit traditional categories (under-inclusion).[87] This is consistent with a growing body of research demonstrating that:

- there is no such thing as the 'standard' or 'average' consumer, that is, one who uses information and makes decisions in a consistently reasonable, rational, benefit-maximising and predictable way
- consumers frequently act in 'non-standard' ways.[88]

Using the term 'vulnerable consumer' can also be *misleading* because it implies that some people are different, dependent, and in need of protection by virtue of their individual characteristics. Responses to such individual 'deficits' tend to focus on protecting or relieving consumers from harm, rather than supporting them to exercise their rights and access essential services on the same basis as others in the community. Consequently, the role of structural forces in creating or contributing to vulnerability, such as markets, business behaviour, economic conditions, and social factors, is not identified or addressed.[89]

Finally, the concept of the 'vulnerable consumer' is *unhelpful*, because most consumers who might be classified as 'vulnerable' (and organisations that represent their interests) do not like or identify with the term, and hence may not respond to calls for information or engagement in these terms.[90]

The remainder of this section discusses efforts to define more useful and appropriate concepts, such as 'consumer vulnerability', 'consumers experiencing vulnerability' and 'consumers in vulnerable situations' for regulatory purposes, including consumer engagement.[91] This is a

balancing act, requiring attention to both the potential for all people to find themselves in vulnerable circumstances and the specific circumstances that produce disproportionate and/or severe disadvantage for only some people.[92] Careful attention should also be given to categorising the drivers of such circumstances, where there can be overlap or interaction between factors across structural conditions (market, societal, economic and political) and personal characteristics.[93]

Developing regulatory definitions of 'consumer vulnerability'

> [R]egulators have started to recognise that consumer vulnerability is a more complex, dynamic concept than can be captured in list form and have been developing plans and policies aimed at reflecting this reality. This is extremely welcome but it inevitably leads to the big question of how the regulators put this approach into practice...[94]

The appreciation of the breadth of circumstances that might give rise to vulnerability has brought the issue into the 'mainstream', with regulators increasingly recognising that they must consider vulnerability in all processes, decisions and actions.[95] Preliminary work in this area has focused on developing comprehensive definitions of consumer vulnerability to guide regulators' planning and activities, first in the UK and increasingly also in Australia.[96]

In the Australian context, work in the first decades of the 2000s was focused on defining vulnerability in terms of evaluating the effectiveness of assistance given to consumers in meeting needs and improving protection, ensuring compliance of businesses when dealing with vulnerability in the consumer context, and planning in relation to future policy settings and strategies for supporting vulnerable consumers.[97] Other initiatives, such as ASIC's Indigenous Outreach Program, have been targeted at specific communities.[98]

Regulated businesses and industry bodies have also shown increasing interest in the broader issue of 'vulnerability' and developing effective responses to it. For example, Yarra Valley Water convened a 'Vulnerability Roundtable' in 2016, inviting business, government and the community sector to identify goals and necessary actions to reduce vulnerability, which emphasised the need for cross-sector collaboration, early identification of vulnerability, and community involvement in rating organisations' vulnerability programs.[99] This led to the establishment of the Thriving Communities Partnership, a 'cross-sector collaboration' whose members have committed 'to contribute to and implement policies, practices and initiatives that result in tangible change for people experiencing vulnerability or hardship'.[100]

In the UK, efforts were initially 'ad hoc', focusing on identifying vulnerable groups or classes of consumers in particular markets or in relation to specific regulatory issues (like price-setting or dealing with financial hardship).[101] More recently, regulators have begun to develop organisational vulnerability strategies.[102] For example, Ofgem (the Office of Gas and Electricity Markets) was the

first of the UK regulators to publish a vulnerability strategy in 2013, which was revised in 2019.[103] Its definition of vulnerability reflected the circumstances-based approach described above. It explained:

> '[W]e have defined vulnerability as when a consumer's personal circumstances and characteristics combine with aspects of the market to create situations where he or she is:
>
> - significantly less able than a typical consumer to protect or represent his or her interests in the energy market
>
> - significantly more likely than a typical consumer to suffer detriment, or that detriment is likely to be more substantial.'[104]

Consumer engagement does not appear to have been a major feature of regulators' work on vulnerability-related issues. Evidence of the experiences and needs of consumers experiencing vulnerability has mainly been gathered through traditional quantitative (such as survey and consumer data analysis) and qualitative (such as interview and focus group) methods.[105]

Some UK regulators have described the role of consumer advisory bodies in developing their vulnerability strategies or undertaking other consumer-focused work. However, the exact nature of the membership of these bodies — for example, whether they include people participating on the basis that they have themselves experienced vulnerability in a consumer context — is not always clear from regulators' reports. For example:

- Ofgem's Consumer First Panel comprises around 100 people and its membership is regularly 'refreshed'. This includes 'over-recruiting people from BME [Black and Minority Ethnic] communities, and young energy consumers, to ensure they are represented in sufficient numbers for their perspectives to be understood'.[106]

- Ofcom described '[i]nput from consumer stakeholders' as 'usefully augment[ing] information received from market research'.[107] Ofcom has a duty to convene a Communications Consumer Panel as well as an Advisory Committee 'relating to older and disabled people';[108] as of 2014 it also participated in and hosted a Consumer Forum for Communications 'in order to expand its stakeholder contacts, particularly with some groups that are under-resourced'.[109]

- The Financial Conduct Authority describes the role of its Consumer Network in helping the regulator 'to hear the voices of more hard-to-reach consumers' and connecting with consumer organisations like Citizens Advice, Age UK and the Consumer Council of Northern Ireland.[110] A dedicated 'Consumer Vulnerability Network' grew from this original network.[111] The Financial Conduct Authority also runs a UK outreach programme whereby senior directors 'meet with organisations that work with consumers around the country, such as debt advice charities, student money advisors and local financial capability forums'.[112]

A workable definition of 'consumer vulnerability' for different regulatory purposes

General approaches to defining 'consumer vulnerability'

UK regulators have acknowledged the difficulty of operationalising a broad and encompassing definition of consumer vulnerability to inform their regulatory activities. They suggest the need to identify 'priority areas'[113] in order to make the best use of limited resources.[114] This essentially involves adopting a broad headline definition of vulnerability for strategic purposes and then narrowing in on issues, circumstances or groups as relevant to a particular process or problem.[115]

Several overlapping approaches to this can be identified, most of which draw on the regulator's existing knowledge and experience, as well as consumer research and other information gathering.[116] These include:

3. *Focusing on those who are most at risk of detriment and/or are at risk of the most serious detriment.*

Some regulators have adopted approaches that focus on particular subsets of consumers based on an assessment of relative vulnerability.[117] Some state that their 'vulnerability' efforts are focused on consumers with the most severe needs and/or the highest risk of severe detriment.[118]

'Triage-style' approaches[119] have also been proposed; for instance, a 'traffic light' model, which categorises consumers as either 'potentially vulnerable' (not currently vulnerable but may become vulnerable if circumstances change); 'vulnerable' (currently more exposed than other consumers to harm, loss or disadvantage); and 'particularly vulnerable' (at 'greatly heightened risk of experiencing detriment', and more serious negative consequences, compared to the majority of consumers).[120]

- *Examining a subset of circumstances of vulnerability that are likely to be representative of a range of 'vulnerable' groups.*

Another approach has been to select a subset of '"proxies" [that are] associated with a range of circumstances contributing to financial detriment', on the basis that these 'may apply to consumers in a broad range of vulnerable circumstances' and hence give broad insight.[121] The UK Financial Conduct Authority adopted this approach to develop its understanding of vulnerability in relation to financial services. It commissioned research with people with long-term or significant illness, carers, people aged over 65, people with 'low basic skills' like literacy and numeracy, people experiencing job loss or unemployment, and people who were bereaved (loss of partner or parent).[122]

In another example, research conducted for Ofgem segmented customers into thirteen distinct groups or 'archetypes' of energy consumers that would allow the regulator to identify consumer types, including consumers 'in vulnerable situations', and to understand the impacts that different energy policy changes might have on different groups. The researchers cautioned that the archetypes did not permit a close examination of 'complex vulnerabilities', but explained that they offered a tool for 'more detailed review of different consumer issues across the energy sector',

including exploring the distributional impacts of different policy settings and ensuring that certain household types are not overlooked or disadvantaged.[123]

2. *Focusing on sectors, products or services used by consumers experiencing vulnerability, or mapping location-based need.*

In some instances, regulators have proposed a focus on 'sectors and products which are predominantly used by consumers with low resilience', such as 'high-cost short-term credit',[124] rather than looking directly at consumer groups. Several Australian studies have examined vulnerability based on geographic location — for instance:

- AusNet services commissioned the Consumer Policy Research Centre to use census and other quantitative data to identify households experiencing disadvantage by location and household type;[125] and
- St Vincent de Paul Society used energy disconnection data to identify postcodes with high rates or risk of disconnection and better understand the factors leading to these events.[126]

The practical difficulties in conducting these prioritisation exercises, and in identifying consumers experiencing vulnerability more generally, have been noted. Improved use of data and more nuanced research have been identified as potentially fruitful avenues for improvement.[127]

Another set of approaches proposed by some researchers and regulators do not focus directly on consumer vulnerability. These approaches, which include 'inclusive design', 'human-centred design' and 'universal design', instead focus on designing products, services and consumer-related processes to meet the requirements and needs of the full range of potential users.[128] These approaches typically begin with an attempt to define the spectrum of potential users, and involve a high level of involvement of end-users in the design, development and testing of products, services, and processes.[129]

Defining the group for consumer engagement

The specific question of how to define 'consumers experiencing vulnerability' for the purpose of consumer engagement — and whether such an exercise is necessary — has not been a focus of regulators' efforts to date. This is despite:

- recognition of the importance of diverse and representative consumer engagement for a range of regulatory functions (discussed in detail in section 2 of this report, above)
- indications that attempting to engage with consumers without understanding the complexity of vulnerability (or having a strategy for recognising and tailoring engagement activities to consumers who are experiencing vulnerability) risks exacerbating existing vulnerability or having other detrimental effects on consumers' wellbeing.

An inadequate approach in this context can erode legitimacy by threatening the very aim of contemporary, responsible regulatory work. In contrast, recognising that some consumers may need extra support in accessing and participating in engagement activities encourages social participation and equal access.

Flexible approaches that can be tailored to individuals can ensure that consumer engagement activities capture the diverse voices of consumers, including consumers who may be experiencing vulnerability. This is central to establishing legitimacy and accountability.[130] The next section outlines these approaches — which are variously described as 'inclusive', 'universal' or 'diverse' engagement — and the existing guidance for regulators on how they can be implemented.

Section 4: Guidance on engaging with consumers experiencing vulnerability

Key points

- Regulators, government bodies and others have published guidance on how to conduct inclusive consumer engagement.
- The guidance can help regulators at four stages:
  - Developing an organisational culture of inclusive, diverse and representative engagement.
  - Understanding why consumer engagement is needed and what approach to take.
  - Identifying and reaching consumers for engagement.
  - Designing and conducting inclusive engagement activities.

Introduction

Regulators, government bodies, researchers, and community and consultancy organisations have published guidance on how to engage with a wide range of consumers and community members. This guidance identifies four matters that regulators should address in establishing and running consumer engagement processes that achieve these goals:

A. Developing an organisational culture of inclusive, diverse and representative engagement

B. Understanding why consumer engagement is needed and what approach to take

C. Identifying and reaching consumers for engagement

D. Designing and conducting inclusive engagement activities.

The main sources of guidance are discussion papers, strategies, research reports and journal articles. We identified a small number of documents focused specifically on essential services regulators' engagement with consumers and a larger number of documents on 'consumer' or 'community' engagement by public bodies more generally.

We focused on documents with some emphasis on 'vulnerability', 'inclusive engagement', engagement with so-called 'hard to reach' groups and/or engagement with populations or groups who are often not well-served by standard approaches to engagement, such as people with disabilities, older people, and Aboriginal and Torres Strait Islander people. For more information on our literature search methodology, see **Appendix A**.

A. Developing an organisational culture of inclusive, diverse and representative engagement

> ## Key points
>
> - Regulators should develop an organisational culture that values diversity, inclusivity and representativeness.
>
> - Regulators should treat inclusive engagement as part of usual practice. Stakeholder and consumer engagement strategies should be adapted to be inclusive and universal, rather than 'adding on' separate processes for some groups.
>
> - Embedding inclusive engagement requires resources to:
>
>   – develop formal consumer engagement strategies and approaches
>
>   – conduct research
>
>   – train staff
>
>   – establish dedicated teams to coordinate efforts and share knowledge and expertise across the organisation
>
>   – engage experts
>
>   – conduct inclusive and universal engagement activities (such as meetings, roundtables, interviews, focus groups, written and online consultations).

In section 2 of this report, we discussed four rationales for essential services regulators to ensure that their processes and decisions are informed by engagement with a range of consumers, including consumers experiencing vulnerability.

These include establishing the legitimacy of regulators' actions and decisions, enhancing the quality of regulatory processes and outcomes, ensuring that regulators are accountable to the public, and ensuring that consumer input genuinely reflects the diversity of the consumer body.

Embedding inclusive consumer engagement in practice requires:

- establishing inclusive engagement as part of mainstream engagement

- developing structures to support the conduct of inclusive engagement.

a. Establishing inclusive engagement as standard practice

Consumer engagement policy and practice should place the **interests of consumers at the centre**.[131] Consumer engagement will be effective when it enables regulators to become 'consumer interest expert[s]', meaning they are:

> able and equipped to identify likely sources of consumer detriment now and in the future, to be confident that they are effectively exploring the needs of existing and future consumers and discussing robustly the short and long term trade-offs that will need to be made as a result.[132]

This will only be possible if *all* consumer engagement is inclusive, representative and diverse. This means regulators' **general consumer engagement strategies and approaches should be adapted** to be inclusive, rather than regulators developing separate, 'add-on' processes to engage only some consumers or groups of consumers.[133]

Regulators should view diversity as being within the mainstream, rather than on the margins.[134] This is consistent with the shift (described in section 3 of this report, above) in how consumer vulnerability is understood — from a 'special' issue that affects only some categories of consumers to a widespread issue that can affect consumers in multiple, shifting ways and that may be created or exacerbated by markets and regulation.[135] Developing equality and diversity policies and recruiting diverse boards and staff — to 'ensure that they include people with a range of backgrounds and life experiences' — is likely to support these efforts.[136]

Bringing inclusive engagement into the mainstream also means recognising the need to seek 'citizen' and 'public' perspectives beyond those of existing consumers. This is necessary for several reasons, including ensuring that matters of broader public significance are addressed through a more open and democratic process, and that the perspectives and needs of people who are excluded altogether from participating in a market are captured. This might require more deliberative or empowered approaches to engagement such as citizens juries and negotiated settlements.[137] These can provide fora for engagement that are more suitable for debate and sharing ideas on 'big-picture' issues, or more consistent for reaching out to, and empowering, people who may have been excluded from the market or prior engagement with existing consumers.

b. Structures and resources to support inclusive consumer engagement

Organisational commitment is essential to establishing and driving inclusive consumer engagement processes. Recognition of the value of consumer engagement:

> needs to be integral to any corporate strategy and at the heart of policy and delivery. It needs Board level leadership and commitment. It needs clarity of purpose. That purpose should be for consumer engagement to have a genuine and visible impact on policy. It recognises consumers as experts with the insight and expertise which can help policies to respond better to need.[138]

Proper resourcing is required to integrate inclusive, diverse and representative engagement in regulators' culture and practice and ensure that people at all levels of the organisation understand

and support the purpose of consumer engagement.[139] These include '**resources for training and research**' and resources 'to enable **dedicated teams to work across the regulator** and share knowledge and expertise',[140] including developing strategies, tools and techniques for inclusive engagement.

Collaborations and cross-sector partnerships may also help regulators to develop and embed inclusive engagement practices. These might involve:

- arranging work placements for regulatory staff in consumer advocacy organisations[141]

- engaging experts or collaborating with organisations that specialise in developing and managing consumer engagement projects (discussed in **Case Study 1**, below)[142]

- establishing networks or information sharing partnerships among regulators (like the UK Regulators Network) to share knowledge and examples of good practice.[143]

-

Case Study 1: Using specialist expertise for regulatory consumer engagement online — SA Power Networks' "Talking Power", supported by Bang the Table

Talking Power is an online engagement space for SA Power Networks, established in 2017. It was initially intended to provide 'a progressive, phased route to activating and sustaining dialogue' within SA Power Network's '2020 Reset Customer Engagement Program'[144] and its success during this process means it is now described as having a 'vital role' in SA Power Networks' 2020-2025 engagement program.

Talking Power was developed in partnership with Bang the Table, a digital engagement company that facilitates public participation through an online community engagement platform and associated training, support, and guidance.[145] According to Bang the Table, the collaboration was successful because it:

- was consistent with SA Power Network's key engagement principles (such as inclusivity and targeting a range of participants)[146] and allowed 'existing conversations to be extended into a comprehensive engagement program'[147]

- complemented SA Power Networks' 'Vulnerability Customer Strategy' by providing an *inclusive and tailored approach to engaging with consumers experiencing vulnerability* (Talking Power has a dedicated portal on 'Vulnerable Consumers')[148]

  helped SA Power Networks (as a monopoly business) to meet its regulatory requirements of engaging with consumers.[149]

B. Understanding why consumer engagement is needed and what approach to take

Key points

- Having a clear purpose and plan for consumer engagement can help regulators to identify and reach the right people and design inclusive activities.

- Regulators should consider the need for, and purpose of, consumer engagement at an early stage in any project.

- Frameworks or tools like the Ofcom Consumer Panel toolkit can help regulators to:

  - think about the implications of regulatory policy and processes for consumers

  - decide what input they need from consumers, including consumers experiencing vulnerability and other groups.

- Regulators should also consider the appropriate form of consumer engagement, for example:

- whether they will ask consumers to give feedback on a draft policy or decision

- whether consumers will have input at earlier stages of devising or drafting policy or regulatory responses

- whether consumers will be partners in defining the problem and devising a solution.

- Tools like the International Association for Public Participation (IAP2) public participation spectrum can help regulators to design engagement and select tools according to the level of input and influence they want consumers to have over the final outcome, such as:

  - Informing: giving consumers information to help them understand the problem, alternatives and/or solutions.

  - Consulting: getting feedback from consumers on analysis, alternatives and/or solutions.

  - Involving: working with consumers throughout the process to ensure their concerns and aspirations are understood and considered.

  - Collaborating: partnering with consumers on each element of the decision, including developing alternatives and/or solutions.

  - Empowering: putting final decision-making power in consumers' hands.

A second theme in the literature on inclusive consumer engagement is the need for regulators to adopt a structured approach to determining whether consumer engagement is necessary and what form it should take. The perceived purpose of consumer engagement will then dictate what input the regulator needs from consumers and who the result should approach to provide it.

Several existing tools may assist regulators to **understand why they need to engage with consumers** and **determine the appropriate approach to engagement** – for example, whether

engagement should take the form of information-gathering, more intensive collaboration with consumers, or detailed co-design.

a. Tools for mapping the purpose of consumer engagement

Some tools developed by regulators offer a systematic approach to identifying the consumer interest or consumer need in regard to particular regulatory issues. These may indirectly assist regulators to identify matters for consumer engagement.

For example, the 'Consumer Interest Toolkit' developed by Ofcom's Communications Consumer Panel poses a series of questions that can be used to develop or assess a regulator's approach to defining and addressing consumer interests. These include foundational questions about who the relevant consumers are and how to ensure the right people are consulted (see **Box A**).

A. The Consumer Interest Toolkit[150]

Questions posed under several themes could assist regulators to describe the consumer need and identify consumers for engagement:

- **Organisational issues:** for example, 'Is there a clear view of who the consumer is?'; 'Are there clear policies and procedures setting out the organisation's approach to dealing with consumer interest issues?'

- **Risk assessment and planning:** for example, 'Is there a process of ensuring consumer interest issues are taken into account of [sic] in the development of the organisations periodic business planning process?'; 'Is there regular liaison with consumer bodies to keep informed about their issues and concerns?'

- **Project specific issues:** for example, 'For each project are the relevant consumer interest issues explicitly explained?'; 'Are there appropriate processes devised to ensure evidence is gathered from consumers on the key issues being addressed by the project?'

  Organisational and project specific issues: for example, 'Are there clear processes in place that set out how the organisation communicates with consumers?'; 'Are there clear channels through which consumers can communicate and raise issues with the organisation?'

The UK Regulators Network has published a guide to consumer engagement in regulatory decisions. It describes how a range of UK regulators 'involve consumers, hear their views and take their interests into account when making decisions'.[151] It refers to two purposes of regulator engagement:

- to 'understand whether markets are working for consumers'
- to 'ensure regulatory decisions reflect consumers' needs'.[152]

The guide indicates that the primary factors in determining the nature of UK regulators' consumer engagement are the structure of the sector and the level of competition (and associated level of

consumer choice) within the sector. It notes differences in approach associated with the level of competition in the market:

- In more competitive markets where consumers have some choice, regulators 'work to both empower and protect consumers in these markets', which means they 'need to engage with consumers to ensure policy is designed around consumers' needs.'
- In less competitive markets with monopoly providers, regulators 'carry out consumer research and work with consumer groups and representatives within and outside of the regulator'.[153]

The guide suggests that regulators and regulated businesses:

> need to engage with consumers when they can't make choices between services or when choice alone doesn't drive companies to meet consumers' needs and regulatory intervention is required.[154]

While the guide does not explicitly mention inclusive engagement or engagement with or about consumers experiencing vulnerability, the approach it proposes in mapping the need for engagement could assist regulators to identify actual or potential market-based circumstances of vulnerability within a sector that might require input from consumers.

b. Tools for determining the appropriate and necessary form of engagement

A process for analysing, understanding and mapping out the approach to consumer engagement is essential in planning inclusive consumer engagement. A widely accepted and popular approach to planning community and stakeholder engagement is the International Association for Public Participation (IAP2)[155] public participation spectrum. The spectrum offers high-level, practical guidance on community and stakeholder engagement. It provides a starting point for developing engagement strategies and plans that are consistent and easily evaluated.[156]

The IAP2 spectrum has been used in toolkits, practice guides and manuals in multiple jurisdictions, and in both general and specific policy contexts.[157] For example, it has been applied and adapted in government-wide guidance on community engagement by the Victorian Auditor-General's Office and the South Australian Government.[158]

The IAP2 spectrum presents community (including consumer) participation according to a matrix that reflects the level of impact that participation is expected to have on a decision or other outcome. As the expected impact of public participation increases, the corresponding level of participation and promise made to those participating also increases. Table 4.1 presents the main features of the IAP2 spectrum alongside the VAGO and South Australian Government adaptations.

Table 4.1 *IAP2's Public Participation Spectrum, including adaptions from Better Together (SA Government) and the Victorian Auditor-General's Office*

IAP2 Spectrum of Public Participation[159]					
	INCREASING PUBLIC INFLUENCE ON THE DECISION ⟶				
	INFORM	**CONSULT**	**INVOLVE**	**COLLABORATE**	**EMPOWER**
PUBLIC PARTICIPATION GOAL	To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions.	To obtain public feedback on analysis, alternatives and/or decisions.	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision making in the hands of the public.
PROMISES TO THE PUBLIC	We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will look to you for advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.	We will implement what you decide.

Better Together: Principles of Engagement (South Australian Government)[160]					
	INFORM	**CONSULT**	**INVOLVE**	**COLLABORATE**	**EMPOWER**
EXAMPLE TOOLS	Fact sheets Websites Open houses	Public comments Focus groups Surveys Community meetings	Workshops Deliberative polling Interactive websites	Citizens' advisory committees Consensus-building Participatory decision-making	Citizens' juries Ballots Delegated decisions

Public Participation in Government Decision-making (Victorian Auditor-General's Office)[161]					
	INFORM	**CONSULT**	**INVOLVE**	**COLLABORATE**	**EMPOWER**
DESCRIPTION AND LEVEL OF PARTICIPATION	**Participation** … typically employed 'when a decision has already been made, and government wants to either communicate that decision to the public, or seek opinions on the decision'.		**Engagement** … involves 'two way information flows, and include[s] sharing information within and across stakeholder communities during the decision-making process', as well as a commitment 'to using stakeholder feedback to inform the decision and shape the outcome'.		**Empowerment** … 'where decisions are made jointly between government and the community. This is typically when decision-making authority has been delegated to a group including members from both the government and the community/industry.'
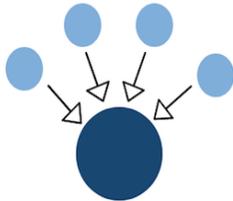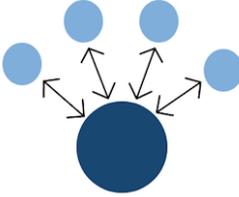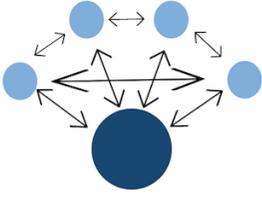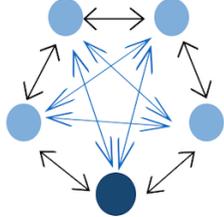
C. Identifying and reaching consumers for engagement

Key points

- Regulators should understand who they need to engage with, and how to identify and reach all relevant participants.

- Regulators commonly engage with organisations that work with consumers or advocate for them.

  - This indirect engagement is conducted in a variety of ways, including roundtables, working groups, advisory committees, data and information sharing, and inviting written submissions.

  - Indirect engagement can give regulators the 'big picture' view of consumer issues, provide comprehensive, cross-sector data on those issues, and present a coherent consumer voice.

- Indirect engagement is unlikely to give regulators the full picture.

  - It offers a 'filtered' version of the consumer perspective and is unlikely to be representative of the views of all consumers (including, for example, people who are excluded from the market altogether, and those who cannot access advocacy or support services).

  - It does not give consumers the opportunity to have a voice and participate directly in public processes.

- Regulators should also engage directly with individual consumers and groups of consumers.

  - Direct engagement can also take multiple forms, including consumer committees or panels, advisory boards, roundtables, written submissions, focus groups, interviews, and vox pops.

  - Direct engagement gives regulators access to information that is not held by consumer organisations, demonstrates respect for individuals' experiences and perspectives, and help ensure the regulator hears from a diverse and representative sample of consumers.

  - Consumer research can be a valuable complement to direct consumer engagement, especially where it provides insights into population-level issues and consumer behaviour.

- Regulators must ensure that direct engagement involves a diversity of consumers, including consumers experiencing vulnerability. This means regulators must:

  - know who the relevant consumers are and how diverse they are

  - have a clear plan for finding and connecting with consumers.

- Stakeholder mapping, researching the community and drawing on existing networks and relationships within the community can help regulators to identify and connect with the full range of potential participants.

- Regulators should build relationships with specific groups of consumers and involve community groups in planning engagement. Some government bodies have developed guidelines for engaging appropriately and respectfully with some groups, such as people with disabilities and Victorian Traditional Owners.

- Regulators should remember that one individual cannot represent the views of an entire group.

- Representative and advocacy organisations run by and for consumers may advocate for the views of multiple members, although their contributions will not replace direct engagement.

- Regulators should also recognise diversity within consumer groups and take an intersectional approach in doing so – for example, engagement with older people should include older people with disabilities, older people from Culturally and Linguistically Diverse backgrounds, older Aboriginal and Torres Strait Islander people, and/or older LGBTI people.

Researchers have argued that effective engagement is only possible if it involves all consumers who are affected by regulatory and policy decisions, including those who are excluded from the market[162] and/or from engagement processes. Regulators therefore need to identify *who* should be involved in engagement at an early stage in any consumer engagement process.[163]

Regulators should consider two matters here. The first is to determine **which form or forms of engagement** — such as direct engagement with individual consumers or indirect engagement with organisations that work with consumers — are appropriate.

The second is to **identify and connect with the full diversity of consumers**, including those who might not be well-served — or might be excluded altogether — by existing approaches to engagement.

a. Direct and indirect consumer engagement

Regulators engage with a range of individuals and groups under the banner of 'consumer engagement'.[164] **Indirect consumer engagement** encompasses engagement with organisations or individuals who work with or on behalf of consumers (including consumers experiencing vulnerability), such as consumer advocates and Community Legal Centres.[165] This form of engagement is *about* the experiences and needs of consumers but it does not hear directly from consumers.

Direct consumer engagement involves engagement with individual consumers or citizens. Individuals may participate only on their own behalf (in terms of their own experience) or may participate as advocates or experts on behalf of themselves and others in similar circumstances, such as people with disabilities or older people.

Co-regulated engagement or **regulator-facilitated engagement** involves the regulator facilitating engagement or other interactions between regulated businesses and consumers through incentives or other regulatory mechanisms.[166] This form of engagement can be useful in giving consumers an 'institutional voice' across sectors.[167] It is also crucial for gathering information about and devising responses to consumer vulnerability through, for example, identifying and supporting customers in vulnerable circumstances and facilitating inclusive or human-centred design of products and services.[168] For example, the commission has developed minimum standards for energy and water

retailers to provide assistance to customers affected by family violence.[169] The standards provide consumers with an entitlement to assistance that is safe, supportive and flexible.[170] They were developed in consultation with energy retailers, family violence specialists, the community sector and, importantly, victim-survivors.[171]

The next two sub-sections focus on the processes of indirect and direct consumer engagement.

Indirect consumer engagement

Regulators' standard approach to incorporating the consumer perspective in regulatory processes and decision-making[172] has been via 'indirect engagement' with organisations that work with or on behalf of consumers (including consumers experiencing vulnerability).[173]

These organisations may, for example, make formal submissions in response to public calls, share information and data about the experiences and requirements of particular groups of consumers and act as a sounding board for, comment on and challenge regulatory approaches and work plans in terms of their implications for consumers.[174] Engagement may be conducted through a range of channels, including advisory bodies, working groups, roundtables and membership-based groups and formal or informal sharing of data and information.[175]

Regulators may need to develop programs or strategies to ensure that consumer advocates have timely access to information and the resources to analyse this information so that they can be effective participants in engagement.[176]

Indirect consumer engagement can give regulators (and regulated businesses) the 'big picture' view of consumer issues and consumer perspective, including matters relating to consumer vulnerability. Organisations that work with consumers can provide comprehensive, cross-sector data and intelligence on consumer issues,[177] as well as a powerful and coherent consumer voice based on clearly established policy positions and established expertise.

Indirect engagement may also help regulators to 'explore further ways of widening their networks',[178] including discussing how organisations and individuals beyond the 'usual suspects'[179] can be 'effectively involved' in regulators' work.[180] This must involve conversations about the resources and capacity of the organisation to participate so the regulator can 'make the best use of their expertise and experience without placing undue pressures on them.'[181] This is also necessary to ensure that better resourced advocates do not become 'proxies for all consumers'.[182]

Indirect engagement is unlikely to be sufficient on its own for regulators to meet their obligations in relation to the consumer interest and fulfil the principles of inclusive, representative and diverse consumer engagement. This is because input gained from indirect engagement may:

- offer only a 'filtered' form of consumer information and input (where, for example, the organisation draws on respond to specific questions or illustrate a particular policy position)

- not capture the full diversity of consumer experience where, for example, the organisation is accessed by only some members of the consumer community[183]
- be relied upon because of a perception that some people are 'too vulnerable' to engage directly,[184] which removes attention from the barriers to engagement and risks missing out on some voices.

Direct consumer engagement

Direct engagement involves interaction directly with individual or 'end-user'[185] consumers and/or bodies run by and for one or more groups of consumers. Direct engagement can help regulators to ensure that their engagement is diverse and representative. It 'allows the regulator to access a different form of intelligence from that provided by consumer organisations',[186] including:

- gathering consumer input on specific questions
- hearing perspectives that consumer organisations have not encountered or reported.[187]

It also demonstrates respect for individuals' experiences and acknowledges their capacity to speak for themselves on issues that affect them.[188]

The most common way for essential services regulators to access the perspectives of consumers (including consumers experiencing vulnerability) has been through qualitative and quantitative research conducted directly by the regulator or outsourced to a research body.[189] Research may constitute a form of 'engagement' if it is conducted in a manner consistent with the principles described earlier in this document, for example, where it involves the 'co-design' of a regulatory response or service with consumers.

Research will not generally provide an appropriate substitute for direct engagement. It may not capture consumer preferences or consumers' views on particular issues. It can, however, be an important source of population-level information, as well as offering insight into consumer behaviour. The latter might not always be gleaned from direct engagement because there can be a difference 'between what people say about their preferences, and what their actions reveal'.[190]

As with indirect consumer engagement, regulators may conduct direct consumer engagement through a range of one-to-one, small group or large group activities including interviews, vox pops, focus groups or invitations to make formal submissions,[191] and/or by establishing advisory bodies or panels of consumers for regular and ongoing consumer input.[192] For example, a number of UK regulators have convened standing consumer panels; these panels are available for repeated consultation 'to explore consumer perspectives on different issues'. This offers 'the methodological advantage of consistency in the survey population' (see **Case study 2**, below),[193] although attention to the representativeness, diversity and inclusiveness of these panels is essential.

Case study 2: *Standing consumer panels as an example of direct regulator engagement*

Ofgem's 'Consumer First Research Programme' is designed to ensure that regulatory decision-making is informed by 'robust evidence' and an understanding of the priorities, views and experiences of a wide range of consumers, including business consumers and more vulnerable groups'.[194]

One element of this, and an example of direct regulator engagement through research specifically targeted to capture the needs, values and priorities of everyday energy consumers, is the 'Consumer First Panel'.

The Consumer First Panel offers ongoing and consistent involvement in engagement through regular meetings to discuss key issues impacting on their participation in the energy market, as well as other topics related to energy. It also enables the regulator to identify issues requiring further consumer research or engagement.

One example is the Decarbonisation Action Plan project, which was concerned with how to achieve decarbonisation of the economy at the lowest cost to consumers. Ofgem's engagement goal was to understand the 'current consumer mindset' on this and related issues, with the Consumer First Panel being engaged in qualitative research on consumer opinions about energy use, decarbonisation and how to achieve net zero carbon emission targets.[195]

This suggested the need for engagement or research to answer questions about how attitudes and behaviours varied among sub-groups within the community of consumers, which prompted Ofgem to commission a further round of research in March/April 2020 to conduct a 'deep dive' into current consumer attitudes and behaviours towards decarbonisation.[196]

b. Ensuring that direct engagement is diverse and representative

Engagement with a diversity of consumers is necessary to ensure that their participation has 'legitimacy', meaning they are 'legitimate representatives of the customers and communities that they speak for'.[197] Regulators must recognise diversity on a range of dimensions, including diversity of experience, life stage and ways of thinking, as well as diversity of background in terms of consumers' participation in the market and relationships with particular providers.[198] It also means engaging 'with those least likely to participate in the market — usually the most vulnerable who could benefit the most.'[199]

In order to ensure that engagement is diverse and representative, regulators must also:

- know who the relevant consumers are, how diverse they are, and therefore who can legitimately speak for them

- have a clear plan for finding consumers, and what to do if they are 'hard to reach'
- remember that the consumers most likely to participate in engagement or have the loudest voice are not necessarily representative of all consumers.[200]

Stakeholder mapping or assessment tools such as the *Better Together Project Stakeholder Assessment Tool* and *Twyfords Appreciative Inquiry Stakeholder Analysis* offer a structured way to map potential stakeholders, including individual consumers.[201] These are likely to require adaptation in order to promote inclusive engagement, because they do not offer guidance for users to ensure that they identify and include diverse and representative stakeholders.

Tools developed for other purposes might also assist regulators to identify consumers for engagement, including consumers experiencing vulnerability. For example, frameworks to assess the impacts of regulatory policies and decisions on different groups of consumers (such as the UK Financial Conduct Authority's tool for 'assessing the distributional impacts of economic regulation')[202] could also be used to identify which consumers should be involved in engagement.

There is some guidance on **how to identify the full range of necessary participants** and **how to approach people and groups** who are not well-served by existing consumer engagement processes. This includes so-called 'hidden audiences', 'hard-to-reach groups' and 'people who might not be obvious stakeholders'.[203]

Researching the characteristics of consumers and the wider community, reaching out through existing networks, and spending time and resources to develop new relationships with consumers and their representative bodies are all identified as valuable avenues of inquiry (see **Box B**).

B. Actions for identifying consumers for engagement
- Research the consumer community and identify which consumers have not contributed to past projects.[204]
- Explore how people who are 'isolated due to geography, environment, culture, support need or lack of access to information' could be supported to engage.[205]
- Talk to local government and non-government organisations, like neighbourhood and community houses, about the demographic features of the local community and issues of concern to the community.[206]
- Collaborate with organisations that are connected to the community you want to reach.[207]
- Use existing networks[208] and contact individuals through advocacy or community organisations you are already connected with (including those already involved in engagement processes).[209]
- Talk to staff in other agencies who have previously engaged with the groups of interest.[210]
- Develop trust-based relationships with community leaders.[211]

> Allow time and resources to build relationships and confidence with the whole community,[212] including people who might participate in current or future engagement processes.[213]

Regulators should also investigate the best way to **build relationships with specific groups**. For example, a Disability Services Queensland engagement guideline proposes that 'active participation' of people with disabilities in public sector processes requires the development of strategic relationships with, and developing the leadership of, individuals with disabilities, families and supporters.[214]

Aboriginal Victoria is currently developing a strategic framework for strong relationships and engagement between the Victorian Government and Traditional Owners in Victoria, with input from 120 Traditional Owners (see **Box C**). This framework also emphasises the importance of relationship-building and planning with the community.

C. Identifying who to engage: Aboriginal Victoria's forthcoming guidance

Aboriginal Victoria's Concept Draft of the *Good Practice Guide for Engagement Between Government and Traditional Owners*[215] suggests that 'Doing the ground work' and 'Understanding who might be involved and how to reach out' are the first two steps in any engagement with Traditional Owners.

The draft emphasises the importance of this being 'an ongoing and evolving inquiry'.[216] The final version will provide more detailed guidance on how to achieve this. It will include:

- identifying the relevant Traditional Owners' aspirations and priorities

- identifying relevant individuals, families and groups

- useful factors in deciding how to reach out

  whether and how to navigate involving the broader Aboriginal community.[217]

To ensure that engagement is legitimate, regulators must **not assume that one individual, or even a group of people, are representative of an entire population group**. There is great diversity within social or identity groups, and this must be reflected in engagement. For example, older people who contributed to a South Australian government guide to engagement noted that the term 'older people' encompasses a diverse population that includes older people from Culturally and Linguistically Diverse backgrounds, older Aboriginal and Torres Strait Islander people and LGBTI older people.[218]

Representative or advocacy organisations that gather and advocate for the views of multiple members — such as disability advocacy organisations run by and for people with disabilities — can play a complementary role here, although they will not replace consultation with individuals. Ongoing input from key individuals and peak organisations might be sought via working groups, reference groups, informal regular contact, regular information sharing sessions, and involvement in planning processes.[219] The membership of these groups should represent 'a diverse range of views, experiences and perspectives', include a combination of individuals and peak organisations, and have 'more than one person'[220] representing consumers or a specific consumer groups.

Resource and time constraints mean that it is impossible to achieve truly universal engagement in any project. Recognising and acknowledging these and other inevitable limitations can enhance trust and perceptions of legitimacy.

> A customer engagement group cannot possibly represent all consumers. So it, and the regulator need to be honest about these limitations — honesty where customers are not involved and have not agreed or made decisions. Do not over-claim that customers are engaged when they have not been.[221]

D. Designing and conducting inclusive engagement activities

Key points

- Regulators should tailor consumer engagement activities — like working groups, roundtables, advisory board meetings, focus groups, community forums, interviews, or invitations to make submissions — to the people and communities involved.

- Regulators need both resources and time to run inclusive engagement activities.

- Designing and conducting inclusive engagement activities has three stages:
- preparing for consumer engagement
- designing accessible, approachable and appropriate activities
- using, reporting and evaluating consumer contributions.

Consumer engagement activities — whether they take the form of working groups, roundtables, advisory boards, or one-off activities such as focus groups, community forums, and interviews — will only be effective and inclusive if they are tailored to the people and communities who are participating.[222]

This means regulators should design all activities with the broadest possible range of participants in mind, while also having the resources and flexibility to adjust when needed.

Regulators should have regard to three sets of considerations at this stage of engagement:

a. preparing for consumer engagement;

- designing accessible, approachable and appropriate engagement activities

- using, reporting and evaluating consumers' contributions.

Many of these considerations require resources. They might also take extra time. It is essential that these matters are identified, discussed and included in discussions of project budgets and timelines prior to engagement.[223]

a. Preparing for consumer engagement

Checklist: Preparing for consumer engagement

5. Ask individuals and groups how they would like to be engaged with.

- Do your research about participants' potential needs and devise a plan to meet those needs before you approach them for their input.

- Some community groups and organisations have published guidance about 'how to engage' with them.

6. Use language that reflects how the community sees themselves.

7. Clearly define the scope and purpose of engagement, and develop clear, easy-to-understand explanations.

8. Make sure the terms of engagement are appropriate to the audience (for example, translate technical matters into plain language).

9. Ask participants whether they have access to the resources (financial and otherwise) they need to participate.

- Offer low- or no-cost opportunities to participate (for example, telephone consultations or activities in participants' local area).

- Offer to cover participants' travel costs and other costs of participation, such as childcare or disability support. Ask participants if and how they would like to be reimbursed.

- Develop a remuneration policy to help decide if and when participants should be paid for their time and expertise; discuss remuneration with participants early in the process.

10. Ensure all written communication is clear and accessible.

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

- Test communication materials with different audiences to make sure they are appropriate and accessible.

- Advertise through multiple channels including community networks, local media, local radio, ethnic media and social media.

11. Ensure all person-to-person communication is clear and accessible.

- Ask participants about their communication needs up-front.

- Arrange language interpreters or other necessary services.

- Be aware of cultural norms and protocols that may require you to communicate through nominated individuals or intermediaries.

- Create clear and accessible communication channels between participants and staff, and among staff within the regulator.

12. Understand and address cultural considerations in partnership with local communities.

- Invest time and resources into building ongoing, mutually beneficial relationships and rapport with Elders, Traditional Owners and community leaders in a collaborative and culturally safe manner.

- Engage Elders and other community leaders in planning, development and delivery of engagement processes and activities.

- Understand and respect governance and decision-making structures within communities, groups and families.

- Prioritise culture and respect for Aboriginal knowledge and expertise, and develop cultural competence and a culturally safe environment.

- Acknowledge and tell the truth about our history and the struggle for rights and self-determination of Aboriginal and Torres Strait Islander peoples since colonisation.

- Reflect on the impact of your own culture (for instance, the power and privilege associated with membership of the dominant culture).

- Be mindful that there may be cultural sensitivities around certain topics and discuss these with Elders and community leaders prior to engagement, and ensure activities are culturally appropriate.

- Follow cultural protocols, and seek advice when you are not sure.

- Seek permission before photographing or filming participants.

- Use plain language.

- Make sure you are genuinely understood by all participants if language interpreters are not present.

- Use images and other materials that reflect the diversity of the community and participants.

- 'Think diversity': do not assume that all people from the same cultural or linguistic background share the same characteristics or perspectives, and include a diverse range of people from each group.

Regulators should begin all discussions about engagement by **asking individuals and groups what their preferences are** and what they require in order to be genuinely involved in an engagement process.[224] Some community or advocacy groups have developed guidelines and advice about how to engage with them;[225] peak bodies and other advisors may also offer guidance.[226]

Researching consumers' potential needs, and devising a plan to meet those needs, prior to approaching individuals and advocacy groups for advice can help regulators to prepare for these conversations and demonstrate a genuine and respectful intention to facilitate engagement.

Considerations here may include practical matters such as:

- a lack of money, a lack of transport, time constraints, and caring or work responsibilities
- factors that require changes to the way communication and engagement processes are conducted, such as limited literacy or numeracy skills, mental or physical health issues, disability, and language barriers
- factors associated with prior engagement practices, such as 'consultation "fatigue"'[227] and poor previous engagement experiences.

The language used before and during engagement is another important factor in creating inclusive consumer engagement. **Language should 'reflect how the community sees themselves'**, meaning 'labels like "'socially excluded", "poor", "disadvantaged" and "vulnerable" are not appropriate.'[228] The best way to proceed is to ask respectful questions about how a person would like to be addressed and their other preferences about language.[229]

Clearly **defining the scope and purposes and expected outcomes of proposed engagement** will help ensure that regulators recruit suitable participants and that participants understand their role and influence in the process.[230] This gives an opportunity for potential participants to discuss their own expectations and for regulators to acknowledge and address differences, minimising the chance of causing offence or misunderstandings later in the process.[231]

Staff should brief potential participants about any possibility that the engagement process will touch on distressing subject matter or painful or traumatic past experiences — for example, where consumers are asked to participate in their capacity as mental health service users or survivors of family violence.[232]

It is also important to ask prospective participants what kind of support they might require during or after engagement, and to ensure this support is available. Participants might wish to be accompanied by a family member, friend, peer or support worker. Many advocacy groups recommend, and offer, peer support (such as support from a fellow mental health service user, a fellow person with a disability or a fellow survivor of family violence).[233]

Regulators should develop **clear, easy-to-understand explanations** of the proposed engagement,[234] and invite potential participants to make contact through multiple channels if they have questions, concerns or feedback.[235]

Regulators might need to revise their standard **terms of engagement** in order to promote diverse participation, as these can operate to exclude some views and contributions from consideration. For

example, processes that require individuals and groups to understand technical regulatory issues and clearly articulate their responses in technical terms will not be appropriate for some individuals and groups.[236]

Regulators should discuss participants' and organisations' **access to resources** — financial or otherwise — prior to commencing engagement. A lack of resources can be a major barrier to meaningful and equitable engagement.[237] This may include access to funding and access to administrative support.[238]

Regulators should ensure that participants are **not financially disadvantaged** by their participation in engagement.[239] This might require, for example, offering to cover the cost to participants of travelling to the engagement activity and other costs they might incur as a result of their participation, such as childcare or respite service fees, or the cost for the participant's disability support worker to attend with them.[240]

It will often be appropriate to also remunerate participants for the time and expertise they bring to the engagement.[241] Regulators should consider developing **remuneration policies** to guide decisions about remuneration.[242] Some organisations publish guidance on appropriate rates of remuneration.[243] Payments might interfere with some participants' eligibility for income support payments or other supports. This means it is important to ask about people's remuneration preferences and offer a range of options.[244]

During disaster recovery or other fast-moving processes where there are limited resources, an 'assets-based' approach may be most productive. This involves identifying the resources (in terms of people's skills, expertise, experience and capacity) that are available and making the best use of them.[245]

Regulators should ensure that all information for, and communication with, consumers is **clear and accessible**.[246] Regulators should begin all interactions with consumers by asking about their communication needs and preferences and making necessary adjustments, such as engaging a language interpreter or using the National Relay Service.[247] Cultural norms and protocols might also necessitate communication through nominated individuals or intermediaries.[248]

All information — including flyers, permission forms, meeting agendas, and other documents — should be published in multiple languages (as appropriate to the community) and formats (including plain language, Easy English and easy-to-read, audio, captioned and Auslan interpreted video, and large print).[249]

Make sure potential participants can also access information in-person or over the phone.[250] It may be helpful to prepare by inquiring with local government, community leaders and families about the

community's language requirements.[251] **Testing communication materials** with different audiences will ensure that they are widely accessible. [252]

Advertising engagement processes through multiple channels, including local networks, local media, radio, ethnic media and social media, will help regulators to reach a wider pool of participants.[253]

Good communication also requires **open and accessible communication channels** between participants and staff running the engagement before, during and after engagement activities[254] and clear communication channels within the regulator to ensure consistency of messaging and action.[255]

Cultural considerations must be identified and addressed prior to the commencement of engagement activities.[256] Understanding the demographics of the community, involving people from the community in designing, developing, running, and evaluating engagement activities, asking informed and respectful questions, and actively listening to and addressing feedback and concerns are central to cultural awareness, cultural sensitivity, and cultural safety (see **Box D**).[257]

D. Key considerations for cultural awareness, cultural sensitivity and cultural safety

- Invest time and resources into building respectful, ongoing, mutually beneficial relationships and rapport with Elders, Traditional Owners and community leaders in a collaborative and culturally safe manner.[258]

- Engage Elders and community leaders in planning, developing and delivering engagement processes and activities.[259]

- Understand and respect governance and decision-making structures within communities, groups and families.[260]

- Prioritise culture and respect for Aboriginal knowledge and expertise.[261]

- Focus on developing cultural competence and a culturally safe environment within your organisation that positively recognises and celebrates cultures.[262]

- Ensure that all processes are informed by 'culturally-safe and healing-informed practice frameworks'.[263]

- Acknowledge and tell the truth about Aboriginal and Torres Strait Islander peoples' 'struggle to maintain respect, dignity, control and power since colonisation',[264] including the 'historical trauma associated with colonisation, understand[ing] negative impacts of past government processes, [and] acknowledg[ing] how trauma has passed down through generations'.[265]

- Reflect on the impact of your own culture (for instance, if you are a member of the dominant culture, consider the power and privileges associated with it).[266]

- Be mindful that there may be cultural sensitivities around certain topics and discuss these with Elders and community leaders prior to engagement, and seek advice where you are unsure.[267]

- Follow cultural protocols (and seeking advice where you are unsure), including beginning all meetings with an Acknowledgment of the Traditional Owners and asking Elders from the local Aboriginal community to conduct a Welcome to Country to begin ceremonies and major events.[268]

- Consider whether the proposed engagement tools and methodology are culturally appropriate.[269]

- Seek explicit permission before photographing or filming participants.[270]

- Avoid 'jargon, idioms, irony and satire'.[271]

- If language interpreters are not used, make sure you are genuinely understood by all participation and that you understand all participants' contributions.[272]

- Use images, videos, and other materials that are representative of the diversity of the community and participants.[273]

  'Think diversity': do not assume that all people from one cultural or linguistic background share the same characteristics or perspectives; and involve a diverse range of people from each group. For example, engagement with older persons should involve engagement with LGBTI older persons, older persons from a range of cultural and linguistic backgrounds and Aboriginal and Torres Strait Islander older persons,[274] and engagement with people with disabilities should involve people with different disabilities, people from urban and rural areas, Aboriginal and Torres Strait Islander people, and people from Culturally and Linguistically Diverse backgrounds.[275]

b. Designing accessible, approachable and appropriate engagement activities

Checklist: Designing inclusive activities

Regulators should address the following considerations when designing engagement activities:

- ✓ Offer multiple and diverse opportunities to participate in engagement.
- Use a range of tailored engagement tools (such as interviews, focus groups, vox pops, and digital engagement) and consider creative techniques. Guides like Capire Consulting Group's *Inclusive Community Engagement Matrix* offer advice on selecting engagement tools.
- Use multiple engagement platforms including in-person and digital. Recognise that not all people have access to digital participation, and provide extra support for those who do want to participate in this way (for example, live IT assistance and tutorials).
- ✓ Help participants to prepare for engagement activities with clear information about what will happen and what is expected of them. Make sure participants can contact someone to ask questions and give feedback prior to the day.
- ✓ Choose locations and venues that are comfortable, familiar and accessible to the participants. This will often mean running different activities in different locations.

- Choose venues that are familiar and local to participants. Where possible, go where people are rather than expecting them to travel to you.

- Choose venues that are warm, welcoming and comfortable (for example, ensure there is appropriate lighting, heating/cooling and seating).

- Choose venues that are accessible to a wide range of people (for example, older people, wheelchair users, people with vision impairment, people who are Deaf, people who are hard of hearing, and people with a hearing impairment).

- Avoid venues that have a negative history or association (for example, former institutions).

- Choose venues with good access to public transport and parking.

- Make sure the path of travel from the road and carpark is clearly signed and accessible.

- Consider the layout of seating, use of lecterns and stages, and other things that might be intimidating or reinforce power differences between facilitators and participants.

✓ Build accessibility for people with disabilities into all aspects of engagement.

- Provide written information in multiple accessible formats (including plain language, large print, Easy English, Braille, audio, video, PDF and RTF). Make sure the content is clear, brief and set in its wider context.

- Provide all formats simultaneously.

- Make webpages compliant with the Web Content Accessibility Guidelines.

- Ask individuals about their communication preferences and accessibility requirements, including support requirements, when you first make contact.

- Ask all participants to list their accessibility requirements at the RSVP point for activities and events. Provide multiple options for responding to invitations, for example, email, telephone and in-person.

- Where a person identifies accessibility requirements, contact them as soon as possible to discuss and confirm how their requirements will be met.

- Describe accessibility measures in invitations to events and activities. This should include detailed information about the address of the venue; transport and way-finding; measures that will or can be made available (including Auslan interpreting, an audio loop, and live captioning); and what activities are planned and the agenda for the event.

- Encourage and support the attendance of personal assistants or support workers (or informal supporters) where these are requested. Check whether participants require funding to pay for the support person's attendance. People should choose their own support person.

- Choose venues and digital platforms that are accessible to the widest possible range of people, regardless of whether you expect people with particular requirements to attend.

✓ For physical venues, confirm the availability of:

- public transport, parking and passenger drop-off points

- properly accessible, clean and available toilets (including toilets on the same level of the building as the event)

- continuous pathways

- a front entrance (not side/back entrance) that is wheelchair accessible

- multiple seating options for wheelchair users (rather than one allocated space for wheelchairs)

- for long meetings, a quiet room where people can rest, lie down or have a break (with staff available to provide directions and assistance)

- enough space inside the venue to move around easily

- tables and stages that are suitable for wheelchair users

- accessible face- face-to-face interactions, including looking directly at participants who are Deaf, hard of hearing or have a hearing impairment when addressing them, and identifying yourself when approaching participants with vision impairment.

✓ Ensure activities are accessible by:

- providing large-print name tags

- ensuring any videos have captions and that the facilitator describes and explains any videos, slides or other visual materials

- collecting information in a transparent, accurate and accessible manner (such as recording feedback on butcher's paper or in large font on-screen)

- including regular breaks (for example, every 45 or 90 minutes) and breaks that are long enough to permit people to get refreshments and use the facilities

- making sure the speed and content is clear and easy to follow.

✓ Facilitation or group management should be open, non-judgmental, respectful and flexible.

- Staff should receive training on inclusive facilitation and group management.

- Facilitators should be open to a range of contributions in a range of forms, be honest and accountable to participants.

- Facilitators should be prepared to change tack if an activity is not working.

- Facilitators should be equipped to respond to participants experiencing stress, distress, grief or trauma, including by demonstrating empathy, asking if it is the right time to engage, giving participants plenty of time and offering support and the opportunity to debrief.

- It may be appropriate to engage external facilitators where the regulator does not have the necessary expertise in-house. These might include facilitators with experience of inclusive engagement and/or facilitators from the community or communities being engaged (such as disability advocates or domestic violence survivor advocates).

- Attendance by senior staff and decision-makers can demonstrate respect for consumers' perspectives.

Offering multiple and diverse opportunities to participate in engagement activities will help ensure a diversity of consumers will find an option that is comfortable and accessible for them.[276] 'Traditional' forms of community engagement such as town-hall meetings are unlikely to be welcoming and appropriate for all consumers.[277] **Greeting and welcoming participants** can help them to feel more comfortable, especially if they feel nervous or uncertain.[278]

Regulators should use multiple, tailored and user-friendly[279] **engagement tools** (such as vox pops, surveys, drop-in sessions, small groups and interviews)[280] and consider **creative techniques**, including enjoyable activities.[281] Tools should recognise and accommodate a range of learning styles. Approaches that employ **visual, tactile and verbal communication tools** are likely to be accessible to a range of consumers.[282]

Visual aids and other materials should be culturally appropriate.[283] If some participants require language interpreters, the interpreters should be briefed on the subject matter of the activity, including noting uncommon words, phrases and concepts that might be used.[284]

Community organisations and community leaders may have advice on engagement tools appropriate to different groups.[285] Capire Consulting Group's 'Inclusive Community Engagement Matrix' offers **a tool for selecting appropriate engagement techniques** (such as one-to-one, small group or large group activities, drop-in sessions, surveys, online activities, arts, community education, and communication materials) depending on the circumstances of the participants.[286]

Regulators should also **use multiple engagement platforms**, including in-person and digital options.[287] Digital engagement tools and activities (including recruitment via digital channels) can make engagement available, accessible and appealing for some people, but will not work for everyone.[288]

Digital interactions have become especially important during physical distancing under the conditions of the COVID-19 pandemic. Where digital engagement activities are chosen or necessary, participants' access and experiences can be improved if regulators:

- provide support to participants to prepare for and participate in online activities through, for example, tutorials, Q&A sessions, and 'live' IT support during sessions
- create opportunities for participants to interact informally with one another (through break-out rooms, chat functions etc)[289]
- thoroughly test technology before use.[290]

Regulators should **help participants to prepare for engagement activities** by providing clear information about how the process will work and what its purpose is, and about the time commitment involved. Regulators should also give participants time to prepare and make arrangements to participate, and staff should be available to answer questions prior to the day.[291] This can help

participants prepare for unfamiliar environments and situations and understand the boundaries of their role.[292]

The style and format of information should be appropriate to the individual participant. For example, participants with cognitive disability might prefer or require information in Easy English, while verbal explanations or videos might be more appropriate for participants with limited literacy or limited time.[293]

Regulators should also give participants clear information about:

- who will own and control the information shared and collected[294]

- how participants' contributions will be used

- measures to protect their privacy (for example, not including personal identifying details and not attributing ideas to identifiable individuals)[295]

- how participants' safety, including 'legal, physical, emotional and cultural safety', will be ensured (which will be especially relevant for some participants, such as domestic violence survivor advocates).[296]

It will often be most appropriate for regulators to **go where people are** (rather than expecting them to come to you) and run activities in familiar and welcoming places.[297] Venues should meet a range of requirements in terms of location, 'friendliness' and comfort, and accessibility (see **Box E**).

E. Considerations for providing friendly and accessible engagement venues

Regulators should ensure that:
- the venue is familiar to the participants and normally used by them [298]

- the venue is warm, welcoming and comfortable (consider, for example, lighting and seating) — this might differ depending on the group, meaning activities might need to take place across multiple locations[299]

- the venue is local (including in regional areas)[300]

- the venue is accessible to a wide range of people (including, for example, older people; wheelchair users; people with vision impairment, people who are Deaf, people who are hard of hearing, and people with a hearing impairment (discussed further below)[301]

- the venue does not have a poor negative history or connotations for some people in the community (such as former institutions)[302]

- there is adequate access to transport (including public transport and proximate car parking) to attend the venue

- the path of travel from public transport or car parking is clearly signed and accessible (see the discussion of accessibility below)[303]

> the set-up addresses power differentials and promotes equity of participation by, for example, placing chairs in such a way as to encourage open and equal participation and removing lecterns.[304]

Providing **refreshments** appropriate to the time of day and which 'express genuine hospitality'[305] is another element of comforting and welcoming activities.[306] This should include:

- refreshments that meet dietary and religious requirements
- refreshment tables that are accessible to wheelchair users
- cups with handles, bendable straws and serviettes.[307]

Accessibility for people with disabilities and other participants should also be built into all engagement processes and activities. Not all people with disabilities will have accessibility requirements, and not all people with accessibility requirements will identify as 'a person with disability'.[308] Regulators should endeavour to make all engagement processes accessible on multiple dimensions (see **Box F**).

Accessibility checklists — such as the accessible written communications checklist and accessible consultations checklist published by the Victorian Government — can help ensure that all accessibility-related matters are covered.[309]

F. Key accessibility considerations for engagement processes and activities
- Provide written information in multiple accessible formats. The content should be clear, brief (without losing meaning), and set in its wider context.[310]
- Provide all formats simultaneously. This will require multiple weeks of lead time to engage experts to prepare different formats and finalise different versions;[311] exact timing should be discussed with providers prior to finalising project timelines.
- Formats of all communications and publications should include:
- standard text
- large print
- Easy English
- Easy English large print
- Braille
- audio tape
- electronic (PDF and RTF).[312]
  - Make webpages compliant with the Web Content Accessibility Guidelines.[313]

- Ask individuals about their communication preferences and accessibility requirements, including support requirements, when you first make contact.[314]

- Ask all participants to list their accessibility requirements at the RSVP point for activities and events.[315] Provide multiple options for responding to invitations, for example, email, telephone, and in-person.[316]

- Where a person identifies accessibility requirements, contact them as soon as possible to discuss and confirm how their requirements will be met.[317] Make bookings (such as Auslan interpreter or speech-to-text captioning bookings) at least two weeks in advance.[318]

- Describe accessibility measures in invitations to events and activities. This should include detailed information about:

- the address of the venue

- transport and way-finding (including maps and, if appropriate, photographs to assist)

- measures that will or can be made available (including Auslan interpreting, an audio loop and live captioning[319]

- what activities are planned and the agenda for the event.

  - Choose venues and digital platforms that are accessible to the widest possible range of people, regardless of whether you expect people with particular requirements to attend. It will usually be necessary to visit a proposed venue to check its accessibility.[320]

  - For physical venues, confirm the availability of:

- public transport, parking and passenger drop-off points

- properly accessible, clean and available toilets (including toilets on the same level of the building as the event)

- continuous pathways and even surfaces[321]

- a front entrance (not side/back entrance) that is wheelchair accessible[322]

- multiple seating options for wheelchair users (rather than one allocated space for wheelchairs)[323]

- for long meetings, a quiet room where people can rest, lie down or have a break (with staff available to provide directions and assistance).[324]

  - Check the accessibility of the inside of the venue, including:

- enough space to move around easily

- table height and stage that is suitable for wheelchair users[325]

- accessible face-to-face interactions, including looking directly at participants who are Deaf, hard of hearing or have a hearing impairment when addressing them; identifying yourself when approaching participants with vision impairment and telling them when you are walking away.[326]

  - Encourage and support the attendance of personal assistants or support workers (or informal supporters) where these are requested.[327] People should choose their own support person.[328]

- Check whether participants have funding to pay a worker to attend an engagement activity and offer the resources needed to remunerate them.[329]

- Ensure activities are accessible by:

- providing large-print name tags[330]

- ensuring any videos have captions and that the facilitator describes and explains any videos, slides or other visual materials[331]

- collecting information in a transparent, accurate and accessible manner (such as recording feedback on butcher's paper or in large font on-screen)

- including regular breaks (for example, every 45 or 90 minutes) and breaks that are long enough to permit people to get refreshments and use the facilities[332]

- making sure the speed and content is clear and easy to follow.

For more detailed guidance on accessible engagement, see:

Department of Human Services (Vic), *Inclusive Consultation and Communication with People with a Disability: A Guide for Victorian Government Departments and Agencies* (Disability Services Division, DHS, December 2004).

Sally Robinson, Disability Studies Research Institute and Jan Dyke, *Walking the Talk: A framework for effective engagement with people with disability, families and people who support them* (Disability Services Queensland, nd).

Staff members who facilitate engagement activities should receive training on inclusive facilitation and group management.[333] Facilitation is likely to be inclusive if it prioritises two-way communication and learning, demonstrates respect for all contributions, and is based on empathy.[334] This will be especially important when participants are asked to discuss personal experiences and concerns.

Facilitators — and other staff involved in engagement — should adopt a flexible, respectful and non-judgmental approach to consumers. This means being open to a range of contributions and being non-judgmental; being committed, honest and accountable;[335] and being prepared to change the approach where an activity is not accessible to some participants,[336] or where organisers become aware that they are not reaching some participants.[337] It also means prioritising participants' safety and comfort without being patronising or overly protective.[338]

Attendance by senior staff and decision-makers can demonstrate the regulator's commitment to genuine engagement and respect for participants' contributions.[339]

Staff should also **identify and address their 'own feelings, beliefs, issues and potential biases'**, including negative attitudes, assumptions and stereotypes, and how these might affect interactions and the outcomes of the engagement.[340]

Giving participants an agenda for the activity, following the agenda, and regularly reminding participants about the item under discussion can help participants to follow and contribute, especially where multiple or complex matters are involved.[341]

Engaging **expert facilitators and interviewers** may be most appropriate where initial planning suggests that the regulator do not have the skills or resources internally to engage well with all participants.[342] These may include:

- professional facilitators or interviewers with expertise in conducting inclusive engagement, cross-cultural engagement, disability-accessible engagement etc.

- advocates from the community or communities with which you are engaging (for example, disability advocates and domestic violence survivor advocates).[343]

Regulators should be aware that participants or potential participants might be experiencing **stress, distress, grief or trauma**, and discussions and questions raised during engagement activities might trigger or exacerbate these experiences. Participants may be in the midst or aftermath of a personal crisis (such as a bereavement, health issue, mental health crisis, job loss, homelessness or financial hardship) or a public emergency or disaster (such as bushfires or floods). This can have a range of consequences, including making it difficult for people to take in information and make decisions quickly.[344]

Sensitive and appropriate engagement in these circumstances might also require:

- **asking if it is the right time** to engage and regularly 'checking in' with participants throughout the process[345]

- **investigating (and asking) about the best way to communicate** with individuals and the community (where, for example, usual communication channels are disrupted or unavailable)[346]

- making sure **support** is available for participants (such trauma-informed support for domestic violence survivor advocates), telling participants how they can (discreetly) seek support if they require it, and ensuring that all participants have the opportunity to debrief with skilled facilitators and/or peer supporters who understand their distress and can respond appropriately to it[347]

- **offering plenty of time** to prepare and participate, and clear information[348]

- **offering the option to participate in pairs** rather than being the lone 'voice' from a group or perspective[349]

- **considering which voices might have 'become silent'** and spending time to identify and identify new connection points and networks through which to make contact.[350]

c. Using, reporting and evaluating consumers' contributions

Checklist: Using, reporting and evaluating consumers' contributions

Regulators should acknowledge participants' contributions to their work. Feedback, reporting and evaluation processes should be designed according to the following considerations:

✓ Regulators should ask participants whether they would like to receive feedback about the outcomes of the engagement activity and how they would like to receive it (for example, their preferred formats and communication channel).

✓ Where participants have indicated that they would like to receive feedback, regulators should send participants:

- a summary of what was discussed during the engagement activity shortly after the activity was conducted

- a summary of how consumers' feedback was used and the influence it had on the process and final outcomes (including acknowledging feedback that was not incorporated)

- copies and accessible summaries of final reports and other publications.

✓ Community feedback sessions may be an appropriate way to discuss and explain the role of consumers in decisions.

✓ Regulators should evaluate their consumer engagement processes, including:

- seeking feedback from participants on what worked well and what did not (ensuring that the evaluation process follows inclusive engagement principles)

- reflecting on whether the engagement activity was inclusive and whether feedback was received and acted on during the process

- engaging with the wider community of consumers to consider who was missing and plan for improvements in the future

- sharing experiences and reflections with colleagues within and beyond their organisation.

Acknowledging and celebrating the contributions of engagement participants[351] and informing them how their contributions informed or influenced project outcomes demonstrates respect for participants and enhances trust and investment in the engagement process.[352]

In order to be inclusive, outcomes should be communicated in multiple formats and via multiple channels. This includes the following communication approaches:

- Producing **videos to record and explain** the engagement process.[353]

- **Acknowledging participants' contributions** during engagement activities and in reports and summaries (where privacy and confidentiality considerations permit).[354]

- Asking participants **if and how they would like to receive feedback** (including what formats and communication channels they prefer).
- Sending participants:
- **a summary of what was discussed**, including participants' contributions, to show that you were listening[355]
- **a summary of how participants' contributions were used** and the influence they had on the process and final outcomes (including acknowledging feedback that was not incorporated)[356]
- copies and accessible summaries of final reports and other publications.
  - Running **community feedback sessions** and making other offers to meet and discuss the project with diverse stakeholders.[357]

Evaluation of the engagement process is commonly identified as the final essential element of effective community engagement.[358]

Tactful, open dialogue with all parties (including the community) has also been suggested as an important way to ensure that feedback on the engagement process is solicited during — not just after — engagement and, where necessary, processes adjusted during disaster or emergency responses and other fast-moving processes.[359]

After engagement processes have concluded, inclusive evaluation requires regulators to be genuine in follow up activities. This means regulators should:

- seek and **act on feedback** from facilitators and participants about what worked well and what did not (through, for example, participant satisfaction surveys)[360]
- allow time and space for **reflection**[361]
- reflect on whether feedback (including feedback on problems or conflict) was taken and acted on during the engagement process
- **engage with the wider community of consumers** to ensure that future engagement meets their needs and expectations[362]
- **share experiences and reflections with colleagues** within and beyond the organisation in order to support the development of effective and inclusive engagement across the public sector and wider society.[363]

Section 5: Principles for designing sensitive, appropriate engagement with consumers experiencing vulnerability

Introduction

In this section, we propose a set of 10 principles to guide effective, sensitive and appropriate engagement with consumers experiencing vulnerability through a 'universal' and 'inclusive' approach. These 'universal engagement principles' are based on the analysis of guidance previously published by regulators, government and public bodies, researchers and non-profit organisations set out in section 4 of this report.

There are gaps in that guidance. For example, only some of the documents were themselves prepared in consultation or engagement with consumers or their representative organisations and many are not specific to engagement on consumer issues. It will therefore be appropriate to test and amend the principles in consultation with consumers and their representative organisations before they are put into practice and periodically.

In Appendix B, we discuss how the principles complement the commission's current approach to stakeholder and consumer engagement.

Universal engagement principles

1. Be inclusive

Adapt your standard engagement processes to be inclusive of all consumers and develop engagement techniques that are suitable for the diverse characteristics and needs of consumers.

Regulatory engagement will only be effective, sensitive and appropriate if it is inclusive. Regulators should consider inclusivity in terms of:

- who is involved in engagement
- how participants are involved in engagement.

Regulators should treat inclusive engagement as part of usual practice. Stakeholder and consumer engagement strategies should be adapted to be universal and inclusive, rather than 'adding on' separate processes for some groups.

Regulators should avoid categorising consumers into static groups defined by their characteristics or circumstances, or treating some groups as being outside the boundaries of the 'usual' or 'standard' consumer. This can result in thinking or behaviour that positions some people as 'other', meaning they are treated as different to and separate from the mainstream.[364]

Taking an inclusive approach also means being aware that regulatory processes and policies affect the entire community. When planning for consumer engagement, regulators should consider the broader public significance of all issues, processes, decisions and policies, and not only their significance to current consumers or to the market.

Inclusivity also requires regulators to develop a range of engagement techniques that are suitable to the diverse characteristics and needs of consumers, and to tailor approaches to meet the needs of all participants (see Principle 9 below). This ensures the regulator has the capacity and flexibility to employ approaches that are 'fit' for all purposes and audiences.

For example, regulatory issues that may have a wider citizen interest may be suited to more deliberative or empowered approaches to engagement, because they require 'big-picture' thinking or concern wider social issues like family violence. Other regulatory issues may be confined to very specific circumstances or consumers, for example reliability of power supply for life support customers.

2. Collaborate and co-design with consumers

> Develop engagement strategies, plans and techniques in consultation, partnership or co-design with consumers.

All elements of consumer engagement — from organisational engagement strategies to project-specific activities — should be developed in consultation with consumers or at least informed by a clear articulation of the consumer interest. Collaboration and co-design can help build consensus, trust and buy-in,[365] as well as ensuring that regulators identify and address all barriers to participation and build in all necessary facilitators of participation.[366]

It may also be necessary and appropriate for regulators to employ consumers as facilitators or co-facilitators of engagement activities or in other representative capacities — for example, where they have expertise and lived experience of the subject matter or where their involvement will make the engagement more accessible, culturally appropriate, culturally safe, and/or comfortable for participants.[367]

Where consumer organisations and representative bodies identify power-sharing or ownership of processes and outcomes as expectations or conditions for their participation (through 'partnership',

'co-design' or other arrangements), formal processes and/or agreements may be necessary before collaboration commences.

3. Treat engagement as an ongoing process based on relationships

Investing in relationships with consumers, consumer groups and advocates builds a strong foundation for engagement.

Strong relationships with consumers, consumer-led bodies, and organisations working with consumers are essential for identifying the right consumers for engagement, understanding the purpose and form that engagement should take, co-designing engagement strategies, and ensuring that engagement activities are accessible, available and appropriate for a wide diversity of consumers.[368]

Relationship-building must extend beyond the 'usual list'[369] to include reaching out to consumers and groups that are not currently at the table.[370] Existing networks, community leaders, local government, and community groups can all offer insight and advice on who might be missing.[371] Raising general community awareness of the regulator's role in consumers' lives can also assist with this.[372]

Regulators should reach out to consumer groups and the wider community of consumers at the earliest possible stage of all projects. This can ensure that the relevant issues are identified and that all stages of the project are inclusive and appropriate from a consumer perspective.[373]

Good relationships — those founded on trust and mutual understanding — take time and investment. Regulators should treat relationship-building as an ongoing process that precedes and continues alongside any specific engagement activity.[374]

Relationships are likely to be improved by clear and honest conversations about a range of matters, including all parties' expectations about engagement processes and outcomes, ownership of information, preferences about the form and extent of engagement (including, for example, whether partnership and power-sharing are essential), the availability of and need for resources, and the potential for mutual benefit.[375]

Relationship-building — including relationships between the regulator and consumers, and relationships between consumers and other stakeholders — should also be a goal of all consumer engagement processes. This might involve, for example, supporting the development of networks among organisations and creating opportunities for consumers to connect with one another.[376]

Fostering good relationships and being accountable to consumers also means the relationship does not have to end when the engagement activity concludes. Following up, communicating outcomes,

seeking feedback and staying in touch (where this is the participant's preference) are all important for accountability, respect and positive future interactions.[377]

4. Have a clear purpose

> Understand — and clearly explain — why you want to engage with consumers.

Regulators must develop a clear understanding of their purpose in conducting consumer engagement and how it fits into the wider project or process.[378] This includes understanding why consumer engagement is necessary, what information, input, influence and outcomes are sought, 'what success looks like',[379] and the implications of this in terms of *who* is engaged and what resources and expertise are required.[380]

Factors for consideration include:

- identifying the question, problem, or issue for engagement, and asking why consumers or community members should be engaged to inform policy or decision-making[381]

- where the activity sits on the IAP2 spectrum in terms of what has been promised to participants, what the outcomes will be, and how the results will influence decision-making (and why that level of engagement is appropriate from the perspective of both regulators and consumers)[382]

- the structure of the sector and market and the implications of this for consumers' needs, interests and experiences

- whether engagement by the regulator (rather than the regulated industry) is necessary and appropriate[383]

- known (or suspected) circumstances of vulnerability in the sector and/or market and implications of these for the purpose and targets of consumer engagement

- identifying potential engagement participants, including those who might not generally be included or have not previously been engaged[384]

- identifying who is not included and explaining why

- understanding how the purpose of engagement fits (or does not fit) with the community's own interests and goals.[385]

Regulators should formulate the purpose (or purposes) of engagement early in the planning stages and these should be based on 'a shared understanding of community needs and ambitions' as appropriate to the project.[386]

Regulators should articulate the identified purposes and scope of consumer engagement in clear, plain language.[387] This includes developing and testing communication materials in multiple formats and communicating through diverse channels.[388]

5. Reflect community diversity

> Engaging with the full diversity of consumers will ensure you hear representative and reliable perspectives.

Effective, sensitive and appropriate engagement should reflect the diversity of the community and the consumer body. This is important to ensure that the perspectives heard during consumer engagement are as diverse as the communities they represent and are a true representation of the consumer interest.[389]

Regulators should develop a sophisticated understanding of the diversity of the consumer community and its implications for the consumer interest and consumer need, including regarding vulnerability. Research and engagement with the community can contribute to these efforts.

Regulators should also demonstrate that they value diversity and difference. This means acknowledging and respecting difference and treating the involvement of diverse participants as an opportunity to both strengthen the regulator's understanding of the consumer interest and improve the outcomes of regulatory processes. It also means treating consumer vulnerability as a typical experience that is relevant to all regulatory policies and processes.

Engagement will be accessible to community members and consumers with a wide range of perspectives and needs if it designed with an appreciation of diversity. This includes being aware of and understanding diversity within and between communities and individuals who are current or future consumers.[390]

Regulators should be aware and respectful of the implications of diversity for what people need to participate in engagement[391] and possible barriers to participation for the community generally, certain groups, and/or certain individuals.[392]

6. Invest in engagement

> Effective and inclusive engagement is only possible with the investment of time and resources.

Effective and inclusive consumer engagement is only possible with the investment of time and resources. Consumers and their representative organisations might need timely, direct access to resources in order to participate in engagement and achieve the stated purpose(s) of that engagement.[393] These might include financial compensation to cover costs or expenses; information, facilities and support to understand and prepare for engagement; and support, assistance and time to attend and genuinely participate in engagement activities.[394]

It will also often be appropriate to remunerate engagement participants for their time and expertise, especially where they are participating in a personal (non-professional) capacity.[395] A remuneration policy that sets out the rationale for rates of payment and a process for responding equitably to different quoted rates across organisations and participants can promote fair, equitable, and transparent remuneration.[396]

The design of engagement activities that are appealing, appropriate and accessible for a broad range of consumers also requires resources to facilitate participation and remove barriers.[397] This includes, for example:

- training staff on relevant matters including cultural awareness and cultural safety, disability and mental health awareness, responding appropriately to family violence, and responding sensitively to distress[398]
- choosing venues that are universally accessible, familiar, and appropriate to the community[399]
- engaging language interpreters[400]
- engaging outside facilitators where their expertise is required[401]
- allowing enough time to run multiple and varied engagement sessions.[402]

These considerations should be incorporated into project budgets and timelines, with flexibility often being necessary to ensure that all relevant matters can be addressed and adjustments made when they are necessary.[403]

Investing resources, time and support in consumers can also develop their capacity to participate in engagement and other public processes,[404] including developing relationships, networks and skills.[405] This can enhance the legitimacy of regulators' activities and lead to improved future engagement.

7. Be transparent and offer genuine involvement

Give all participants a genuine opportunity to influence outcomes and equal access to decision-makers. Recognise and acknowledge consumers' expertise.

Regulators should have a clear understanding of the role, influence and impact that consumer engagement will have and how this will be demonstrated,[406] and to communicate this clearly and honestly to participants.[407] Transparency and openness also mean acknowledging and managing expectations,[408] and being honest about the limits of consumers' influence.[409] Taking responsibility and being accountable are essential elements of transparent engagement[410] and will help establish the legitimacy of regulators' activities and decisions.[411]

Sharing information and knowledge and being clear about who is being consulted, as well as how decision-making processes work, is also necessary for transparent engagement.[412]

After engagement activities have concluded, regulators should report how consumer input has been incorporated into regulatory decisions and explain why certain input or perspectives were not so incorporated.[413] This information should be provided directly to participants as well as being made publicly available, where privacy and confidentiality considerations permit.

The outcomes of feedback and evaluation processes (discussed in principle 10 below) should also be publicly reported and shared widely with other bodies to contribute to the knowledge base and understandings of good practice.[414]

All communications should be accessible. This is likely to require the creation of multiple formats in multiple languages and styles, including community languages and accessible formats (such as plain language, Easy English, electronic PDF and RTF formats, large print and Braille) (see the checklist in section 4D of this report, above).[415]

8. Show respect for individuals, their knowledge and expertise

Ensure all interactions with consumers are founded on respect for their contributions, expertise, circumstances and needs.

All engagement with consumers should be founded on genuine respect for their contributions, expertise, circumstances and needs. This is essential for building trust in the process and in the regulator, and for creating an environment in which consumers can:

- feel that their perspectives are relevant and important and that they have been heard
- offer independent challenge to the perspectives of the regulator and other stakeholders
- have a genuine influence on decisions.

Being clear about the purpose of consumer engagement and the potential implications of a process or decision for consumers is a first step in respectful engagement.[416] This should involve genuine dialogue with participants whereby differences in expectations (for example, around information ownership and power-sharing) are acknowledged and negotiated prior to engagement activities commencing.[417]

Remunerating participants for their time and expertise will often be necessary to demonstrate recognition and respect for their contributions.[418] Conversations about both parties' expectations about remuneration should occur at an early stage.

Approaching consumers and communities in an appropriate and respectful way by, for example, demonstrating cultural awareness and using respectful language[419] is another important starting point for engagement and relationship-building.[420]

Asking participants and their representative organisations about their preferences, expectations and requirements for engagement early and often — and being genuinely responsive to their answers — is another element of respectful engagement.[421] This also involves adopting an approach to engagement that assumes participants will require a range of opportunities to participate and give feedback, and may make contributions in multiple formats and forms.[422]

An open-minded, non-judgemental and empathetic approach to engagement activities, and prioritising building mutual knowledge and understanding, will also promote respectful interactions and activities.[423] Regulators should ensure that everyone has the opportunity to be heard.[424]

Commitment by the regulator at an organisational level, and by project staff, to being honest and open with —and accountable to — participants is also essential for fostering mutual respect.[425] This should extend to acknowledging where things have gone wrong and disclosing and explaining when and why certain opinions or perspectives have not been taken into account.[426]

Another element of respectful engagement is recognising power differentials between the regulator and participants, openly acknowledging them and working to reduce or minimise them as appropriate to the project.[427]

Related to this is the need to identify and address 'feelings, beliefs, issues and potential biases'[428] that may be held by staff or embedded in the project (such as terms of engagement that can only be addressed by people with in-depth technical knowledge) and might exclude or diminish some voices. Training, ongoing building of trust-based relationships, and adopting structured and transparent engagement planning processes are all likely to assist with this.[429]

Behind the scenes, regulators should give all contributions to engagement processes equal weight, rather than prioritising certain stakeholders or perspectives over others.[430] This does not mean that final outcomes should comprise a perfect balancing of all perspectives, but that regulators should assume that all input is valid and relevant, and assess it with an open mind.[431]

Respectful engagement also requires accessible, appropriate and timely communication with participants throughout the engagement process, including when communicating and explaining outcomes.[432]

9. Use methods that are universal and flexible

Design engagement with a wide diversity of consumers in mind, then ask participants what they need and tailor accordingly.

Regulators should design engagement to be appropriate and accessible to a range of participants while also being flexible and responsive to the specific circumstances and needs of those involved.

Regulators should develop in-house knowledge and skills to understand and plan to meet the requirements of a wide diversity of consumer participants. This can then enable staff to respectfully approach individuals and groups with a proposed plan and seek feedback and further information on what else is required.

A careful and responsive approach involves many considerations, including:

- practicing cultural awareness and cultural safety;
- providing information, communication, venues and activities that are appropriate and accessible to:
- people with disabilities
- people from all cultural and linguistic backgrounds
- people with low literacy and numeracy
- providing multiple opportunities to participate in different locations and formats and at different times
- using engaging and welcoming tools
- being willing to compensate participants for the costs they incur
- communicating in a clear and accessible manner (see the checklist in section 4D of this report, above)
- being flexible, open, creative and innovative.[433]

Detailed guidelines, checklists and other planning resources — developed in consultation with the consumer community — are likely to assist staff to consistently design and choose processes that address the range of relevant considerations and promote 'universal' consumer engagement.[434]

10. Reflect, adapt, improve

Invite, and act on, feedback from engagement participants. Evaluate your activities and adapt for the future.

Inviting feedback from all participants and stakeholders is necessary for accountability and can help establish the legitimacy of engagement and wider regulatory processes.

First, regulators should proactively seek feedback, provide multiple channels through which participants can give that feedback, and have the resources and flexibility to respond to feedback (including making adjustments or changes) during engagement processes.[435]

Secondly, a formal, accessible process for taking feedback and evaluating the engagement after it has been completed can assist regulators to:

- assess whether the stated aims and principles of the engagement were met (including those relating to inclusiveness and diversity)
- identify errors or persistent barriers to participation that should be addressed in the future
- develop an understanding of good practice.[436]

Evaluation processes should follow the same principles as engagement —for example, they should directly involve consumers and their representative organisations, and should address the full range of considerations for designing universal, inclusive processes and activities.[437]

Sharing the outcomes of evaluations internally and externally through regulators' networks and other fora can support ongoing improvements, embed good practice and foster trust in the regulator's activities.[438]

Appendix A: Scope and methodology of the review

Scope

This review focuses on literature on regulators' engagement with consumers generally and consumers experiencing vulnerability specifically. This includes:

- research literature
- resources published by regulatory bodies and other public bodies
- resources published by consumer advocacy organisations or community organisations representing demographic groups who might not be well-served by traditional engagement approaches.

We have included some literature that technically falls outside the remit of the study but that we consider to be relevant. These include reports published by Australian consultancy organisations specialising in community engagement, several of which provide detailed practical guidance for designing and conducting engagement with diverse and representative audiences.

Methodology

We conducted a search of the following multijurisdictional, interdisciplinary databases to identify the academic and professional literature relevant to this topic:

- AUSTLII (Law) Journals
- EBSCO databases: Academic Search Complete, Business Source Complete, Index to Legal Periodicals, Family & Society Studies Worldwide, SocIndex
- Google Scholar
- INFORMIT: all databases, including AGIS (law), Families & Society Collection and Australian Family & Society Abstracts Database (FAMILY)
- LegalTrac
- Oxford Journals
- Social Science Research Network (SSRN)
- Westlaw AU
- Westlaw UK Journals.

For books we searched:

- Catalogues: the University of Melbourne library, TROVE (the catalogue of the National Library), which includes the holdings of hundreds of Australian libraries, and WorldCat.

- E-book packages including: Cambridge University Press, Hart/Bloomsbury, Oxford University Press, Routledge / Taylor & Francis and Springer.

For publications by regulatory bodies and consumer advocacy organisations, we conducted Google searches, specifying 'gov', 'asn' and 'org' domains. We also searched the websites of Australian regulatory bodies including:

- Essential Services Commission (Victoria)
- Economic Regulation Authority (Western Australia)
- Essential Services Commission of South Australia
- Independent Competition and Regulation Commission (ACT)
- Independent Pricing & Regulatory Tribunal of NSW
- Office of the Tasmanian Economic Regulator
- Queensland Competition Authority
- Utilities Commission Northern Territory
- Australian Securities and Investments Commission
- Australian Competition and Consumer Commission.

We also searched the websites of UK regulators including Ofgem, Ofwat, Ofcom, the Financial Conduct Authority and the Competition and Markets Authority.

Search items included:

- vulnerab* /5 consumer AND regulat* AND ("consumer*protection" OR paternalism OR support*)
- vulnerab* /5 consumer AND regulat* AND (co-production OR engagement OR consultation)
- (vulnerab* OR disadvantage*) AND consumer AND (site: .gov.uk OR site: .org.uk OR site: .asn.uk)
- (vulnerab* OR disadvantage*) AND consumer AND (site: .gov.au OR site: .org.au OR site: .asn.au).

Through these searches, we obtained 81 results, around 50 of which we determined were relevant to the study.

In the course of our background research for this study, we identified and included a number of other documents that did not strictly meet the search criteria but were nevertheless relevant to the research question. These mainly comprised:

- reports published by Australian consultancy organisations specialising in community engagement
- publications by public bodies and community organisations that do not address consumer or community engagement but do not contain general guidance on respectful and appropriate communication or involvement of one or more population groups in public processes.

Appendix B: Adapting the commission's approach with the universal principles

Introduction

The commission's Stakeholder Engagement Framework ('Engagement Framework') was adopted in 2018.[cdxxxix] It mentions many of the elements of universal and inclusive engagement discussed in this report. This Appendix describes the commission's approach to stakeholder and community engagement and briefly discusses how the universal engagement principles can usefully complement the Engagement Framework, because they offer more detailed guidance about *how* universality and inclusivity can be built into all elements of engagement.

The Essential Services Commission's approach to stakeholder and community engagement

The commission has expressed its commitment to effective engagement with stakeholders, including consumers, and has developed policies to support this goal. In accordance with its legislative obligation, the commission has developed and published a Charter of Consultation and Regulatory Practice ('Charter'). The Charter must include 'guidelines relating to processes for making determinations and other regulatory decisions and conducting inquiries'.[cdxl] The commission published an updated Charter, along with a new Engagement Framework, in 2018.[cdxli]

The Charter encapsulates the commission's 'commitment to effective stakeholder engagement'.[cdxlii] It sets out guidelines for incorporating engagement in its inquiry and decision-making processes and is subject to further review every three years.

The Engagement Framework was developed as part of a 2017–2018 review of the Charter, which included an internal deliberative process with Commission staff across a range of roles and divisions. This process culminated in the group's proposal of a set of recommendations. These were considered by the commission and formed the basis of the new framework published in 2018.

The Charter operates as 'the core guiding document'[cdxliii] for the Engagement Framework, and the Engagement Framework aims to 'promote consistency of practice and excellence across the organisation'.[cdxliv]

These documents establish the commission's position that stakeholder and community engagement is essential to its work, as 'a building block for better decisions'.[cdxlv] The value placed by the commission on engagement is expressed in its statement that:

> Stakeholder engagement helps us build respectful and productive relationships, helping create trust and goodwill. It helps us identify emerging issues and trends affecting the sectors we work with and is important to inform unbiased regulatory decision-making. Our principles underpin our commitment to excellent stakeholder engagement.[cdxlvi]

The Engagement Framework is built around five principles that work in tandem with the Charter's engagement guidelines. The commission lists some of the activities in its engagement work as 'ongoing stakeholder engagement, formal consultations, consumer insights, expert advice and research and analysis'.[cdxlvii] Table B.1 sets out the five principles, according to their meaning, actions and methods.

Table B.1 Five Principles of Engagement: Essential Services Commission (Vic)

Principle	Meaning	Actions	Methods
Principle 1: We are transparent and accountable.	We are clear about what, when and how we consult. We publish information about how we make decisions and explain the decisions we have made.	We publish information about our decisions and processes. We explain key issues and report stakeholder input accurately. We keep stakeholders informed about our work.	Project web pages Fact sheets Emails, newsletters, media releases Reports and associated submissions Annual work program Annual report Social media
Principle 2: Our engagement is considered, planned and genuine.	We develop plans with the aim of providing time for meaningful, fit for purpose engagement with people who are affected, or have an interest in our decisions.	Engagement strategies are tailored to fit the task at hand	One on one discussions Surveys

Principle	Meaning	Actions	Methods
		We notify as widely as possible about our projects.	Workshops, forums or webinars Engagement feedback forms Early notification
Principle 3: Our engagement is inclusive.	Our decisions are well-informed by input from a range of groups and individuals who are affected by, or interested in our work.	We use a variety of engagement methods. We engage regularly.	Workshops, forums etc. Public hearings Working groups, reference panels Focus groups Reports and submissions
Principle 4: Our information is clear, accessible and simple to understand.	We present information in plain language that sets out clearly what we are doing, how people are affected and how they can get involved.	Plain English is our standard. We use multiple channels to reach many audiences.	Website Information sharing forums Newsletters Online engagement tools Plain English
Principle 5: We listen and learn to improve our consultation and engagement.	We evaluate and monitor our engagement and consultation, measuring ourselves against these principles.	We will review this charter to promote effective engagement.	Submissions Surveys

Principle	Meaning	Actions	Methods
		We invest in people and systems to promote best practice.	Project and program evaluation reports Regular objective assessment of engagement efforts

The commission is also required to act in accordance with performance and governance objectives established in the Victorian Government's Statement of Expectations Framework, which are designed to improve regulator performance.[cdxlviii]

The commission's Charter outlines how its approach to engagement aligns with such government guidelines. This includes commitments to timeliness; cooperation among regulators, stakeholder consultation and engagement; and accountability and transparency, which are the subject of reporting requirements.[cdxlix] Notably, stakeholder consultation and engagement is listed in the Victorian Government's Statement of Expectations as one of several 'Other Suggested Elements of Good Regulatory Practice' (behind 'Mandatory' or 'Recommended' elements).[cdl]

The commission's Engagement Framework and Charter identify a comprehensive approach to engaging with stakeholders, including a range of considerations that are relevant to consumers experiencing vulnerability.[cdli] One of the commission's key strategic regulatory priorities for the 2019–20 financial year was to focus on consumer protection, with a particular focus on the protection of vulnerable consumers.[cdlii] This has been further developed in the September 2020 approach paper, *Building a Strategy to Address Consumer Vulnerability*, which sets the commission's intention to develop a consumer vulnerability strategy.

The increasing alignment between meaningful consumer engagement and the commission's modern regulatory values[cdliii] demonstrates the potential of the former to close the gap between regulatory processes and the community.[cdliv] The importance of effective consumer engagement for regulators' objectives and functions suggests a clear role for ensuring that consumers experiencing vulnerability — as part of the diversity of consumers who have insights and needs that are relevant to a range of regulatory functions and decisions — are identified and involved in consumer engagement process.

Embedding universal engagement in the commission's approach

The commission's Stakeholder Engagement Framework touches on many of the principles proposed in the body of this report. The engagement guidance reviewed in section 4, and the universal engagement principles proposed in section 5, essentially offer more, and more detailed, guidance about how the commission can put its general principles of consumer engagement into practice. They also suggest additional methods for recruiting, communicating with, involving, and informing consumers in engagement processes.

For example, the universal engagement principles echo many of the elements of the commission's first engagement principle, '**We are transparent and accountable**', in their emphasis on transparency, openness, genuineness and responsiveness. The universal principles offer further guidance on the steps the commission can take to articulate and communicate its purpose and approach to engagement, and the outcomes of engagement, in a manner that is accessible and appropriate for a diversity of consumers.

The commission's explanation of its second principle, '**Our engagement is considered, planned and genuine**' identifies the provision of time for meaningful and appropriate engagement as a key feature of engagement. This is consistent with several of the principles proposed in section 5, including those relating to co-design with consumers, having a clear purpose, and ensuring genuine involvement. Again, the universal principles point to practical considerations for tailoring the planning and execution of activities to a diversity of consumers. These include, for example, developing relationships and connections by investing in long-term, respectful relationships with consumers and their representative organisations and involving them in the design of engagement processes, and using engagement processes that are both universally appropriate and tailored to individual (and project-specific) requirements.

The commission's third principle, '**Our engagement is inclusive'**, touches most directly on the matters raised in this report. The commission explains that this requires varied and regular engagement that leads to input from a range of interested groups. The universal principles describe the adaptations necessary to support the commission to identify and involve a truly representative and diverse group. These include, for instance, formal processes to articulate the purpose of consumer engagement (including vulnerability-related considerations) and to identify who the commission should engage with, including those who participation is not usually facilitated, as well as processes for designing inclusive and universal engagement processes in consultation with participants.

In regard to Principle 4, '**Our information is clear, accessible and simple to understand'**, the guidance indicates that the commission's methods of issuing plain language versions of information and using multiple channels to reach audiences are important elements of accessible and inclusive

engagement. The universal principles demonstrate that clarity and accessibility are relevant in all elements of engagement (not only information) and that these require planning, resources and an appreciation of a wide range of considerations including accessibility, cultural awareness, literacy and numeracy, and responding sensitively to distress.

The universal principles reinforce the fifth and final Commission principle, '**We listen and learn to improve our consultation and engagement**', which addresses the evaluation and monitoring of engagement against the principles, and the need for investment to promote 'best practice'. The universal principles discuss how to ensure these processes are inclusive and appropriate, including inviting and accepting feedback in multiple forms and through a range of channels, responding to feedback in a timely fashion (including during engagement where necessary) and directly involving participants and their representative organisations in the design and conduct of evaluation and feedback processes.

The emphasis in the universal principles on timeliness, cooperation and cross-sector collaboration, stakeholder engagement, accountability and transparency, can also offer further support for aligning the commission's engagement approach with the Victorian Government's Statement of Expectations Framework.[cdlv]

Endnotes

[1] Essential Services Commission, *Stakeholder Engagement Framework* (2018) 5 ('*Framework*').

[2] *Essential Services Commission Act 2001* (Vic) s 8(1) ('*Essential Services Commission Act*').

[3] Ibid s 8A(1)(e)(i).

[4] Emma O'Neill, 'Exploring Regulatory Approaches to Consumer Vulnerability' (Consumer Policy Research Centre for the Australian Energy Regulator, 2020) 11. A more detailed definition and discussion of the circumstances of vulnerability in the consumer context is contained in section 3 of this report.

[5] Essential Services Commission, *Building a Strategy to Address Consumer Vulnerability* (September 2020) 10 ('*Building a Strategy*').

[6] Martin Coppack, Francis Jackson and James Tallack, 'Involving Consumers in the Development of Regulatory Policy' (Discussion Paper, UK Regulators Network Consumer Working Group, July 2014) 2; UK Regulators Network, *Consumer Engagement in Regulatory Decisions: A Guide to How UK Regulators Involve Consumers, Hear Their Views and take their Interests into Account* (Report, April 2017); Eva Heims and Martin Lodge, 'Customer Engagement: Towards a New Era in Economic Regulation' in Sharon Darcy et al, 'Customer Engagement in Regulation' (Discussion Paper 82, Centre for Analysis of Risk and Regulation, February 2016) 1, 3–4.

[7] For example, Government of South Australia, *Better Together: Engaging with Hard-to-Reach Groups and Individuals* (Fact sheet, nd) ('*Engaging with Hard-to-Reach Groups*').

[8] Yvette Maker et al, 'From Safety Nets to Support Networks: Beyond "Vulnerability" in Protection for Consumers with Cognitive Disabilities' (2018) 41(3) *UNSW Law Journal* 818 ('*From Safety Nets to Support Networks*').

[9] Carol Bacchi, *Analysing Policy: What's the Problem Represented to Be?* (Pearson, 2009).

[10] Government of South Australia, *Better Together Fact Sheet: Inclusive Engagement* (Factsheet, nd) ('*Inclusive Engagement*').

[11] See Hans Persson et al, 'Universal Design, Inclusive Design, Accessible Design, Design for All: Different Concepts—One Goal? On the Concept of Accessibility—Historical, Methodological and Philosophical Aspects' (2015) 14(4) *Universal Access in the Information Society* 505; and see for example Government of South Australia (n 10); Capire Consulting Group, *Inclusive Community Engagement Toolkit* (Toolkit version two, 2016) ('*Engagement Toolkit*').

[12] O'Neill (n 4) 25.

[13] Essential Services Commission, 'For Consumers', *Essential Services Commission* (Web Page, 2018) <https://www.esc.vic.gov.au/consumers>. The commission on occasion conducts other work that promotes the long-term interests of consumers with respect to the price, quality and reliability of essential services, and reviews other sectors at the request of the Victorian Government, for example, providing advice in relation to the waste and resource recovery sector and reporting on domestic building insurance: Essential Services Commission, 'Other Work', *Essential Services Commission* (Web Page, 2018) <https://www.esc.vic.gov.au/other-work>.

[14] National Audit Office, *Vulnerable Consumers in Regulated Industries* (Report No HC/1061, House of Commons, 31 March 2017) 6.

[15] Essential Services Commission, *Framework* (n 1); Essential Services Commission, *Stakeholder Engagement Framework: Charter of Consultation and Regulatory Practice* (Report, 2018) 5 ('*Charter*').

[16] *Essential Services Commission Act* (n 2) ss 10–10AAA.

[17] See for example, Mike George et al, 'Tackling Consumer Vulnerability: Regulators' Powers, Actions and Strategies' (Research Paper 15–06, University of Leicester, July 2014).

[18] *Essential Services Commission Act* (n 2) s 8(1).

[19] Ibid s 8(2).

[20] Ibid s 8A(1)(d).

[21] O'Neill (n 4) 11, 27.

[22] Coppack, Jackson and Tallack (n 6) 4.

[23] Government of South Australia, *Better Together Handbook: Principles of Engagement* (Second Edition, nd) 22 (*'Better Together Handbook'*).

[24] International Association for Public Participation (IAP2) Australasia*, Quality Assurance* Standard *for Community and Stakeholder Engagement* (2015) 6 <http://www.iap2.org> (*'Quality Assurance Standard'*)

[25] Oliver Lough and Kerrie Holloway, 'Covid-19: A Watershed Moment for Collective Approaches to Community Engagement' (Briefing Note, Humanitarian Policy Group, July 2020) 1.

[26] Heims and Lodge (n 6).

[27] Coppack, Jackson and Tallack (n 6) 4.

[28] Ibid; Heims and Lodge (n 6); Trisha McAuley, 'Consumer Engagement in Regulation: What Does Good Practice Look Like' in Sharon Darcy et al, 'Customer Engagement in Regulation' (Discussion Paper 82, Centre for Analysis of Risk and Regulation, February 2016) 11; UK Regulators Network (n 6) 5.

[29] Heims and Lodge (n 6) 3.

[30] Christopher Hood, *The Art of the State: Culture Rhetoric and Public Management* (Oxford University Press, 1998); Christopher Hood and Michael Jackson, *Administrative Argument.* Aldershot: Dartmouth Publishing Company, 1991).

[31] Heims and Lodge (n 6) 3.

[32] Tom R Tyler, 'Procedural Justice, Legitimacy and the Effective Rule of Law' (2003) 30 *Crime and Justice* 283; Tom Tyler, *Why People Obey the Law* (Princeton University Press, 2006).

[33] Heims and Lodge (n 6) 3–4.

[34] Cosmo Graham, 'Consumer Engagement in the Regulation of Network Industries' in Sharon Darcy et al, 'Customer Engagement in Regulation' (Discussion Paper 82, Centre for Analysis of Risk and Regulation, February 2016) 34, 34-35.

[35] Valerie Braithwaite, 'Closing the Gap between Regulation and the Community' in Peter Drahos (ed), *Regulatory Theory: Foundations and Applications* (ANU Press, 2017) 25.

[36] Ibid.

[37] For example, bans on certain products, requirements on the composition of pharmaceutical products and mandatory safety requirements for certain products: Eric L Windholz, 'Consumer Protection, Modern Regulation, Paternalism and the Nanny State: Understanding the Legitimacy Challenge' (2018) 26(2) *Competition and Consumer Law Journal* 182, 182.

[38] Ibid; Nicola Howell, 'Searching for a National Consumer Policy Reform Program?' (2005) 12(3) *Competition and Consumer Law Journal* 294; see also Maker et al, *From Safety Nets to Support Networks* (n 8).

[39] Windholz (n 37) 210–11.

[40] McAuley (n 28) 14; Coppack, Jackson and Tallack (n 6) 4; UK Regulators Network (n 6) 5.

[41] Sharon Darcy, 'Customer Engagement in Regulation: Let's Start with the Customer' in Sharon Darcy et al, 'Customer Engagement in Regulation' (Discussion Paper 82, Centre for Analysis of Risk and Regulation, February 2016) 19, 19–20.

[42] Examples include 'self-serve' 'pro-sumers' or collaborative approaches: ibid 19.

[43] Ibid.

[44] Ibid 20.

[45] Ibid.

[46] Ibid.

[47] McAuley (n 28) 12.

[48] Ibid; Heims and Lodge (n 6).

[49] McAuley (n 28) 13–14; see also Graham (n 34) 35–6.

[50] See Mike George, Cosmo Graham and Linda Lennard, 'Consumer Vulnerability — Mainstream, Not Marginal' (Research Paper, Centre for Consumers and Essential Services, University of Leicester, 2016) 9–10.

[51] Darcy (n 41) 20.

[52] Ibid.

[53] Ibid.

[54] McAuley (n 28) 14.

[55] IAP2 Australasia, *Quality Assurance Standard* (n 24) 11.

Endnotes

56 Coppack, Jackson and Tallack (n 6) 2; UK Regulators Network (n 6).

57 George et al (n 17) 12.5

58 O'Neill (n 4) 11.

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[281] Capire Consulting Group, *Engagement Toolkit* (n 11) 25, 31.

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[284] Department of Human Services (Vic) (n 223) 6.

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[292] Domestic Violence Victoria (n 188) 15.
[293] Voice at the Table, *Top Ten Tips* (n 139).

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[300] Government of South Australia, *Effective Engagement with Older People* (n 218).

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[302] Robinson, Disability Studies Research Institute and Dyke (n 205) 16.

[303] Government of South Australia, *Inclusive Engagement* (n 10) 2; Department of Human Services (Vic) (n 223).

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[305] Government of South Australia, *Effective Engagement with Older People* (n 218) 14.

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[308] Government of South Australia, *Effective Engagement with Older People* (n 218) 14; Department of Human Services (Vic) (n 223) 21.

[309] Department of Human Services (Vic) (n 223) Appendix 1, Appendix 2.

[310] Robinson, Disability Studies Research Institute and Dyke (n 205) 12.

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[334] Government of South Australia, *Better Together Handbook* (n 23) 13; Capire Consulting Group, *Engagement Toolkit* (n 11) 10.

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