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Submission to the Consumer Safeguards Review Part C: Choice and Fairness

24 September 2020

Department of Infrastructure, Transport, Regional Development and Communications
GPO Box 2154
CANBERRA ACT 2601

By email: consumersafeguardsreview@communications.gov.au

Dear Secretariat,

We thank the Department for the opportunity to provide a submission to the Department's Consumer Safeguards Review Part C – Choice and Fairness consultation paper. The Consumer Policy Research Centre (CPRC) is an independent, non-profit, consumer think tank. Our mission is to protect and improve the experiences and welfare of consumers, by producing evidence-based research that drives policy and practice change.

This submission draws on CPRC's commissioned and collaborative research with academics across different complex and essential service markets, highlighting key aspects that relate to choice and fairness in the telecommunications sector. In this submission we cover the following key topics:

- The importance of telecommunications
- Market stewards need to facilitate an effective marketplace
- Comprehension testing and clear advice
- Improving the quality of service through regulation and competitive tension
- Inclusive design and consumer vulnerability

An essential service

Even before the pandemic, markets and public facing government services were increasingly moving online. CPRC's research from 2019 found 97% of Australians surveyed were shopping online at least occasionally or browsing for products online.[1] Government reforms such as the Consumer Data Right intend to improve market efficiency through reduced comparison and switching costs, facilitating bespoke service offerings based on individual consumption data, all through online gateways. The digital transformation of government and the expectation that citizens will access a variety of services online through MyGov also highlights the importance of access to telecommunications services.[2]

The COVID-19 pandemic has definitively established telecommunications as an essential service that is vital to the economy and our daily lives. Social distancing measures have seen a rapid uptake of online shopping for virtually all consumer goods, pushing businesses to pivot online as well. Video calling and cloud-based servers has enabled many of those

[1] Ben Martin Hobbs, *Online Reviews: A guide not a gospel,* (Consumer Policy Research Centre, 2019).
[2] Australian Government Digital Transformation Agency, *Digital Transformation Strategy 2018 – 2025*, available at: https://www.dta.gov.au/digital-transformation-strategy.

living with restrictions to work from home, remote learning for school aged children, and has become a staple part of social contact for those unable to socialise outside their homes.

This increasing dependence on a multiple telecommunication services has resulted in a significant increase in the cost as a percentage of a household budget, and research (from before the pandemic) suggests telecommunications now cost average households more than energy.[3] The consequences of inadequate or unaffordable telco services are severe, hindering people's ability to communicate with social and support networks, access government and social services, work or learn from home, engage with markets and access consumer products, and use assistive and mobility technology.

Adopting a market stewardship approach

Telecommunication policymakers and regulators can take a stronger, clearer role in market stewardship, which involves 'steering' or shaping markets to ensure they deliver good outcomes for consumers.[4] It involves shifting the focus from solely competition policy to a more considered and evidence-based view of how people are likely to engage with markets and make choices. This approach was advocated by the Harper Review with regard to quasi-markets but should be extended to complex markets where there is evidence or risk of poor consumer outcomes.

CPRC proposes a hierarchy of priorities for policymakers and regulators governing essential service markets:

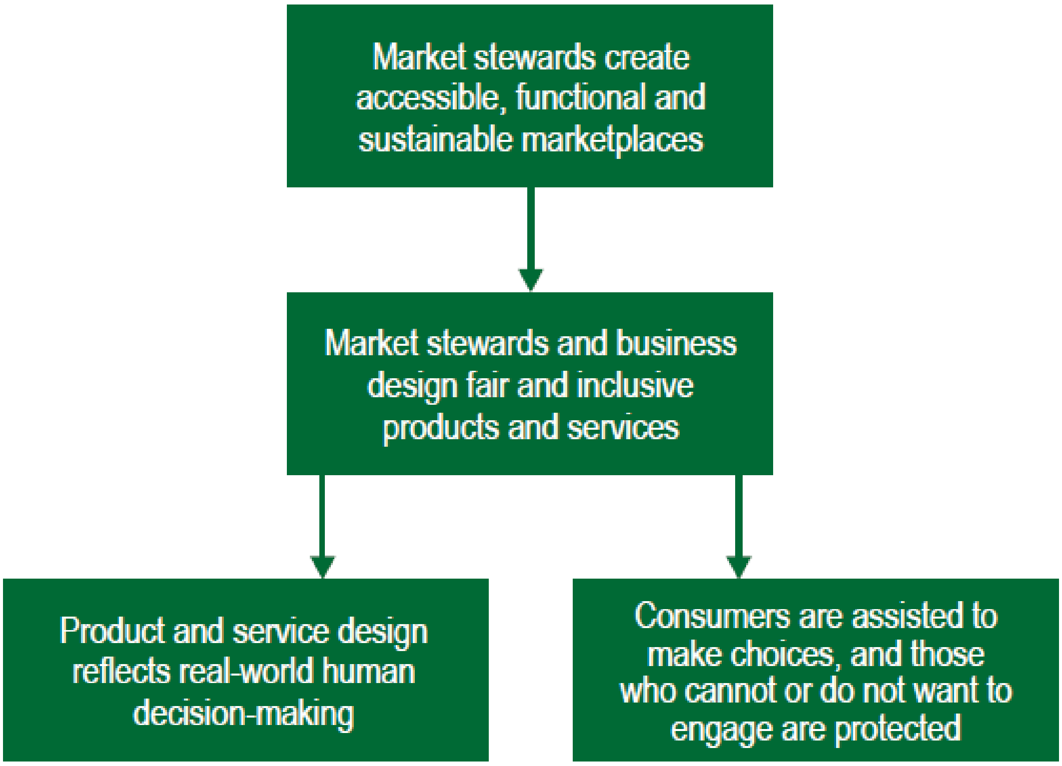

Figure 1: CPRC's *Hierarchy of Stewardship Priorities*

[3] Greg Ogle, *Telecommunications Expenditure in Australia*, (Australian Communications Consumer Action Network, Sydney; 2017).

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

An effective marketplace

Well-functioning consumer markets – enabling informed choice of different products and providers – require an accessible and navigable *marketplace.* A *marketplace* provides a particular location where people can access key information about a range of goods or services, compare this range of suppliers, and choose/purchase a good or service – in effect this brings into being the abstract concept of a market.[5] Where marketplaces are inaccessible, hard to navigate or incomplete (due to limited or imperfect information disclosure, or lack a whole of market view), search and switching costs increase, resulting in poor consumer outcomes.

As noted in our report, *The experiences of older consumers: towards markets that work for people* (July 2020), few comprehensive marketplaces exist in essential and complex services.[6] Where 'market stewards' (such as regulators and government departments) rely on commercial entities to provide the marketplace (e.g. switching sites and digital aggregators), the incentives of these intermediaries may not be aligned with those of consumers, resulting in limited, skewed or misleading comparisons of available products.[7]

While there are a range of commercial comparators offering comparisons mobile, NBN or bundled plans with handsets and tablets, an accessible independent marketplace providing whole of market coverage is lacking in the telecommunications sector. By comparison, in the residential energy market, government comparison websites provide an independent, whole of market view, with a mechanism that enables direct comparison of different plans pricing. Requirements that all retailers submit new energy plans to the regulator/department run comparator websites ensures the regulator has full view of the market and consumers can compare all market offers. The independence of these websites is highly regarded by consumers, who report distrust of commercial comparator websites due to sales practices.[8] Though these government comparison websites do not yet facilitate switching directly, a variety of recent energy market reforms in Victoria and the National Energy Market have sought to improve the comparability of different plans through standardisation of key information, and the introduction of different kinds of reference prices to improve comprehension.[9]

In our *Five Preconditions of Effective Consumer Engagement* report, we outline the key "infrastructure" required for an effective marketplace.[10] Market stewards need to ensure consumers can easily **access** and **assess** comparable information about the price, quality, features and terms of service of different plans, providers and products, and to **act** on this

[5] Ben Martin Hobbs and Emma O'Neill, *The experiences of older consumers: towards markets that work for people* (Consumer Policy Research Centre, July 2020), 21.
[6] Ibid.
[7] Ibid., 63.
[8] Ben Martin Hobbs and Lauren Solomon, *Five preconditions of effective consumer engagement – a conceptual framework,* (Consumer Policy Research Centre, March 2018), 42.
[9] See the recommendations outlined John Thwaites, Patricia Faulkner and Terry Mulder, *Independent Review into the Electricity and Gas Markets in Victoria,* (August 2017). https://web.archive.org/web/20190118091050/https://www.energy.vic.gov.au/__data/assets/pdf_file/0030/79266/Retail-Energy-Review-Final-Report.pdf; and related Essential Services Commission, *Electricity and gas retail markets review implementation 2018*, https://www.esc.vic.gov.au/electricity-and-gas/inquiries-studies-and-reviews/electricity-and-gas-retail-markets-review-implementation-2018. See also the Australian Competition and Consumer Commission, *Restoring Electricity Affordability and Australia's Competitive Advantage: Retail Electricity Pricing Inquiry – Final Report* (11 July 2018).
[10] Ben Martin Hobbs and Lauren Solomon, *Five preconditions of effective consumer engagement – a conceptual framework,* (Consumer Policy Research Centre, March 2018).

information (by switching plan or product). Where consumers face heightened issues of access – due to a variety of vulnerabilities including language barriers, digital literacy and disabilities in particular contexts – market stewards need to facilitate access through outreach or targeted assistance. Market stewards also need to ensure consumers are **aware** where to go to access key information (i.e. the marketplace), how to navigate a marketplace and switch providers.[11]

Comprehension testing and clear advice

Market stewards also need to take an active role in testing the comprehensibility of the key information provided through marketplaces. While disclosure requirements and mechanisms have long been relied on as a key pillar of consumer protection to address information asymmetries, research demonstrates firms' inadvertent or deliberate and strategic use of complexity in information disclosure - often resulting in poor consumer outcomes.[12] ASIC's 2019 report *Disclosure: Why it shouldn't be the default* provides a useful summary of much of this evidence, highlighting in particular the real world context in which disclosure operates, explaining how and why disclosure and warnings can be less effective than expected, or even ineffective, in influencing consumer behaviour.[13]

In recent years, market stewards in the residential energy market have engaged in behavioural testing to measure consumer comprehension of different disclosure mechanisms provided through the government run websites, on consumers' bills, and as part of a reference price to improve consumer comprehension.[14] Given the complexity of bundled pricing of plans and handsets, as well as the emerging bundling of NBN plans with energy plans, we strongly recommend a similar approach in the telecommunications sector.

The Essential Service Commission has introduced a 'clear advice' entitlement as part of a broader reform package in the Victorian retail energy market – which requires providers to better articulate whether a consumer will be better off switching to another plan or not, and to clearly explain changes in plan pricing, fees and charges in new energy plan agreements.[15] We strongly endorse the outcome based regulation adopted by the Essential Services Commission, and would encourage the Department to adopt a similar approach in the telecommunications sector.

Improving the quality of service through regulation and competitive tension

The Part C consultation paper highlights the issue of poor customer service in the telecommunications sector in recent years. Forthcoming research commissioned by ACCAN suggests it cost Australians $151million in time foregone to resolve problems with their telco provider.[16] This is consistent with CPRC's monthly COVID-19 consumer survey, which has found a higher proportion of consumers report negative experiences with their telco provider

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[11] See for example, CPRC's *Energy Simplified* outreach program, providing webinars to consumers explaining key steps to manage their energy bills in light of the new energy reforms in Victoria.
[12] Martin Hobbs and O'Neill, *Towards markets that work for people*, 31-39.
[13] Australian Securities and Investments Commission (ASIC) and the Dutch Authority for Financial Markets (AFM), *Disclosure: Why it shouldn't be the default* (REP 632), (October 2018).
[14] See for example BI Team, *BIT review of Basic Plan Information Document – Final Report,* (Australian Energy Regulator, 2018), https://www.aer.gov.au/system/files/Review%20 of%20Basic%20Plan%20Information%20Document%20-%20Final%20Report%20-%20April%202018_0.pdf; BI Team, *Testing the presentation of energy price information – final report,* (Essential Services Commission, December 2019), https://www.esc.vic.gov.au/sites/default/files/documents/academic-report-4A-market-design-20191210.pdf
[15] Essential Services Commission*, Building trust through new customer entitlements in the retail energy market*, October 2018. https://www.esc.vic.gov.au/sites/default/files/documents/building-trust-through-new-customer-entitlements-in-the-retail-energy-market-retail-markets-review-final-decision-20181030_0.pdf
[16] ACCAN, The Cost of *Still Waiting,* (forthcoming research)

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than any other sector in our survey – a consistent trend since the start of the survey in May 2020. Moreover, our most recent data (see attachment) shows there was a significant jump in the proportion of consumers reporting negative experiences, up from one in five in July (21%) to nearly one in three in August (29%). Our data shows an increase in the proportion of consumers experiencing a range of difficulties, including the proportion of consumers:

- who could not understand how to contact their provider or resolve an issue (7% up from 4% in July)
- who could not navigate websites or phone systems (8% up from 4% in July)
- reporting long wait times on the phone or via email (17% up from 12% in July)
- reporting unhelpful or poor service (9% up from 6% in July)
- feeling misled by information provided by their provider (6% up from 3% in July)
- reporting unfair terms in their contract or agreement (4% across July and August).

Our survey data adds to the evidence that general customer service standards in the telecommunications sector need to be regulated by ACMA in consultation with industry, consumers and other relevant stakeholders as appropriate, rather than left to industry to develop and self-regulate. We suggest the Department give consideration to the principle-based regulation approach adopted by energy regulators such as the Victorian Essential Services Commission, which is focused on achieving good customer outcomes, allows service providers some flexibility in how they tailor and deliver supports to best meet the needs of customers, and enables enforcement and monitoring of consumer service standards by an independent regulator.

Aspects of this principle-based regulation can benefit from competitive tension between suppliers to improve outcomes for consumers. As first articulated in George Akerlof's 1970 seminal paper *The Market for "Lemons",* if consumers cannot distinguish high quality from low quality products, higher quality providers may exit the market.[17] The issue of information asymmetry as it applies to essential services is explored in our 2018 report "*But are they any good?"*. Our paper also served as a literature scan to inform our collaborative partnership project with RMIT's Behavioural Business Lab to develop and test a prototype measure of service quality in the residential energy market. This research - a series of iterative consumer research stages - is summarised in our recent report (August 2020) *Picking Peaches: Service Quality in the Victorian Energy Market –a summary report*, which identified key aspects of customer service consumers are willing to pay for and developed a prototype accordingly. Our research empirically tested the effect of service quality information on consumers' choices in an experimental setting, mimicking a comparator website. We found those consumers provided with service quality information choose higher quality energy retailers, even when they are lesser known, or were more expensive.

This research provides evidence that the quality of customer care can be improved through this kind of "sunlight remedy", in which the market steward develops a public facing measure of service quality to inform consumer choice, enabling competitive pressure to improve quality. Voluntary and commercial approaches to this kind of information disclosure have a range of limitations, such as limited market coverage, biased or incomplete information, and so independent service quality information should be a priority for market stewards.[18] Again, this information needs to be easily accessible in the marketplace to enable consumers to compare all providers.

[17] George A. Akerlof, "The Market for "Lemons": Quality Uncertainty and the Market Mechanism", *Quarterly Journal of Economics* 84, no. 3 (August 1970): 500.
[18] Marin Hobbs and O'Neill, *Towards markets for People,* 32.

Inclusive design and consumer vulnerability

Given the essentiality of telecommunications, market stewards must ensure services are designed inclusively so they can be accessed by all Australians, particularly those who are especially dependent on telecommunications for health, safety and wellbeing. Consumers are not a homogeneous whole – they differ in their ability and preferences in accessing and navigating digital marketplaces or online information. Research from the Office of the eSafety Commissioner found a larger proportion of older Australians reported a preference not to use the internet for a variety of tasks.[19] In the context of the market for in-home care, CPRC's own research found older Australians prefer to speak to a trusted intermediary rather than use a website or portal.[20] This highlights the importance of ensuring the marketplace and key product or plan information is accessible and comparable through different channels to ensure that all consumers can make informed choices.

Where service mechanisms and systems are not designed with the broader lived experience of *all* consumers in consideration, difficulties may be amplified for consumer segments. CPRC's August 2020 COVID-19 survey data highlights the experience of consumers with disability, who make up approximately 18% Australians.[21] Just under half of all consumers with disability (43%) reported a negative experience with their telco provider in August, well above the already heightened proportion of the broader population (29%), including:

- 22% reported wait times on the phone/email were too long (17% nationally)
- 16% reported difficulties navigating the website/phone system (8% nationally)
- 13% reported their provider was unhelpful/poor service (9% nationally)
- 12% reported difficulties understanding how to contact their telco provider (7% nationally)
- 10% reported misleading information provided by their telco (6% nationally)
- 12% reported unfair terms or conditions (4% nationally)[22]

Research by Yvette Maker and others has highlighted many of these issues and includes a toolkit for service providers, to enable consumers with disability to better access telco and other essential services.[23] We encourage both industry and market stewards to adopt an inclusive design approach to ensure all consumers can navigate the market and access the support they need.[24]

We also recommend the development of a consumer vulnerability strategy for the telecommunications sector, which can be monitored and enforced by ACMA.

Regulators in Australia are beginning to follow the lead of UK regulators in adopting vulnerability strategies. In 2019, the AER commissioned a CPRC research report, *Exploring regulatory approaches to consumer vulnerability: a report for the Australian Energy Regulator,* which outlines key findings, lessons and approaches being taken to address

[19] Ipsos, *Understanding digital behaviour amongst adults aged 50 years and over,* (Office of the eSafety Commissioner, 2018), 91-92, https://apo.org.au/ node/174271
[20] Ben Martin Hobbs and Emma O'Neill, *Choosing care: the difficulties in navigating the Home Care Package market*, (Consumer Policy Research Centre, 2020), 33.
[21] Australian Institute of Health and Welfare, *People with Disability: In brief,* September 2019
[22] Consumer Policy Research Centre, *COVID-19 and Consumers: from crisis to recovery - Monthly Insights Report August 2020,* September 2020
[23] Yvette Maker, Jeannie Marie Paterson, Bernadette McSherry, Lisa Brophy, Anna Arstein-Kerslake, Alex Callahan and Eugene Teo, *Thanks a Bundle: Improving Support and Access to Online Telecommunications Products for consumers with Cognitive Disabilities,* (Australian Communications Consumer Action Network, Sydney and Melbourne Social Equity Institute, University of Melbourne; 2018), https://socialequity.unimelb.edu.au/projects/support-for-consumer-transactions/ thanks-a-bundle
[24] Martin Hobbs and O'Neill, *Towards markets that work for people,* 62.

vulnerability across different jurisdictions, sectors and regulators. This report recognises that significant work has been done around vulnerability and hardship in other sectors - that everyone is likely to experience vulnerable circumstances at some point in their lives, due to common, unavoidable and unpredictable life events such as illness, job loss, financial shocks, the death of a loved one and natural disaster. Life events such as having children, ageing and disability can also contribute to consumer vulnerability. Vulnerability can arise from personal circumstances, but it can also arise as a consequence of market complexity, poor product and service design, deliberate exploitation of people's behavioural biases, information asymmetry and targeted exploitation of particular communities.[25]

More recently, the ESC formally launched its vulnerability strategy work program – which follows on from a significant work program of energy reform over recent years.[26]

Hardship and payment difficulty support

To address consumer vulnerability, a priority action for the Department should be the development of a rigorous, enforceable hardship/payment difficulty framework for telecommunications customers. The current hardship provisions in the industry-led Telecommunications Consumer Protections Code do not allow for timely, regular and systemic enforcement by ACMA. We recommend ACMA be given powers similar to energy regulators to develop regulations on minimum standards of hardship and payment assistance, and to be able to directly enforce these regulations.

CPRC's COVID-19 survey shows a clear need for comprehensive payment difficulty assistance framework for telco customers, especially at a time of recession and to build consumer resilience into recovery and beyond. Our COVID survey has identified widespread concern about financial wellbeing and ability to pay bills - 65% of the broader population reported they were somewhat or very concerned about their financial wellbeing. Our survey has also found some consumers subgroups are facing increased difficulty paying bills; in August 9% of renters, 9% of young people, and 9% of consumers with disability reported missing a telco payment compared with 5% of the broader population.

Our survey data reveals a similar proportion of telco and energy consumers experiencing difficulties paying bills. Both the proportion of consumers who sought payment assistance (5%) and the proportion reporting they had to miss a payment (5%) are comparable to the energy sector (5% sought payment assistance and 2% missed a payment).[27] Yet as noted in the ACMA's most recent *State of Play* report, indicates just 0.07% of residential telecommunications customers were in financial hardship arrangements with their provider at 30 June 2019, compared with more than 1% of electricity customers.[28] This disparity in the provision of hardship compared with the reported need among the broader community demonstrates the importance of a regulated hardship framework to help consumers.

Service provision and system design also has a bearing on the ability of individuals facing financial difficulties to seek assistance. Our COVID-19 survey found that three-quarters of people (76%) who sought payment assistance from their telecommunication provider in August reported a negative experience or difficulties contacting their provider. We encourage

[25] Emma O'Neill, *Exploring Regulatory Approaches to Consumer Vulnerability: A Report for the Australian Energy Regulator,* (Consumer Policy Research Centre, February 2020).
[26] ESC, *Building a strategy to address consumer vulnerability – Approach paper,* 17 September 2020.
[27] Consumer Policy Research Centre, *COVID-19 and Consumers: from crisis to recovery - Monthly Insights Report August 2020,* September 2020.
[28] Australian Communications and Media Authority, *Customer financial hardship in the telco industry: state of play report 2018-19*, (March 2020) 5, https://www.acma.gov.au/publications/2020-03/report/financial-hardship-telco-industry.

the Department and ACMA to consider the impact that vulnerability has on decision-making and the ability of individuals to engage, and whether the current hardship arrangements place an excessively onerous burden on individuals to seek assistance.[29]

In the energy market, both AER and ESC have regulated consumer protection frameworks in place that stipulate a suite of required actions for retailers to engage consumers with payment difficulty early as debt accrues and provide hardship support. The ESC's *Payment Difficulty Framework,* introduced in 2019 goes further, providing a structure to enable genuine customer-led negotiation around repayment of arrears through a staged process. Early intervention to prevent large debts accruing is in the interests of both consumers and industry, particularly in an environment where bad debt provisions pose risks to the viability of some service providers and therefore competition in markets. In our view, there is a significant opportunity for ACMA to draw on the experiences of other regulators who have already produced significant work on payment difficulty.

Consumer protection frameworks in energy markets also include concessions to help low income families manage cost. This includes concessions for ongoing use (e.g. a percentage based concession in Victoria) as well as one off assistance for those facing temporary financial crisis (e.g. Utility Relief Grants in Victoria or Energy Accounts Payment Assistance). The Department might consider adopting similar measures to provide financial relief for telecommunications bills for those facing crisis.

Ensuring consumer protection frameworks deliver the intended outcomes is also a key priority for market stewards. As part of its new compliance and enforcement powers, the ESC has commenced auditing how retailers deliver the *Payment Difficulty Framework.* We note the most recent audit findings identified retailers failing to provide accessible information about payment difficulty assistance on their websites and provided this feedback directly to retailers – an issue identified by our survey regarding telco providers.[30] This approach reflects the core work of market stewards to ensure that a consumer protections framework improves the wellbeing of consumers.

If you have any queries about this submission and the attached reports, please contact Ben Martin Hobbs, Senior Research and Policy Manager at [redacted]

Yours sincerely

[redacted]

Lauren Solomon
Chief Executive Officer
Consumer Policy Research Centre

[29] Martin Hobbs and O'Neill, *Towards markets that work for people,* 50.
[30] ESC, *Payment difficulty framework audit 2019*. https://www.esc.vic.gov.au/electricity-and-gas/market-performance-and-reporting/compliance-and-auditing-activities/payment-difficulty-framework-audit-2019

Consumers & COVID-19

AUGUST RESULTS SNAPSHOT

Consumer Policy Research Centre

Telco woes plague nation
Australians living with disability experiencing worst service from providers during COVID-19 stress

For the fourth month in a row consumers have reported telecommunications providers as delivering the worst customer service of all essential service providers. Nationwide results for August show disproportionate challenges facing people living with disabilities.

While many people are battling confusing telecommunications websites and long call wait times, people with disability are being pushed further behind by inadequate systems and support.

- **5.7 million Australians reported having a recent negative experience with their telecommunications provider** in August, up from 4.1 million in July.
- Most commonly reported problems by consumers when contacting telecommunications providers included **long wait times** (17%), **unhelpful service** (9%), **difficulty navigating the website or phone system** (8%) or a **general lack of ability to resolve challenges** (7%).
- **Almost half of consumers with disability (43%) reported having negative experiences with telecommunications providers** – with 22% reporting long wait times, 16% had difficulty navigating the website or phone system, 13% had unhelpful service, and 12% reported unfair terms or conditions in their contract.
- **People living with disability were more likely to ask for payment assistance than Australians overall in August,** with 20% seeking assistance from their lender/mortgage provider (7% nationally), 9% seeking payment assistance from their landlord (6% nationally), 9% asking for payment help from their insurer (4% nationally) and 9% seeking help from their credit or personal loan provider (4% nationally).
- **Slightly larger proportion of Australians living with disability dipped into savings** (34%) or **used credit cards or buy now pay later services** (34%) to manage basic household expenses.

This snapshot comes ahead of the September Policy Briefing. Download the ***Consumers and COVID-19: from crisis to recovery*** foundational report and monthly snapshots and briefings at cprc.org.au. For more information contact office@cprc.org.au.

Consumer Policy Research Centre

Picking peaches

Service Quality in the Victorian Energy Market – a summary report

August 2020

Executive Summary

Regulatory inquiries and Royal Commissions continue to identify poor practices by firms delivering essential and complex services, resulting in consumer detriment. Yet in many of these markets there is little information available to consumers to enable them to differentiate companies by the quality of their service, reflecting a key *information asymmetry*. Where consumers cannot pick ‘lemons’ from ‘peaches’, firms do not face competitive pressure to improve their service offering.

This report provides a summary of the findings from a collaborative research project between RMIT’s Behavioural Business Lab and the Consumer Policy Research Centre. This research has produced unique empirical data about the value of service quality and how it affects consumer choice in the context of the Victorian retail energy market.*

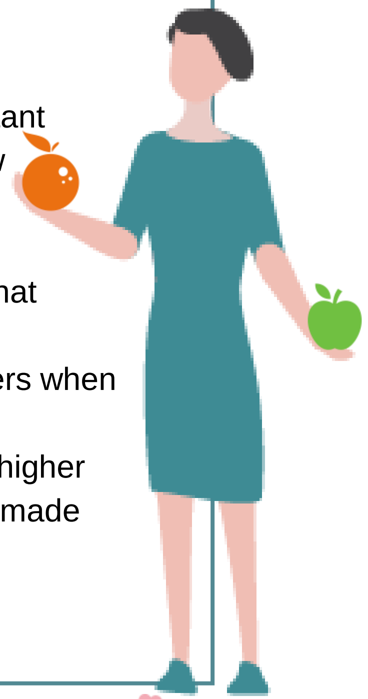
This project adopted a multi-stage, iterative and self-validating approach to first develop a prototype measure of service quality, and then to test whether service quality information affects consumer choice in an experimental setting and if so, *how* it affects choices.

Project Aims

This collaborative research project with RMIT’s Behavioural Business Lab sought to understand what aspects of customer service consumers considered most important in the context of the Victorian energy market. From these insights, we develop and then tested a prototype measure of service quality.

We aimed to identify whether:

- Consumers consider aspects other than price are important when assessing energy companies, and to examine how valuable consumers consider these non-price aspects.
- Consumers with different decision-making styles seek different kinds of information and respond differently to that information.
- Consumers make different choices about energy providers when service quality information is made available.
- Consumers are more likely to choose companies with a higher service quality rating when service quality information is made available.



*The views and recommendations expressed in this report reflect those of CPRC.

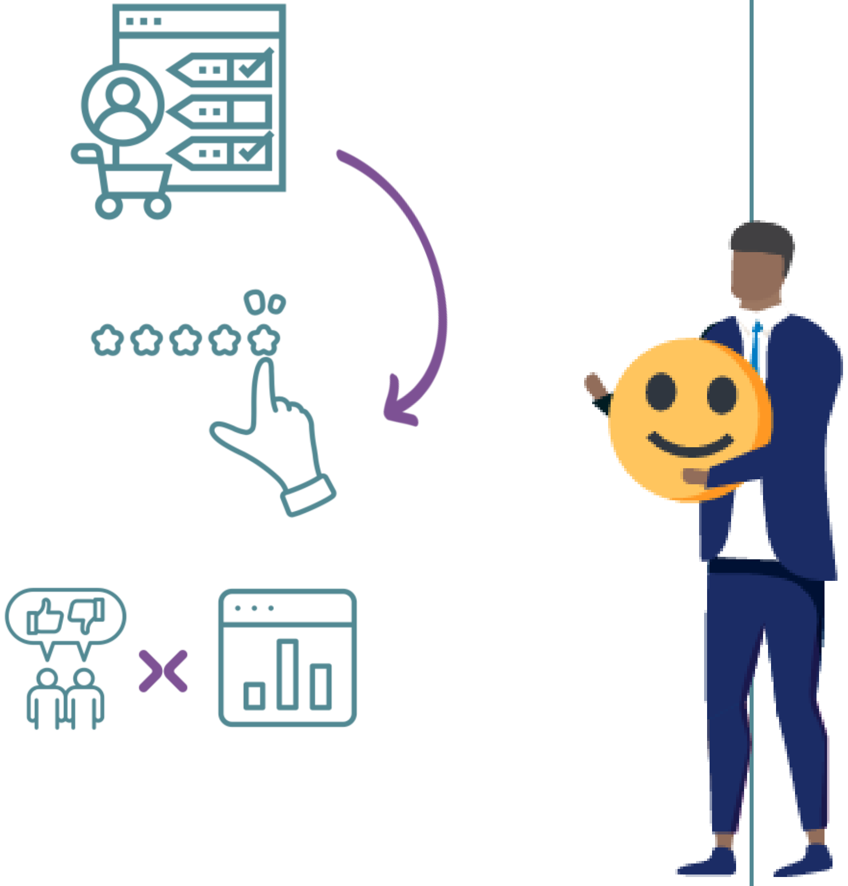
Executive Summary

Developing a measure of service quality

The behavioural research uncovered evidence of key service quality attributes Victorian consumers value when comparing energy retailers, namely: **transparency**, **authenticity**, **agency** and **convenience**. Information about these attributes is largely absent from the information disclosure regime – representing a clear information asymmetry.

The research produced empirical evidence that consumers are willing to pay for energy retail plans that rate higher against these attributes. Through two validating studies, we identified key aspects of each attribute that consumers consider important, and the preferred presentation of this information.

Our research also identified and validated two key decision-making styles: **opinion seeking** and **rational information seeking**. This new segmentation framework cuts across traditional demographic segmentation – which poses both opportunities and challenges for policymakers.



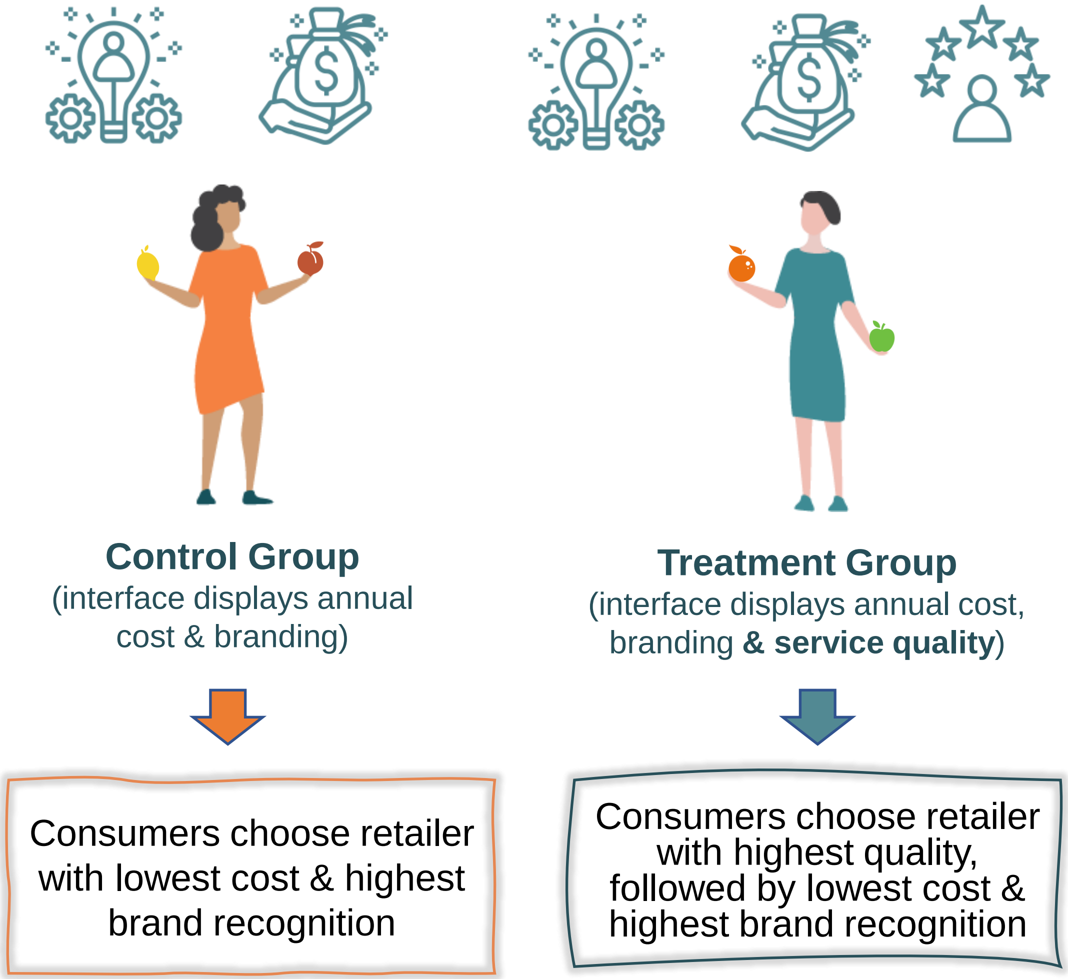
Executive Summary

Testing our prototype measure of service quality

We tested our prototype of a service quality measure in an experimental setting, mimicking how consumers might make a choice through a comparison website. We identified publicly available data to populate our prototype measure of service quality, as well as real energy tariffs and annual costs derived from *Victorian Energy Compare* for each of the energy retailers included in the choice set. Those in the control group were shown the comparator interface with branding and price, while those in the treatment group were shown a comparator interface with the service quality information in addition to annual cost and retailer branding.

In the control group, participants primarily chose the cheapest energy offer (Alinta) followed by a tariff from the most well-known energy retailer (AGL). In the treatment group, participants primarily chose the provider with the highest service quality rating (Tango), despite low awareness of the brand among participants and a higher price than Alinta.

While much of this research entails stated preferences, our findings are statistically significant and suggest that consumers make different choices when provided with information about service quality, and that they choose retailers with higher service quality – even if the brand is less well known or even if the cost is higher.



Recommendations

CPRC recommends market stewards (such as DELWP and the ESC):

Recommendation 1 – Develop public facing measures of service quality in energy and other complex and essential services markets to address information asymmetries – particularly in markets where poor consumer outcomes have been repeatedly identified in regulatory inquires and reviews.

Recommendation 2 – Improve the collection and rigour of regulatory performance data to inform a measure of service quality.

Recommendation 3 – Undertake ongoing consumer research to inform relevant aspects of the service quality measure.

Recommendation 4 – Adopt ongoing evaluation of market and consumer outcomes to determine consumer wellbeing, and research into consumer preferences of important aspects of service quality.

Recommendation 5 – Ensure the measure of service quality is easily accessible at the point of decision-making.

Recommendation 6 – Consider decision-making segmentation approaches to better understand barriers consumers face, as well as tailoring communications accordingly.

Background: the importance of service quality information

Effective markets rely on the premise that consumers actively participate by choosing between different products and services according to their preferences about price, quality and features. Where key information is absent, consumers cannot make fully informed decisions, limiting their ability to choose according to their preferences, and in doing so, drive competitive pressure to reduce cost, improve quality and develop new features.

Akerlof (1970) first highlighted the issue of *information asymmetry* – where sellers have significantly more information than buyers about a product or service – in the market for second-hand vehicles. Akerlof observed buyers face significant difficulty in differentiating a ‘lemon’ (a dud vehicle) from a ‘peach’ (a well-working/good quality vehicle) without a reliable indicator of quality.

This same principle can be applied to essential and complex services where consumers often can only fully understand the quality of service after purchase - be it technical aspects like broadband speed or customer care. Where consumers cannot evaluate the quality of service before purchase, high quality providers cannot differentiate themselves on this basis, while lower quality firms avoid competitive pressure to improve quality (Martin Hobbs, 2019).

Research suggests consumers may stick with their current provider when faced with uncertainty in the absence of this information – reflecting *status quo bias* (Yoo and Sarin, 2018; Hortaçsu et al, 2017).

The additional costs of poor service are borne by consumers. Resolving problems in essential services sectors – energy, banking and finance, internet and telecommunications – is estimated to cost Australian consumers an additional $6.26 billion each year (Martin Hobbs, 2018, p. 3).

Research has found Australians have low trust in these essential service sectors, which may partly be a consequence of poor service quality (Edelman, 2020; O’Neill, 2013). As noted by The Ethics Centre, ‘individuals and organisations will find it difficult (if not impossible) to operate effectively if they do not enjoy the trust and confidence of the community in which they are located’ (The Ethics Centre, 2018, p. 4).

How are regulators responding?

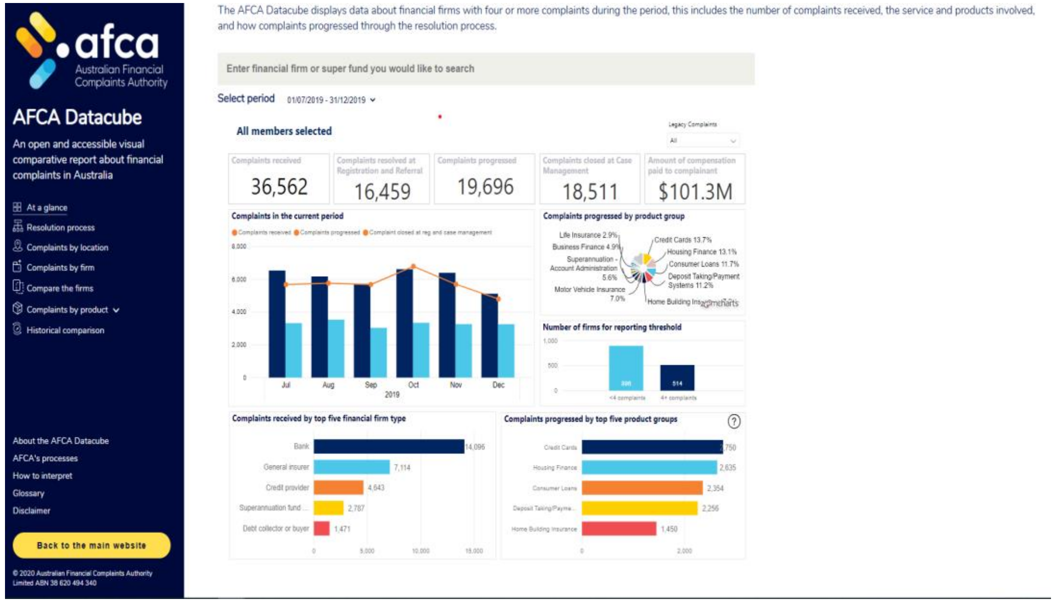
The use of ‘sunlight remedies’ – i.e. ensuring public information about strengths and weaknesses in firms’ service quality is available– has been strongly endorsed by British regulators, as seen in the UK Department for Business, Energy & Industrial Strategy’s *Modernising consumer markets: green paper* (2018), directing regulators of water, energy, banking and insurance, and telecommunications to develop and implement a variety of customer-facing measures of service quality.

More recently, Australian regulators have begun to follow suit. In 2018 the Australian Competition and Consumer Commission (ACCC) introduced a public facing measure of broadband speed (2018). The program relies on thousands of Australians volunteering to have ‘Whiteboxes’ installed in their homes to provide reliable data about their internet speed – effectively providing an ongoing audit of this quality of service.

In March 2019, Australian Securities and Investments Commission and Australian Prudential Regulation Authority launched a consumer-facing Life Insurance Claims comparison tool on MoneySmart, which includes data about consumer complaints (Moneysmart, n.d.).

In December 2019, Australian Financial Conduct Authority (AFCA) launched the ‘AFCA Datacube’, which provides financial services complaints data by firm, location and product (AFCA, 2019).

However, there are few – if any - comparison sites across essential services markets that include a measure of service quality alongside price, as well as a whole of market view.



Developing a measure of service quality

Project stages: an iterative approach

Stage 1

16 qualitative interviews to identify key attributes of service quality (customer care) when considering energy companies

Stage 2

A ‘discrete choice experiment’ – an online survey enabling us to identify to what extent consumers are willing to confirm willingness to pay for these attributes

Stage 3

A survey to build an understanding of the different aspects of these attributes and the importance of different aspects

Stage 4

A survey to test consumers’ preferences around the presentation of service quality information + validate decision-making segments

Stage 5

Experimental survey to test whether preferred presentations (stage 4) result in consumers making ‘better choices’

Stage 1: key attributes of service quality

The first stage entailed 16 qualitative interviews with consumers to identify the aspects of an energy retailer’s service they considered important when making decisions about switching providers. These semi-structured interviews used a ‘why-how’ laddering technique to uncover the underlying reasons why consumers considered these aspects important. Analysis then identified key thematic attributes of service quality for validation at the next stage.

Transparency
One of the key themes identified was a lack of trust in energy retailers; a view that retailers were primarily interested in profit-seeking rather than providing good service. Interviewees suggested retailers could be more forthright about ‘hidden’ charges in their contracts, answering honestly rather than avoiding questions or obfuscating key details about pricing, or alerting customers about rate changes.

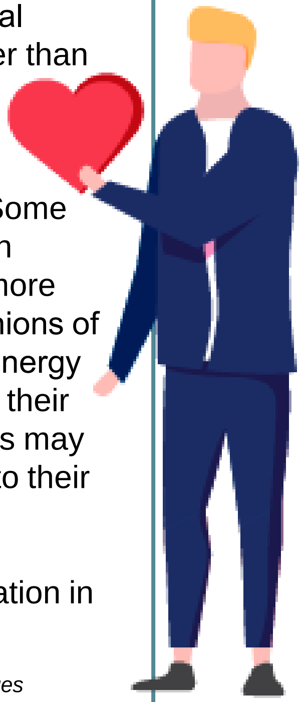
Agency
Interviewees felt that they were disempowered to make decisions about their energy supply, often as a result of push marketing and cold-calling which prompted individuals into making decisions. Interviewees also felt that they were not provided with the information they needed in order to make fully informed decisions.

Convenience
Interviewees raised a range of aspects of convenience relating to the ease with which they could have issues resolved and make decisions on their own terms. This often referred to simplicity rather than the speed necessarily – single call resolution was highlighted as opposed to re-starting or repeating conversations with a different staff member at a later point through a call-back service.

Authenticity
Interviewees expressed a desire to build a relationship with their retailer, to be able to talk with call centre staff like an account manager, to be treated with respect, and for retailers to understand a consumer’s own local context. Interviewees talked about being rewarded for loyalty rather than penalised.

Decision-making style
These interviews also identified different decision-making styles. Some consumers indicated a clear preference for seeking out information themselves, working methodically to make decisions based on a more ‘rational’ basis. By comparison, others preferred to rely on the opinions of trusted individuals. A more nuanced view of “engagement” in the energy market was also identified – that some consumers closely monitor their usage and tariff but do not necessarily switch retailers, while others may switch retailers periodically but otherwise pay little to no attention to their bill.

These decision-making construct was also taken forward for validation in subsequent research stages.*

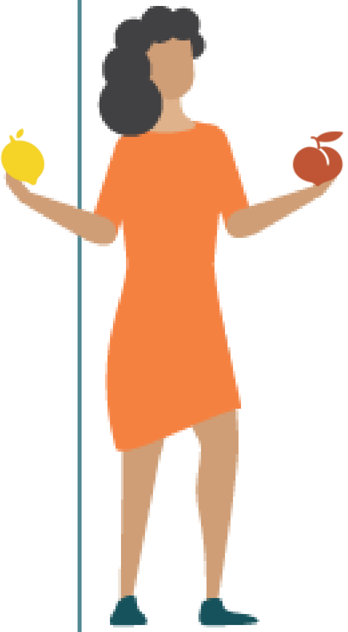


**Note, while other themes were identified at this stage, they were not validated at subsequent stages of the research or fell beyond the immediate scope of the research (e.g. fair pricing for others).*

Stage 2: willingness to pay for service quality

In this stage of the research, we used a ‘discrete choice’ experiment to test consumers’ willingness-to-pay for the attributes identified in the qualitative interviews. Discrete choice experiments are a well-established, widely used empirical methodology to understand the choices people make between goods or services with multiple attributes. This approach enabled us to both validate the four non-price attributes identified in the qualitative research stage with a statistically significant sample (N=1002) and determine people’s willingness-to-pay for these attributes *relative* to price – rather than rating each attribute independently.

Participants were first required to rate their own energy provider on each attribute (high, medium, low) and nearest approximate cost per quarter ($545, $615 or $730) as a reference.* Participants then chose between different hypothetical energy retail plans (Plan A, Plan B and their current plan – see the table below), with different levels of each attribute and a corresponding price.



This experiment was delivered via an online questionnaire, capturing socio-economic indicators and elicited psychographic indicators. We were able to validate the decision-making styles identified in the qualitative research and run a segmentation analysis to identify whether there were differences in how respondents with different decision-making styles value the different attributes.

	Plan A	**Plan B**	**Your current plan**
Price	High ($715)	Low ($545)	Your current plan
Transparency	Medium	Medium	
Agency	High	Low	
Convenience	Medium	Medium	
Authenticity	High	Medium	

*The price brackets were derived from an average from the cheapest offers from retailers available though Victorian Energy Compare using a 4000kwh per year usage profile.

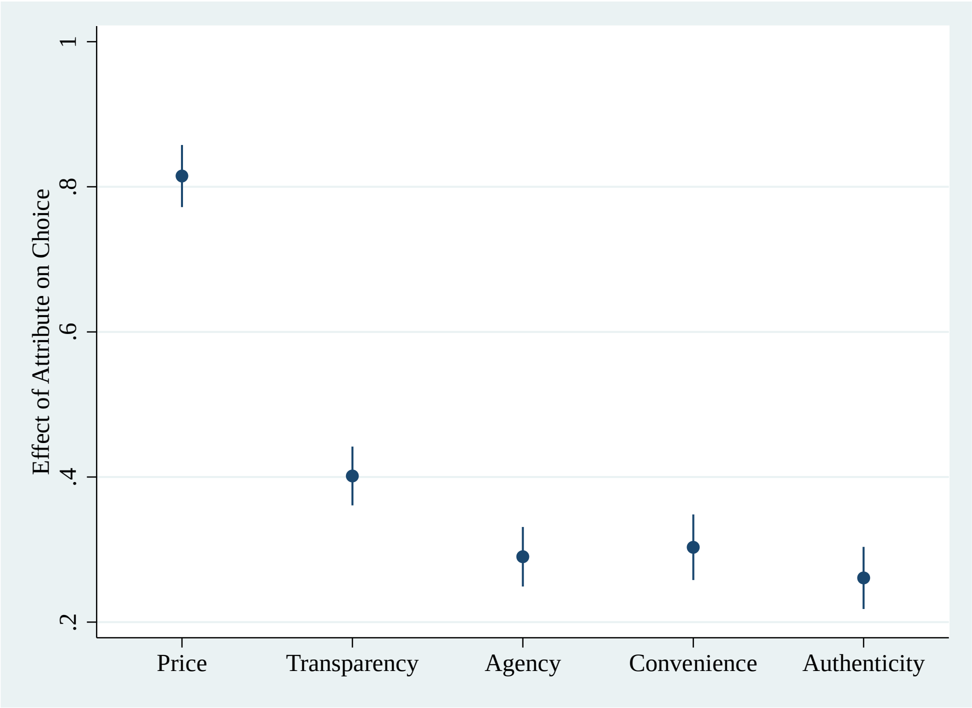
Stage 2: willingness to pay for service quality

The ‘discrete choice experiment’ found price was the most important factor in participants’ choices – this graph shows a lower priced plan is 80% more likely to be chosen (each point (co-efficient) represents the best estimate of the average effect of each attribute).

But importantly, the remaining four non-price attributes are also considered important and affect consumers’ choices. We can infer that an energy plan with greater transparency is about 40% more likely to be chosen, a plan offering greater agency is 29% more likely to be chosen, a plan with higher convenience is 30% more likely to be chosen, and a plan with higher authenticity 26% more likely to be chosen.

From this we can infer that Victorian consumers are most willing to pay for transparency ($42), followed by convenience ($32), agency ($30) and authenticity ($27) **per quarter** for a 3-person household.*

Overall, these findings both validate our attributes and the initial hypothesis of the project – that Victorian consumers consider service quality information valuable and are willing to pay for an energy provider with higher service quality.



*The researchers obtain the marginal rate of substitution between price and other attributes by dividing the coefficient of each non-monetary attribute by the normalised coefficient of price as $\frac{\beta_{attribute}}{\beta_{price}/85}$. It is necessary to first divide the coefficient of price by 85, since the step change between our low, medium and high price levels is $85 (the levels are $545, $615, and $730 respectively).

Stage 3: aspects of service quality attributes

In this stage, we sought to validate the aspects of service quality raised in the qualitative interviews with a statistically significant sample (N=1002). Respondents rated various information components in assessing retailers on each of the four validated attributes (transparency, agency, convenience and authenticity), on a seven-point scale. This list of components was drawn from aspects identified by respondents in the qualitative interviews, and added to by CPRC, RMIT and stakeholders. Through a statistical process called exploratory factor analysis, we then identified information components consumers consider most relevant to each attribute.

This table outlines the most relevant/information components in order of importance and across our total sample. The results indicate a wide array of information consumers consider important when considering retailers, which is largely absent from the market. The absence of publicly available data around many of these aspects had implications for our measure of service quality. We were able to identify publicly available data for those components in italics, which meant we did not necessarily use the most relevant component in our measure of service quality.

The research was conducted during a period of energy market reforms, with many of the components identified the subject of reform. For example, Victorian energy retailers are now required to clearly articulate fees and charges with new energy offers and notify customers of the best available offer (Essential Services Commission, 2018). Performance data for these new regulations could be a useful input into service quality measures.

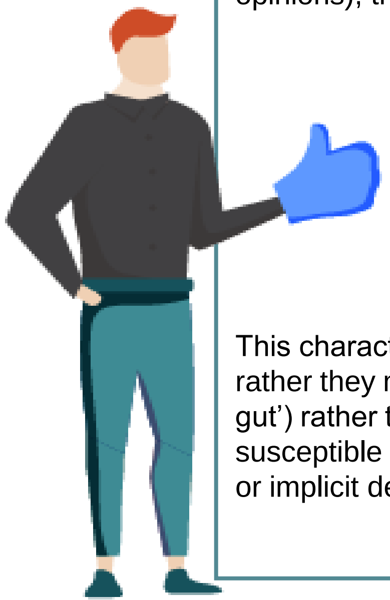
Attribute	Information component
1 Transparency (first aspect)	• Pricing before and after discounts • All fees and charges are clearly communicated (not hidden in complex wording in the Terms and Conditions /contract) • *Bills are generally clear and simple to understand* • Energy companies alert all customers to the best available tariff/offer
1 Transparency (second aspect)	• Disclosure of top executives' salaries • Number of retailers' customers
2 Agency	• *Call-centre staff can provide all the support and information required to enable customers to make informed decisions* • Call-centre staff are knowledgeable and consistent in the way they treat customers • Energy company delivers on what they advertise and promise • *Energy companies provide you clear information about your energy usage so you can take action if you want*
3 Convenience	• Call-centre staff provide you with all the help you need without hesitation • Energy company can resolve your issue or enquiry quickly • Energy company resolves your issue or enquiry within one phone-call • *Ability to switch energy companies without errors (e.g. correct address, correct tariff)*
4 Authenticity	• *Energy company responds well to complaints* • Call-centre staff are knowledgeable and consistent in the way they treat customers • Energy company delivers on what they advertise and promise

Stages 3 and 4: different decision-making styles

Across the two validation studies (stage 3 and 4) we empirically tested a decision-making construct developed from the qualitative interviews. Analysis found the following segments were validated in our data as distinct:

- Rational Information Seeker (high/low)
- Opinion Seeker (high/low)
- Active Engagement with Energy Market (high/low)

Analysis found a correlation between Actively Engaged and Rational Information Seekers, and Actively Engaged and Opinion Seekers. This means that when people score high on information seeker (whether rational information or opinions), they are more likely to also be actively engaged.



It is important to note that people can be *both* a high rational information seeker and a high opinion seeker – consider whether someone only relies on hard data found online or whether they might also ask friends and family their opinions when making a choice about a new product or service, sense checking or triangulating different sources of information. Likewise, they might be *neither*.

This characterisation isn't to say these individuals don't make decisions, but rather they might be more inclined to make on-the-spot decisions ('go with their gut') rather than seeking any further information. This means they might be more susceptible to behavioural biases or rely on heuristics, such as *status quo bias* or implicit defaults (Frederiks *et al*, 2015).

Segments

The breakdown of the different segments demonstrates a reasonably balanced spread across each of the segments – see the mean average of the two segmentation analyses below. Across the different decision-making styles, 49% of the sample can be characterised as 'high engagement' while the other 51% can be characterised as 'low engagement'.

Our findings identified only a quarter can be characterised as both highly engaged and rational information seekers – a decision-making style that most closely represents the archetype consumer expected in textbooks. Conversely, our results identified approximately a third (33%) of respondents can be categorised as both low rational information seekers and low opinion seekers (when disregarding engagement characteristics), suggesting some people do not seek out additional information when making decisions.

This has significant implications for broader questions of information disclosure in market contexts – it highlights the problems for policymakers in developing a one-size-fits-all approach for information disclosure, advice and guidance. These findings suggest a need for tailored messaging, and attention to decision-making styles when identifying and developing messages for target groups.

Validation A	Opinion High	Opinion High	Opinion Low	Opinion Low
N=989	Low Engagement	High Engagement	Low Engagement	High Engagement
Low Rational Info	10.72%	8.90%	17.80%	14.56%
High Rational Info	12.44%	13.85%	10.52%	11.22%

Stage 4: presentation of service quality information

This stage of the research sought to determine whether consumers prefer different visual presentations of the service quality attributes, using a quantitative survey (N=552). This stage also sought to determine whether the validated decision-style segments preferred different information presentations. This built on the qualitative interviews, where disengaged consumers referred to star ratings while more engaged consumers sought to find the data and develop their own spreadsheets for example.

Participants were presented with definitions of each attribute and visual examples of the four different presentation types:

1. Detailed raw data and facts about the energy retailer
2. Data about energy retailers presented in a bar graph or a pie chart
3. Detailed written accounts from experts (such as the energy regulator/ombudsman) or detailed reviews from other energy consumers
4. A rating, ranking or a 'stamp of approval'. This might be a star rating or tick given by the energy regulator/ombudsman or a thumbs up based on consumer reviews.

Participants were asked to choose their preferred presentation for each information component of the different attributes.

Findings

Across all four attributes we found respondents significantly prefer information to be presented as a rating, ranking or stamp of approval, followed by detailed written accounts from experts or consumers. They least prefer information to be presented as a bar graph or pie chart. This finding held even when comparing different decision-making segments – contrary to expectations.

When analysed by attribute, respondents preferred raw data, followed by a rating, ranking or stamp of approval for transparency. For the remaining attributes, a rating, ranking or stamp of approval was the preferred presentation.

We also asked respondents about the source of the information. We found that in the energy market context, roughly two thirds of respondents prefer advice and information from experts/regulators (N=371) compared with a third who prefer opinions from other consumers (N=181).* This has implications for the source of data of a service quality measure, and the agencies best placed to collect this data.

*Qn: *[Thinking] about your preferences when assessing and choosing energy companies… if you had to choose between the following two sources of information, which would you prefer: A) "advice and information from experts/regulators" or B) "opinions from other consumers"?*

Stage 5: does this information lead to ‘better’ choices?

In this field experiment, we tested whether the visual presentation preferences identified in the previous survey (stage 4) result in a ‘better’ choice of energy provider.

Adopting a two-treatment approach, respondents were either allocated the most preferred presentation from stage 4 – a rating, ranking or a stamp of approval (treatment 1: N=220) or allocated the least preferred presentation – information to be presented as bar graph or pie chart (treatment 2: N=212).

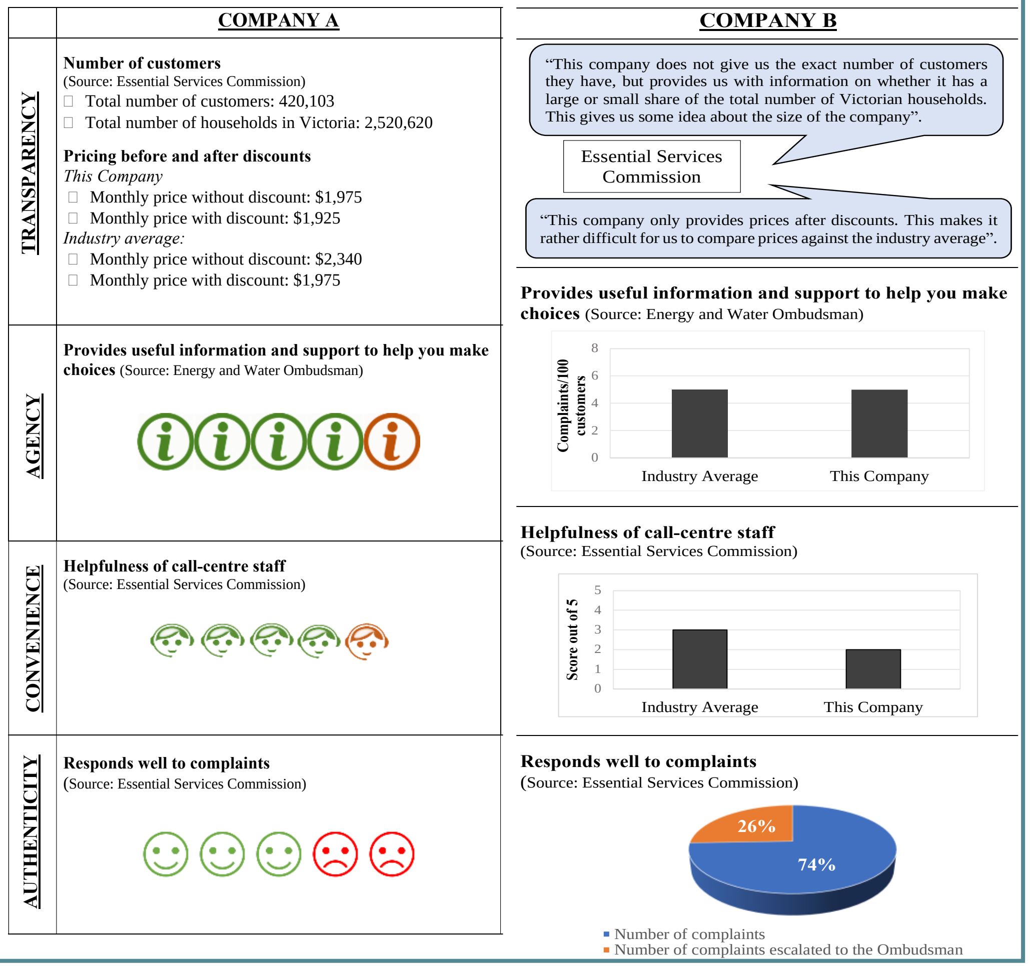
Participants were asked to consider three hypothetical energy companies – each with pre-determined levels of each of our attributes (transparency, agency, convenience and authenticity) – either high, medium or low.

Participants were then asked to identify the company with a particular level (either high, medium or low) of each of the four attributes, as well as the ‘best’ company – i.e. rated most highly for all four attributes. Participants were incentivised to try to improve selection and received a bonus payment if they managed to identify the ‘correct’ company with the prescribed level of a particular attribute.

Findings

Participants in Treatment 1 (83.3%) were better able to identify the company that was ‘best’ overall in terms of all four attributes, compared with those in Treatment 2 (67.9%) – and this difference reached statistical significance.

Treatment 1 presentation vs Treatment 2 presentation



Extended lab experiment – testing a measure of service quality

Methodology

Our final experiment tested a prototype of a measure of service quality, measuring whether this information affected consumers' choices.

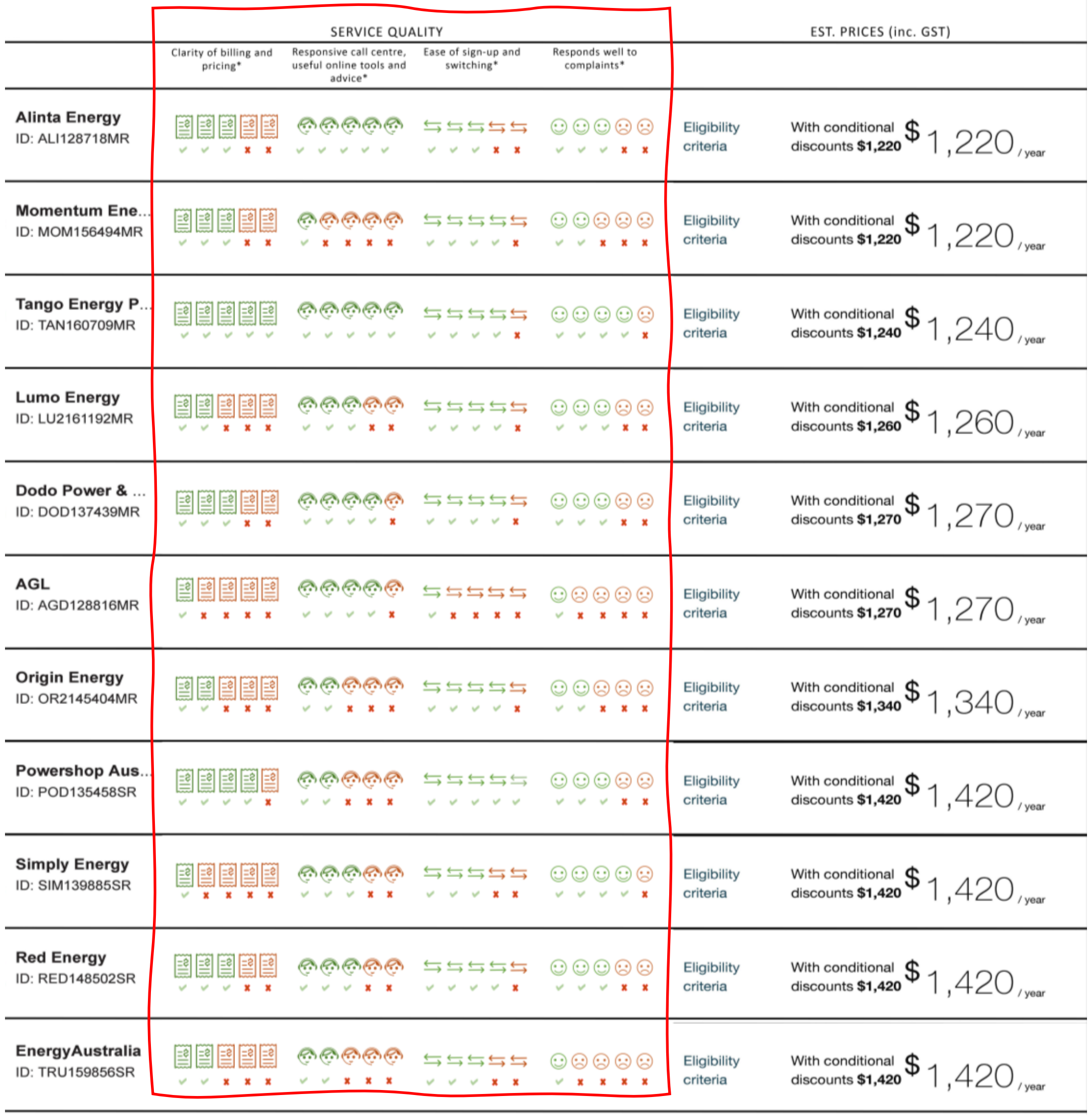
We recruited a representative sample of the Victorian population Qualtrics Online Panel (N= 510). In an online experiment, participants were asked to imagine they were in the market for a new energy provider and choose their preferred retailer from the 11 retailers presented in an interface based on the *Victorian Energy Compare* website.

The control group (N=287) were shown the interface with estimated annual cost and retailers' branding. The treatment group (N=232) were shown this same information as well as the prototype service quality measure (see left – service quality information highlighted).* This design allowed us to explore two questions:

1. Do consumers make different choices about energy companies when service quality information is made available?

2. When service quality information is made available, are companies with a higher service quality rating more likely to be chosen?

*This particular measure of service quality was developed from the cumulative behavioural insights of previous research stages, but limited by a range of factors including the availability of data. It should be considered a **prototype** developed for the sole purpose of this experimental study only and should not be relied upon for any other purpose.



Methodology

The experiment sought to emulate a real-world comparison and choice process as closely as possible. To this end, we included retailers' branding along with their lowest priced offer available (as of December 2019) through *Victorian Energy Compare*. To ensure pricing was directly comparable, we included only flat tariffs based on an annual consumption of 4000kwh, without contract lock-ins or incentives.

The design of the measure of service quality drew on the cumulative validated findings of the five previous research stages, however it was also partly determined by the availability and rigour of publicly available data. We identified public data relevant to an important aspect of each attribute, though due to the data available, this was not necessarily the *most* relevant aspect. Publicly available data also limited the number of retailers in the experiment.

We used both regulatory and survey data sources to populate our measures:

- Essential Services Commission (ESC) – Victorian Energy Market Report 2018-19
- Energy and Water Ombudsman Victoria (EWOV) – Annual Report 2018-19
- Canstar Blue – Victorian Electricity Providers Annual Review

For each aspect of the four different attributes we drew on more than one dataset where possible to improve the rigour of each measure. The data was then transformed to provide a relative ranking for each attribute and across all attributes.

We departed slightly from the findings at stage 4, in that all attributes were presented as ratings in order to simplify presentation through the interface. We chose a graphic for each attribute (this was not empirically tested) that we considered mostly closely related to the information being conveyed. We also asked participants additional questions about awareness of different providers, trust in their own provider and about their engagement in the market.

Attribute	Derived information component and relevant data
Transparency	"clarity of billing and pricing" • ESC data – the billing complaints data (per 100 customers) and • Canstar Blue rating - Bill and cost clarity
Convenience	"ease of sign-up and switching" • ESC data – the number of complaints about transfer and switching errors per 100 customers, and • Canstar Blue rating - Ease of Sign up
Agency	"responsive call centre, useful online tools and advice" • ESC data - the average call response times (seconds) per retailer, • ESC data - the percentage of calls answered within 30 seconds per retailer and, • Canstar Blue rating - Online tools and services.
Authenticity	"responds well to complaints" • EWOV data - investigations as a proportion of complaints, and • ESC data - the number of complaints per 100 customers.

Service quality information influences choice

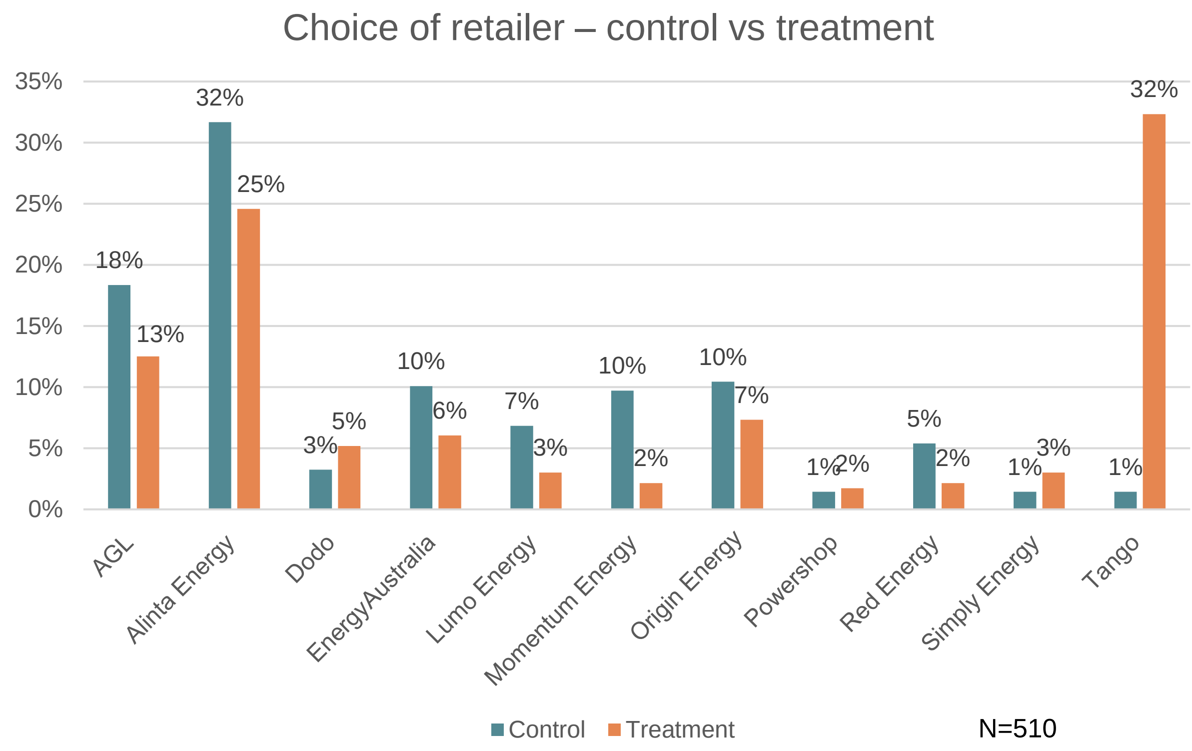
Our results show the effect of service quality information on consumers choices.

In our control group (*no* service quality info)

- 32% (N=88) chose Alinta, the retailer that had the cheapest offer in the choice set, but eighth in brand awareness.
- 18% (N=51) chose AGL, the retailer with the highest brand awareness among participants, but the sixth most expensive.
- 10% (N=28) chose EnergyAustralia, the most expensive retailer in the choice set. This results may reflect the strength of brand awareness - EnergyAustralia had the third highest brand awareness.

In our treatment group (*with* service quality info)

- 36% (N=75) chose Tango compared to 1% in the control group. Tango had the highest service quality rating and the third cheapest price in the choice set. However, Tango had the lowest brand awareness of all retailers among participants.
- In the treatment group only 13% (N=29) chose AGL and 25% (N=57) chose Alinta, the two most chosen retailers in the control group.
- 6% (N=14) chose EnergyAustralia, despite price and ranking poorly on aspects of service quality.



Switching more likely with service quality information

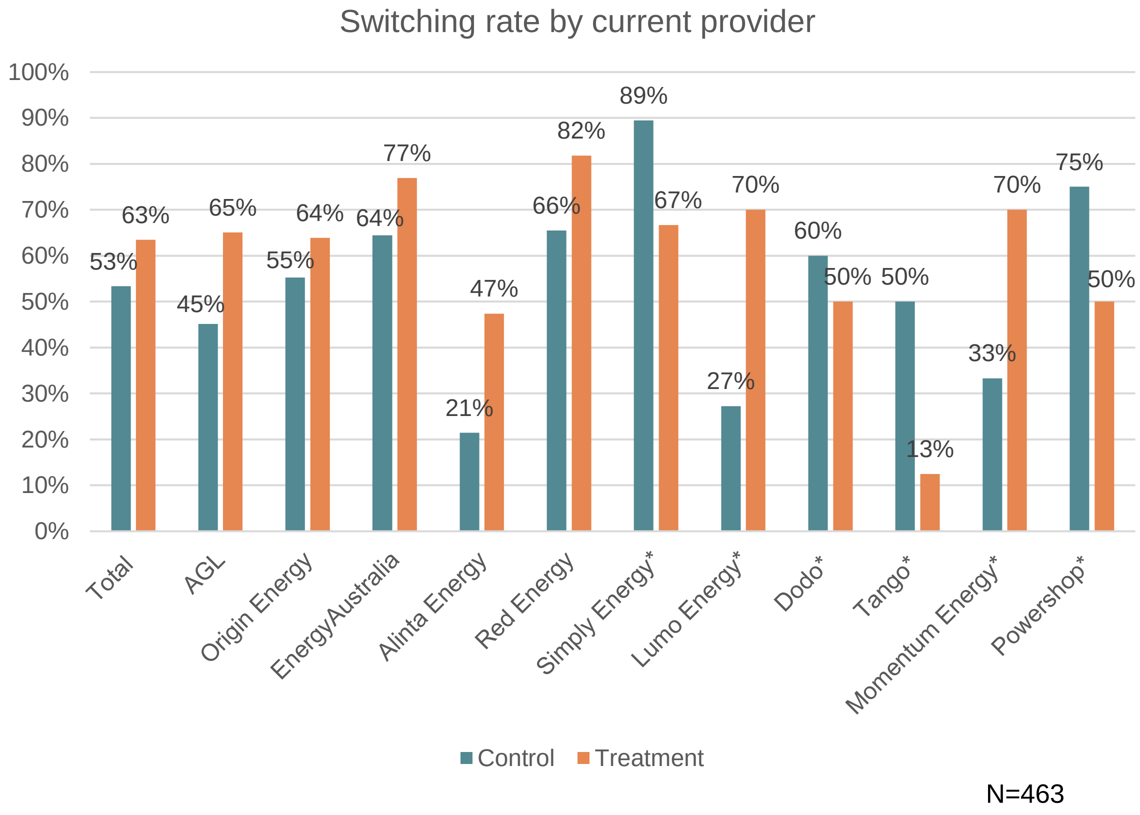
In our experiment, we found a high rate of ‘switching’ retailers – where respondents chose a retailer other than their own current retailer (reported as part of the survey).

The rate of switching retailers was 10% higher among those who received service quality information compared with the control group.

When analysed by retailer, this trend was largely replicated across the ‘big three’ providers, though the number switching increased from 45% (control) to 65% (treatment) for current AGL customers.

In the control group, respondents who are current Alinta Energy customers had a significantly lower switching rate (21%) than average – likely because Alinta was the cheapest tariff in the choice set. Notably, 47% of Alinta customers in the treatment group chose another provider, again suggesting consumers are willing to pay for higher service quality.

We note there was a high rate of switching in our experiment overall. Respondents may be more likely to indicate an inclination to switch provider in an experimental setting than when faced with a real-world choice. This may reflect the *intent-action gap* (Frederiks et al., 2015) or the real switching costs involved (Deller et al., 2017).



*The results for retailers with less than 40 respondents are not statistically reliable and should be treated with caution.

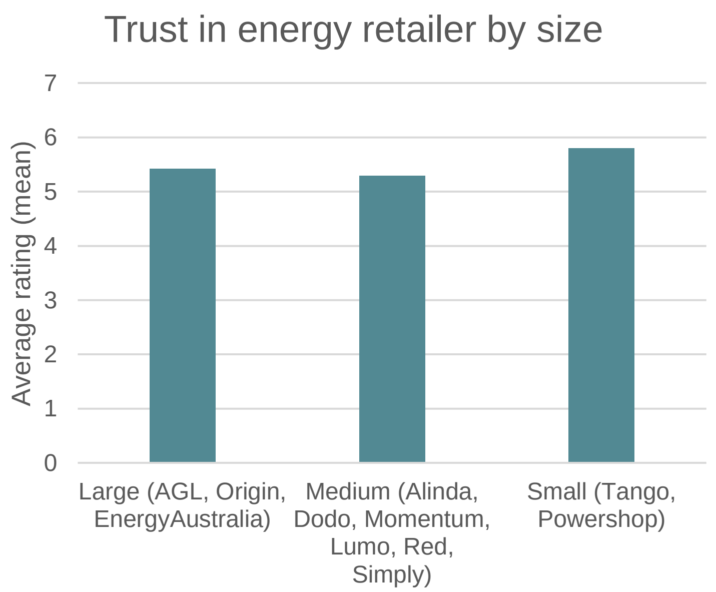
Is bigger better?

As part of the experimental survey, participants were asked questions about their awareness of different providers and trust in energy providers. This allowed us to test relationships between trust and different behaviours or attitudes.

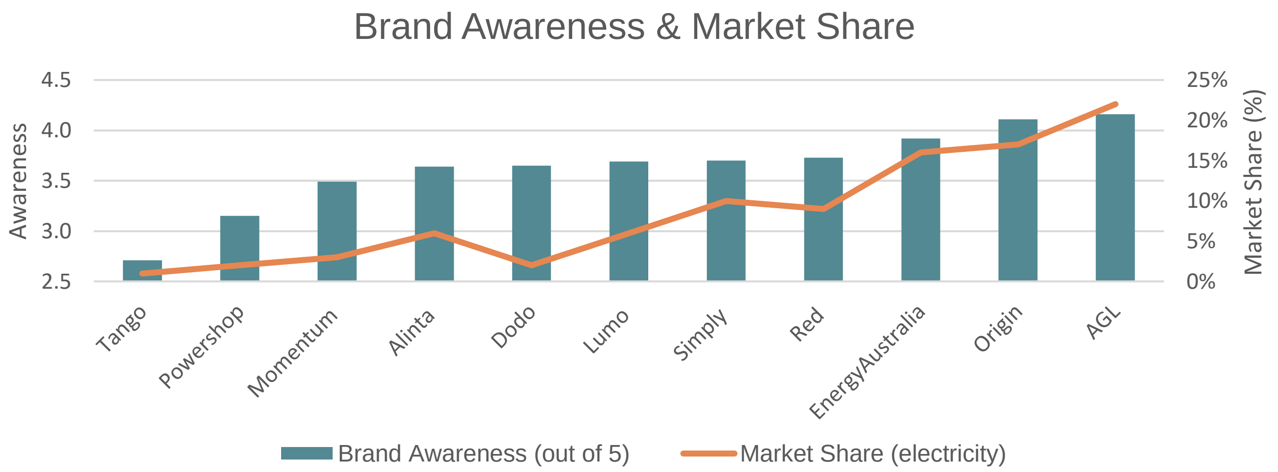
We asked all respondents a series of questions about their brand awareness of the retailers included in the choice set. Unsurprisingly, the smaller retailers had low brand awareness compared to the "big 3" retailers.

However, our research found marginal difference in perceived trustworthiness between retailers of *any* size (see left). This suggests consumers are open to choosing new entrants and smaller retailers.

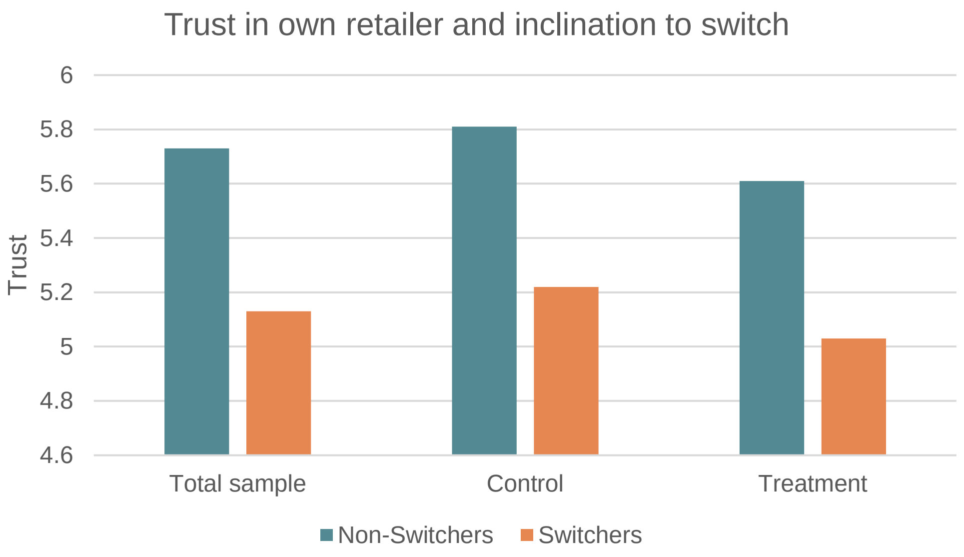
Where consumers have information about service quality, newer firms may be able to grow market share through higher quality of service. In turn, this may drive competitive pressure to increase quality across the industry.



Qnt: *On a scale of 1 (Strongly disagree) to 7 (Strongly agree), please tell us how trustworthy you consider [Large/medium/small] energy companies in general.*



A matter of trust?



We found a relationship between trust and higher inclination to 'switch' provider. In both our treatment and control groups, those with lower trust in their current provider were more likely to switch to one of the firms listed in our experimental choice set.

A regression analysis of our results found an increase of 1 point (on a scale of 7) in trust in a participant's current retailer is associated with a 10 percentage point decrease in likelihood of switching (controlling for current energy provider).

For firms, providing consumers with higher quality service may help them retain customers – a finding reflected in the literature (Carrillat et al., 2009). Research into the Dutch health care insurance market found consumers are more inclined to switch providers if their current health insurance provider has a lower service quality rating (Boonan et al., 2016).

For policymakers, this suggests providing consumers with information about service quality is important to facilitate an effective market – where distrusting consumers switching from their current provider cannot identify a higher quality alternative, they may disengage entirely.

Conclusions and key insights from the lab experiment

Our experiment sought to test two key hypotheses:

- **Hypothesis 1** – Consumers choose different energy retailers when presented with service quality information.
- **Hypothesis 2** – More consumers choose energy retailers with high service quality when this information is provided.

A two-sided χ^2 test (to test for statistical significance) found that the two distributions of choices across the treatment and control groups were statistically significant, which **confirms our first hypothesis**.

A two-sided *t*-test found the choice of Tango was statistically significant across the treatment and control groups (p-value < 0.001), which **validates our second hypothesis**.

For policymakers and regulators, the lab experiment shows that:

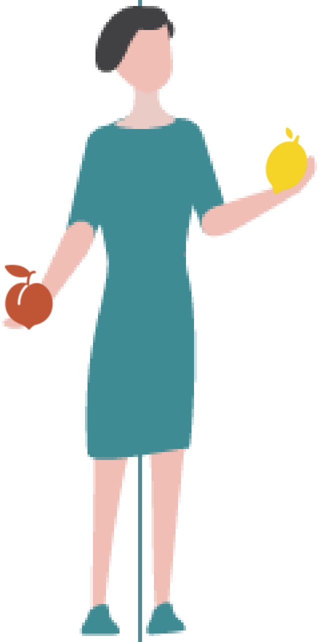
- In the absence of service quality information, consumers are most likely to choose energy companies that offer the lowest cost (e.g. Alinta) and have the highest brand recognition (e.g. AGL).
- Conversely, providing service quality information leads consumers to make different choices – namely, they choose providers with higher service quality ratings.
- Service quality information may result in consumers choosing lesser known, higher quality retailers.
- Consumers may be prepared to pay more for retailers with higher service quality.
- Brand drives choice for some, even where information about price and quality are available.

Information about service quality may facilitate competitive pressure – if service quality information leads consumers to choose higher quality firms rather than relying on well-known brands or lowest cost, firms may seek to compete on quality.

Recommendations

The findings summarised in this report provide a strong empirical basis for developing public-facing measures of service quality to help consumers differentiate between companies.

Service quality information affects consumer choice, with respondents choosing higher quality providers even where this provider is less well known or more expensive.



Moreover, consumers appear more inclined to switch away from their own retailer when provided with service quality information. This ‘sunlight remedy’ may therefore have the effect of driving competitive pressure among firms to improve quality.

CPRC’s recommendations for market stewards (such as DELWP and the ESC) are outlined on the following pages.

Recommendation 1 – Develop public facing measures of service quality in energy and other complex and essential service markets to address information asymmetries, particularly in markets where poor consumer outcomes have been repeatedly identified in regulatory inquires and reviews.

For information about aspects of quality to be useful to consumer decision-making, it needs to be comprehensible, comparable, and (ideally) market-wide. But as Spiegler notes, even where firms produce 'good' products or services they may have an interest in weakening consumer decision-making if they can thereby reduce market competition and increase profits (Spiegler, 2006).

Consequently, there may be no incentive to develop comparable information about aspects of quality with competitors – and anti-collusion regulations may even inhibit businesses determining processes for collecting and publishing internal data.

Moreover, consumers may perceive information supplied by businesses themselves to lack independence. And where businesses voluntarily fund third parties to produce quality comparison ratings, non-participating businesses have no obligation to participate, reducing the comparability of the entire market (Consumer Affairs Victoria, 2006). For these reasons, we suggest market stewards need to ensure that comparable information about the quality of products and services is provided.

Recommendation 2 – Improve the collection and rigour of regulatory performance data to inform a measure of service quality.

The Consumer Affairs Victoria report *Designing quality rating schemes for service providers* (2006) suggests there are two key approaches to measuring service quality:

1. Measure 'actual service quality by sampling or testing the service and/or surveying consumers – an approach that works well for most standardised services'.
2. 'Identify the characteristics of the service provider that affect service quality and develop indicators for measuring those characteristics'.

The findings from this project suggest that the data required to fully populate the measure of service quality would require **both** approaches in order to develop the kinds of information identified by consumers. In developing the prototype measure of service quality, we found a limited range of data available to populate our measure. Though we were able to draw on regulatory performance data from the ESC and data about complaints from EWOV, many of the aspects identified as important by consumers are not currently measured as part of performance reporting requirements.

In developing a measure of service quality, market stewards would need to consider extending these performance reporting requirements to collect this data where possible. We also encourage government agencies and regulatory bodies to share relevant data from publicly funded research where this in the public interest, consistent with the recommendations of the Productivity Commission's *Data Availability and Use* report (2017).

Recommendation 3 – Undertake ongoing consumer research to inform relevant aspects of the service quality measure.

Populating some aspects of quality identified in our research requires data derived from aggregated subjective consumer views about their experiences with energy retailers – for example, the 'ease of sign up'. In developing this measure of service quality, we relied on publicly available data from Canstar Blue's consumer survey. We suggest there is a need for a consumer survey large enough to capture robust data about consumers' experiences dealing with each retailer in the market to provide meaningful comparability.

Recommendation 4 – Adopt ongoing evaluation of market and consumer outcomes to determine consumer wellbeing, and research into consumer preferences of important aspects of service quality.

This research project was conducted during a significant period of reform in the energy market. Many of the aspects of service quality identified and validated over the course of our research have been implemented as new regulatory requirements.

Beyond regulatory compliance, this means retailers may not be able to develop competitive advantage for some components identified by the present research, while other elements of the reform processes may become key points of differentiation. Other aspects of service quality identified as important would require significant change to the energy regulations – and develop as points of competitive advantage if the rules and market design changes. Understanding what is important to consumers as the market evolves will be essential to ensure the measure remains relevant, which will likely require periodic consumer research to confirm or update aspects of the measure.

Recommendation 5 – Ensure the measure of service quality is easily accessible at the point of decision-making.

For a measure of service quality to be useful, it needs to be available where consumers make comparisons and choose providers. In the case of energy, this is often through online comparison sites, but may extend to other channels – such as direct phone calls. In the UK, commercial comparator websites are required to use the service quality rating developed by Citizens Advice (derived from regulatory data provided on a statutory basis) or submit their own methodology to the regulator for consideration should they wish to develop their own (Martin Hobbs, 2019, p. 20) This approach might ensure ratings are not gamed by less scrupulous operators.

Recommendation 6 – Consider decision-making segmentation approaches to better understand barriers consumers face, as well as tailoring communications accordingly.

Our research identified and validated a decision-styles segmentation framework. Analysing our findings through this framework highlighted the differences in understanding of the energy market among respondents and the different kinds of information that different segments sought. We encourage market stewards to consider segmentation approaches that consider how consumers make decisions to barriers consumers face and to inform communication strategies.

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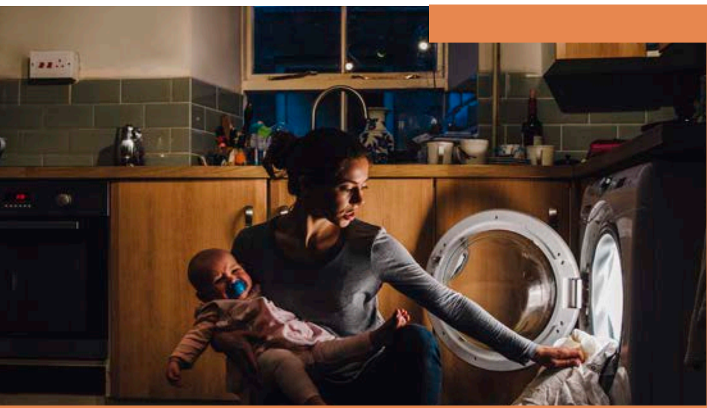



Exploring regulatory approaches to consumer vulnerability

A report for the Australian Energy Regulator

Emma O’Neill

February 2020

ABOUT CONSUMER POLICY RESEARCH CENTRE (CPRC)

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

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

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

Overview

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

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

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

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

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

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

About this report

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

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

The report covers four areas:

1 Why are regulators focusing on consumer vulnerability?

2 Understanding vulnerability

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

3 Current regulatory arrangements

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

4 Supporting vulnerable consumers

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

Australian consumers' circumstances

1 in 5

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

1 in 6

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

44%

of Australians have low literacy

2 in 3

Australians experience some level of financial stress

1 in 5

Australians speak a language other than English at home

30%

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

1 in 5

Australians have a disability

Key lessons

Consumer vulnerability should be a priority issue for regulators

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

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

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

Anyone can become vulnerable as a consumer

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

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

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

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

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

People's lived experience of markets matters

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

Vulnerability can be tackled at multiple stages of the customer journey

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

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

Data has an important role to play in vulnerability strategies

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

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

Key opportunities

Develop a vulnerability strategy

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

Clarify the role of the regulator in supporting vulnerable consumers

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

Adopt a leading approach to understanding vulnerability in the energy sector

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

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

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

1. Why are regulators focusing on consumer vulnerability?

The concept of consumer vulnerability has become prominent in Australia and the UK in recent years. While definitions vary, in broad terms consumer vulnerability refers to circumstances that make it difficult to use markets or receive adequate products and services, and create risks of harm, detriment or disadvantage. This section outlines some of the major reasons for the regulatory focus on consumer vulnerability, and the implications of not properly addressing this issue.

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

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

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

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

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

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

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

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

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

1.1 The role of regulators

Across the jurisdictions and sectors we reviewed, we noted that many regulators have established a central and ongoing role in addressing consumer vulnerability, along with government, industry and civil society. For example, Ofgem established a vulnerability strategy in 2013 and are currently renewing their strategy for 2025. The FCA and the CMA also have strategies for customers in vulnerable circumstances, while protecting vulnerable consumers is one of ASIC's seven regulatory priorities for 2019-20.[5]

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

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

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

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

5. Australian Securities and Investments Commission (2019) ASIC Corporate Plan 2019-2023 – Focus 2019-20, 14.
6. Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 11, 42.
7. National Audit Office (31 March 2017) Vulnerable Consumers in Regulated Industries – Report by the Comptroller and Auditor General, 8-10.
8. Ibid.
9. See Table 2 below.
10. Public Interest Advocacy Centre (November 2018) Close to the Edge: A Qualitative and Quantitative Study.

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

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

2. Understanding vulnerability

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

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

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

2.1 Defining vulnerability

There is no uniformly accepted, consistent definition of consumer vulnerability among regulators, business or consumer advocates. At its broadest, consumer vulnerability refers to circumstances that make it difficult to use markets or receive adequate products and services, and create risks of harm, detriment or disadvantage. Those circumstances can be individual-based (for example, related to income level, age, disability or health conditions) or market-based (for example, markets can create or exacerbate vulnerability through unfair practices, complex market structures and pricing, and information asymmetries).

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

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

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

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

12. Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 6-7.
13. Financial Conduct Authority (February 2015) Consumer Vulnerability – Occasional Paper No. 8, 19-28.

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

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

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

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

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

14. Financial Conduct Authority (2018) FCA Mission: Approach to Consumers; Money Advice Trust (17 July 2018) 'The FCA opts for the right approach to defining vulnerability' (http://www.moneyadvicetrustblog.org/2018/07/17/the-fca-opts-for-the-right-approach-to-defining-vulnerability/).
15. Financial Conduct Authority (February 2015) Consumer Vulnerability – Occasional Paper No. 8, 19.

Table 1: Definitions of consumer vulnerability

Sector / Source	Definition
Cross-sector	
Organisation for Economic Co-operation and Development	Vulnerable consumers are consumers who are susceptible to detriment at a particular point in time, owing to the characteristics of the market for a particular product, the product's qualities, the nature of a transaction or the consumer's attributes or circumstances.[16]
Australian Competition & Consumer Commission	Conduct affecting vulnerable and disadvantaged consumers is an ongoing compliance and enforcement priority for the ACCC.[17] The ACCC does not adopt a single definition of consumer vulnerability. In its compliance guide for business on disadvantaged and vulnerable consumers, it states some consumers may be disadvantaged or vulnerable in marketplace situations if they: • have a low income • are from a non-English speaking background • have a disability • have a serious or chronic illness • have poor reading, writing and numerical skills • are homeless • are very young • are old • come from a remote area • have an Indigenous background.[18] In its 2018 Retail Electricity Pricing Inquiry, the ACCC considered two overlapping forms of vulnerability: • where a consumer who, due to personal circumstances, is unable to meet or is at risk of being unable to meet the cost of electricity supply and, as a result, is at risk of experiencing detriment to their wellbeing and standard of living • where a consumer faces additional barriers to engaging with the retail electricity market.[19]
Competition & Markets Authority (UK)	Consumer vulnerability is defined as 'any situation in which an individual may be unable to engage effectively in a market and, as a result, is at a particularly high risk of getting a poor deal'. The CMA distinguishes between: • market-specific vulnerability, which derives from the specific context of particular markets and can affect a broad range of customers in those markets • vulnerability associated with physical characteristics, such as physical disability, poor mental health or low incomes, which may result in individuals with those characteristics facing particularly severe, persistent problems across markets.[20]

16. Organisation for Economic Co-operation and Development (March 2014) OECD Recommendation on Consumer Policy Decision Making, 4.
17. Australian Competition and Consumer Commission (2019) 'Compliance & Enforcement Policy & Priorities' (https://www.accc.gov.au/about-us/australian-competition-consumer-commission/compliance-enforcement-policy-priorities).
18. Australian Competition and Consumer Commission (2011) 'Don't Take Advantage of Disadvantage: A Compliance Guide for Businesses Dealing with Disadvantaged or Vulnerable Customers' (https://www.accc.gov.au/publications/business-snapshot/dont-take-advantage-of-disadvantage).
19. Australian Competition and Consumer Commission (June 2018) Restoring Electricity Affordability and Australia's Competitive Advantage: Retail Electricity Pricing Inquiry – Final Report, 291.
20. Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions, 4.

Sector / Source	Definition
Cross-sector	
Commission for Customers in Vulnerable Circumstances (UK)	The CCVC adopts the Ofgem definition of vulnerability—that is, where a consumer's personal circumstances and characteristics combine with aspects of the market to create situations where they are: • significantly less able than a typical consumer to protect or represent their interests; and/or • significantly more likely than a typical consumer to suffer detriment or that detriment is likely to be more substantial.[21]
European Commission	A vulnerable consumer is one who, as a result of socio-demographic characteristics, behavioural characteristics, personal situation or market environment: • is at higher risk of experiencing negative outcomes in the market • has limited ability to maximise their wellbeing • has difficulty in obtaining or assimilating information • is less able to buy, choose or access suitable products • is more susceptible to certain marketing practices.[22]
Energy	
Ofgem (GB)	Vulnerability occurs where a consumer's personal circumstances and characteristics combine with aspects of the market to create situations where they are: • significantly less able than a typical consumer to protect or represent their interests; and/or • significantly more likely than a typical consumer to suffer detriment or that detriment is likely to be more substantial.[23]
Financial services	
Australian Securities and Investments Commission	Any consumer can experience vulnerability as a result of a number of factors, including: • the actions of the market or individual providers, e.g. being targeted by products that are inappropriate for a particular consumer, or being given inadequate or overly complex documentation • experiencing specific life events or temporary difficulties, e.g. an accident or sudden illness, relationship breakdown, family violence, job loss, having a baby or the death of a family member • personal or social characteristics that can affect a person's ability to manage financial interactions, e.g. speaking a language other than English, having different cultural assumptions or attitudes about money, or experiencing cognitive or behavioural impairments due to intellectual disability, mental illness, chronic health problems or age.[24]

21. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 19.
22. European Commission (January 2016) Consumer Vulnerability Across Key Markets in the European Union – Final Report, xx.
23. Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 47-48.
24. Australian Securities and Investments Commission (2019) ASIC Corporate Plan 2019-2023 – Focus 2019-20, 12.

Sector / Source	Definition
Financial Services	
Banking Code of Practice	Vulnerable customers include those who are experiencing: • age-related impairment • cognitive impairment • elder abuse • family or domestic violence • financial abuse • mental illness • serious illness • any other personal or financial circumstance causing significant detriment.[25]
Life Insurance Code of Practice	The Code refers to 'consumers requiring additional support' rather than vulnerable customers. It states: 'we recognise that some groups may have unique needs, such as older persons, consumers with a disability, people from non-English speaking backgrounds and Indigenous people, when accessing insurance, making an inquiry, claiming on their insurance, making a compliant and communicating with us'.[26]
Insurance in Superannuation Voluntary Code of Practice	The Code has a section on vulnerable consumers but does not define this term as such. It states: 'we recognise that some people may have unique needs, such as older persons, people with mental health conditions, people with a disability, people from non-English speaking backgrounds, people with low levels of literacy, people in financial distress, and Indigenous Australians, when accessing insurance, making an enquiry, claiming on their cover, making a complaint and communicating with us'.[27]
Financial Conduct Authority (UK)	A vulnerable customer is someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care.[28]
Telecommunications	
Telecommunications Consumer Protections Code	The Code requires telecommunications suppliers to have regard to the ACCC compliance guide 'Don't Take Advantage of Disadvantage' in respect of disadvantaged and vulnerable consumers but does not provide a definition of these consumers.[29] Telecommunications regulation provides entitlements to people with particular needs, including older people, those living in rural and remote areas, people who speak English as a second language, and people with disability or a life-threatening illness.[30]
Ofcom (UK)	UK telecommunication providers have regulatory obligations in relation to people with disability, and consumers who may be vulnerable due to circumstances such as age, physical or learning disability, physical or mental illness, low literacy, communications difficulties or changes in circumstances such as bereavement.[31]
Water	
Ofwat (UK)	Ofwat uses the concept of 'a customer whose circumstances make them vulnerable', defined as 'a customer who due to personal characteristics, their overall life situation or due to broader market and economic factors, is not having reasonable opportunity to access and receive an inclusive service which may have a detrimental impact on their health, wellbeing or finances'.[32]

25. Australian Banking Association (1 July 2019) Banking Code of Practice, 22.
26. Financial Services Council (2019) Life Insurance Code of Practice, 14.
27. Association of Superannuation Funds of Australia, Australian Institute of Superannuation Trustees and Financial Services Council (2018) Insurance in Superannuation Voluntary Code of Practice, 11.
28. Financial Conduct Authority (February 2015) Consumer Vulnerability – Occasional Paper No. 8.
29. Communications Alliance (July 2019) Industry Code C628:2019 – Telecommunications Consumer Protections Code, 20.
30. See Australian Communications and Media Authority, 'People with Particular Needs' (https://www.acma.gov.au/theACMA/i-am-a-special-needs-telecommunications-customerwhat-are-my-rights-acma).
31. Ofcom (1 July 2019) General Conditions of Entitlement – Unofficial Consolidated Version.
32. Ofwat (February 2016) Vulnerability Focus Report, 20.

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

2.1.1 Circumstances of vulnerability

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

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

This approach to vulnerability is adopted by ASIC and is especially apparent in the UK, with regulators such as the CMA, Ofgem, Ofwat and the FCA adopting broad definitions that focus on circumstances placing people at risk of detriment, rather than lists of vulnerable customer groups. Research by the UK-based Centre for Consumers and Essential Services indicates these circumstances cut across the community, and that ‘society is not divided between “vulnerable consumers” and the rest’.[33] The FCA reached similar conclusions after conducting its own research, stating that services ‘need to be able to adapt to the changing circumstances that real life throws at people, rather than being designed for the mythical perfect customer who never experiences difficulty’. A prescriptive list of vulnerable customer groups can therefore be under-inclusive:

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

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

2.1.2 Multi-layered nature of vulnerability

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

33. Centre for Consumers and Essential Services (July 2014) Tackling Consumer Vulnerability: Regulators’ Powers, Actions and Strategies, Research report for Citizens Advice, University of Leicester, 9.
34. Financial Conduct Authority (February 2015) Consumer Vulnerability – Occasional Paper No. 8, 6, 17.
35. Graham, C. (2018) ‘Tackling Consumer Vulnerability in Energy and Banking: Towards a New Approach’ Vol. 40(2) Journal of Social Welfare and Family Law 241, 244.
36. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 19; Financial Conduct Authority (February 2015) Consumer Vulnerability – Occasional Paper No. 8, 8.

2.1.3 Temporal nature of vulnerability

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

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

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

2.1.4 The role of markets in triggering or exacerbating vulnerability

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

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

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

Some regulators and other institutions are focusing on market factors in their vulnerability strategies. Ofgem and the UK Commission for Customers in Vulnerable Circumstances both emphasise the role of markets in their recent vulnerability strategies, with Ofgem having recognised market-based vulnerability since at least 2013.[40] The CMA's work has a particular focus on market-specific vulnerability, including market studies into care homes and funeral services, enforcement action against online gambling firms, and a loyalty penalty 'super-complaint' investigation, which examined the premiums paid by longstanding customers in markets that are subscription-based or which have auto-renewal or roll-over contracts (e.g. mobile phones and home insurance). The European Commission also discusses the role of market-based drivers of vulnerability in its overview of European approaches to consumer vulnerability.[41]

37. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 19.
38. Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 49.
39. Fernando, N. (1 November 2018) When's the Right Time to Talk About Money? Financial 'Teachable Moments' for Women Affected by Family Violence, WIRE Women's Information, 4, 74-75.
40. Ofgem (4 July 2013) Consumer Vulnerability Strategy – Final Decision, 17-18.
41. European Commission (January 2016) Consumer Vulnerability Across Key Markets in the European Union – Final Report, 217-220.

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

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

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

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

42. Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 49; Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions, 4-6; Financial Conduct Authority (February 2015) Consumer Vulnerability – Occasional Paper No. 8, 18; Centre for Consumers and Essential Services (July 2014) Tackling Consumer Vulnerability: Regulators' Powers, Actions and Strategies, Research report for Citizens Advice, University of Leicester, 10; Commonwealth of Australia (2019) Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry – Final Report, vol 1, 1-2.
43. Australian Competition and Consumer Commission (June 2018) Restoring Electricity Affordability and Australia's Competitive Advantage: Retail Electricity Pricing Inquiry – Final Report, v, 293-294.
44. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 29.

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

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

The expectation of consumer engagement in competitive markets can also be unrealistic, conflicting with people's needs and working against their interests. The UK Centre for Consumers and Essential Services notes that:

> Finding your way through ever-more complex and changing markets can be tricky for anyone, and many people have lots of other pressures in their lives. People may be behaving very rationally within their circumstances, for example, if they simply do not have the time or energy to compare deals or switch providers. Consumers may also be concerned about potential risks, especially if they are in vulnerable situations.[46]

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

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

Regulators and government need to monitor any barriers to participation in the changing energy market and prevent any unequal distribution of costs. For example, a lack of access to home solar by renters and some low-income homeowners[48] prevents people reducing their energy costs and potentially requires them to pay higher network charges. Cost-reflective pricing provides more opportunities for some people than others. Ofgem is concerned that some customers will be unable to take advantage of more competitive tariffs, such as time-of-use tariffs, due to their inability to shift energy use. Ofgem is exploring what impact this may have on people reliant on medical equipment, social housing residents, and people on low incomes who are unable to afford supporting technology that allows them to manage the timing of their energy use.[49]

45. See Australian Energy Market Commission (1 August 2019) Consultation Paper: National Energy Retail Amendment (Regulating Conditional Discounting) Rule.
46. Centre for Consumers and Essential Services (July 2014) Tackling Consumer Vulnerability: Regulators' Powers, Actions and Strategies, Research report for Citizens Advice, University of Leicester, 85.
47. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 30.
48. Australian Council of Social Service, Brotherhood of St Laurence and the ANU Centre for Social Research and Methods (October 2018) Energy Stressed in Australia, 8.
49. Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 37.

2.2 Identifying priority areas

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

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

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

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

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

- 'potentially vulnerable': customers that are currently able to manage their finances and make informed financial decisions, but this could change in future due to, for example, an unexpected health condition, caring obligations, or the actions of business
- 'vulnerable': customers that are currently more exposed to harm, loss or disadvantage than other customers
- 'particularly vulnerable': customers who are currently at a greatly heightened risk of experiencing detriment compared to the majority of customers in vulnerable situations. The detriment could also be far more serious in terms of its negative impact on the customer's situation, and could be far more imminent.[53]

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

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

50. Graham, C. (2018) 'Tackling Consumer Vulnerability in Energy and Banking: Towards a New Approach' Vol. 40(2) Journal of Social Welfare and Family Law 241, 258.
51. Financial Conduct Authority (February 2015) Consumer Vulnerability – Occasional Paper No. 8, 19.
52. Centre for Consumers and Essential Services (July 2014) Tackling Consumer Vulnerability: Regulators' Powers, Actions and Strategies, Research report for Citizens Advice, University of Leicester, 34.
53. University of Bristol Personal Finance Research Centre, Money Advice Trust, Plymouth Focus Advice Centre (March 2017) Vulnerability: A Guide for Debt Collection – 21 Questions, 21 Steps, 9.

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

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

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

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

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

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

54. Financial Conduct Authority 'Financial Lives Survey' (https://www.fca.org.uk/publications/research/understanding-financial-lives-uk-adults).
55. Financial Conduct Authority (2018) FCA Mission: Approach to Consumers, 28; Financial Conduct Authority 'Financial Lives Survey' (https://www.fca.org.uk/publications/research/understanding-financial-lives-uk-adults).
56. Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions.
57. Ibid 25-27.

Case study: pinpointing postcodes with high rates of energy disconnection

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

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

2.3 From vulnerability to customer inclusion?

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

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

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

58. Alviss Consulting and St Vincent de Paul Society (August 2019) Households in the Dark II: Mapping Electricity Disconnections in South Australia, Victoria, New South Wales and South East Queensland.
59. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 19. See also Ofwat (February 2016) Vulnerability Focus Report, 20.

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

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

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

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

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

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

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

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

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

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

60. Maker, Y. et al (2018) 'From Safety Nets to Support Networks: Beyond "Vulnerability" in Protection for Consumers with Cognitive Disabilities' Vol. 41(3) UNSW Law Journal 818, 831-833.
61. George, M., Graham, C. and Lennard, L. (2016) Consumer Vulnerability – Mainstream, not Marginal, Centre for Consumers and Essential Services, University of Leicester, 9.
62. Citizens Advice Bureau (January 2015) Treating Consumers Fairly: Flexible and Inclusive Services for All.
63. George, M., Graham, C. and Lennard, L. (2016) Consumer Vulnerability – Mainstream, not Marginal, Centre for Consumers and Essential Services, University of Leicester, 2.
64. Ofwat (February 2016) Vulnerability Focus Report, 20.
65. Financial Conduct Authority (2018) FCA Mission: Approach to Consumers, 8.
66. Australian Banking Association (1 July 2019) Banking Code of Practice.

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

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

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

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

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

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

2.4 The diverse circumstances of Australian consumers

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

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

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

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

67. Centre for Inclusive Design (May 2019) The Benefits of Designing for Everyone; Waller, S. et al (2015) ‘Making the Case for Inclusive Design’ Vol. 46 Applied Ergonomics 297.
68. Citizens Advice Bureau (January 2015) Treating Consumers Fairly: Flexible and Inclusive Services for All, 3.
69. Citizens Advice Bureau (January 2015) Treating Consumers Fairly: Flexible and Inclusive Services for All, 22.
70. See Financial Conduct Authority (2018) FCA Mission: Approach to Consumers, 25.
71. See Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025; Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions; Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report.

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

Australian consumers' circumstances	How does this affect use of the energy market?
Health and disability	
Twenty per cent of Australians have a **disability**. Disability is a feature of our lives. At birth, we can expect to live, on average, over one-fifth of our lives with some level of disability.[72] Just over half (55 per cent) of all Australians have at least one long-term vision disorder, and 14 per cent have at least one long-term hearing disorder.[74]	Depending on the nature of the disability, people with disability and people in caring roles may find it difficult to: • search for and assess energy deals (e.g. if the disability affects cognitive capacity, or if carers have less time and headspace to engage with markets) • communicate with energy retailers • keep energy use to an affordable level (e.g. because of a need to charge wheelchairs and communication devices, or because of additional cooling or heating needs) • pay bills on low incomes—people with disability are more likely to be in poverty and unemployed than people without disability, and can face high disability-related living costs.[73]
Mental illness is common, with just under half of the community (45 per cent) experiencing a common mental disorder in their lifetimes. Women experienced a higher prevalence of mental disorders in the preceding 12 months than men (22.3 per cent compared with 17.6 per cent).[75] In 2019, 20 per cent of callers raising an energy issue with the National Debt Helpline were also experiencing mental health problems.[76]	Mental health problems can affect our ability to manage energy and other essential services, including where people have: • reduced attention span, making it more difficult to understand bills or complete long forms • unreliable memory, making it harder to remember passwords, what was agreed in phone calls or when bills are due • increased impulsivity, making it difficult to control frustration resulting from fear or confusion • reduced planning and problem-solving abilities, making it harder to find solutions with energy retailers • a lack of motivation, including to check for better deals or ensure a bill is correct, which can be compounded by a confusing market • social anxiety and communication phobias, meaning mail can go unopened or people will struggle to ask for help.[77]
Half of all Australians have at least 1 of 8 **chronic diseases**, such as asthma, cardiovascular disease and cancer.[78]	People with chronic health conditions are more likely to face energy hardship than other people. Health conditions such as asthma and cardiovascular disease can require extra heating or cooling, and more time spent at home.

72. Australian Institute of Health and Welfare (19 October 2017) Australia's Welfare 2017: In Brief; Australian Institute of Health and Welfare (2017) Life Expectancy and Disability in Australia: Expected Years Living with and without Disability, cat. no. DIS 66.
73. Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions, 14-16; Victorian Council of Social Service (2018) Empowered Lives: Securing Change for Victorians with Disability, 50, 53-54; Public Interest Advocacy Centre (2012) More Power to You: Electricity and People with Physical Disability.
74. Australian Institute of Health and Welfare (2016) Australia's Health 2016: Vision and Hearing Disorders, cat. no. AUS 199.
75. Australian Institute of Health and Welfare (2019) Mental Health Services: In Brief 2019, cat. no. HSE 228, 1.
76. Consumer Action Law Centre (July 2019) Energy Assistance Report: Tracking How Victoria's Changing Energy Policies are Impacting Households in the State, 33.
77. Holkar, M., Evans, K. and Langston, K. (2018) Access Essentials: Giving People with Mental Health Problems Equal Access to Vital Services, Money and Mental Health Policy Institute, 8.
78. Australian Institute of Health and Welfare (March 2019) Chronic disease (https://www.aihw.gov.au/reports-data/health-conditions-disability-deaths/chronic-disease/overview).

Australian consumers' circumstances	How does this affect use of the energy market?
Health and disability	
Just over 10 per cent of Australians live in **housing** that is likely to reduce their physical and mental wellbeing. Those most affected include public housing residents, young people and people with disability.[80]	Housing that is hard to heat or cool, damp or mouldy increases physiological stress on older people and young children and can cause respiratory illness.[79]
Family violence is a major health and welfare issue: 1 in 6 women have experienced physical and/or sexual violence by a current or previous partner. One woman is killed every nine days by a partner. Financial abuse often occurs alongside other abuse and can continue post-separation.[81]	Family violence victim-survivors may need additional support from service providers, including where they: • have experienced economic abuse, e.g. do not have access to money, have had debts accumulated in their name, or have been left with responsibility for energy debts • have difficulty affording energy and other essential services • require additional account security to protect personal information, such as new address details.[82]
Twenty-five per cent of Australians are lonely, meaning they feel **socially isolated** or experience difficulties with social interactions. Twenty-two per cent of people rarely or never feel they have someone to talk to.[83]	While the effect of loneliness on the use of essential services has not been examined to date, loneliness is associated with factors that could make interacting with markets more difficult, including: • higher levels of anxiety around personal interactions • greater difficulty with household and self-care tasks • more likelihood of feeling a burden, worthless and less confident • lower energy levels and feeling less able to cope with problems • not working or working less regularly • greater tendency to suppress emotions, and less likely to think differently about a difficult situation.[84]

79. Victorian Council of Social Service (November 2018) Battling On: Persistent Energy Hardship, 22-23.
80. Baker, E. et al (2019) 'An Australian Geography of Unhealthy Housing' Vol. 57(1) Geographical Research 40.
81. Australian Institute of Health and Welfare (2019) Family, Domestic and Sexual Violence in Australia: Continuing the National Story, cat. no. FDV 3; Fernando, N. (1 November 2018) When's the Right Time to Talk About Money? Financial 'Teachable Moments' for Women Affected by Family Violence, WIRE Women's Information.
82. Essential Services Commission (22 May 2019) Energy Retail Code Changes to Support Family Violence Provisions for Retailers: Final Decision; Fernando, N. (1 November 2018) When's the Right Time to Talk About Money? Financial 'Teachable Moments' for Women Affected by Family Violence, WIRE Women's Information.
83. Australian Psychological Society and Swinburne University of Technology (2018) Australian Loneliness Report: A Survey Exploring the Loneliness Levels of Australians and the Impact on their Health and Wellbeing.
84. Ibid.

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

85. Centre for Social Impact and NAB (December 2018) Financial Security and the Influence of Economic Resources: Financial Resilience in Australia 2018, 20.
86. Ibid 20.
87. Ibid 15-16.
88. Australian Bureau of Statistics, Household Income and Wealth, Australia, 2017-18, cat. no 6523.0.
89. Hoy, C. and Toth, R. (April 2019) 'A False Divide? Correcting Beliefs About Inequality Aligns Preferences for Redistribution Between Right and Left-wing Voters' Society for the Study of Economic Inequality Working Paper Series.
90. Australian Council of Social Service and UNSW Sydney (2018) Inequality in Australia 2018, 33.
91. Australian Council of Social Service and UNSW Sydney (2018) Poverty in Australia 2018, 15.
92. Australian Council of Social Service (2019) 'I regularly don't eat at all': Trying to get by on Newstart (https://www.acoss.org.au/wp-content/uploads/2019/07/190729-Survey-of-people-on-Newstart-and-Youth-Allowance.pdf).
93. Bourova, E., Ramsay, I. and Ali, P. (2019) 'The Experience of Financial Hardship in Australia: Causes, Impacts and Coping Strategies' Vol. 42 Journal of Consumer Policy 189, 211-217.
94. Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions, 16-18; Solomon, L. and Martin-Hobbs, B. (2018) Five Preconditions of Effective Consumer Engagement: A Conceptual Framework, Consumer Policy Research Centre, 12.

Australian consumers' circumstances	How does this affect use of the energy market?
Resilience	
Over a third of **people in poverty rely on a job** as their main source of income.[95] The labour market is changing: • **underemployment** (i.e. working but looking for more hours) is high at 8.7 per cent of the labour force • secondary jobs have grown, particularly among women and young people • job precariousness has increased, particularly among men.[96]	People who are either underemployed or unemployed are some of the most vulnerable groups in Australia in terms of financial resilience. A job does not ensure financial security and the ability to pay bills on time or in full.[97]
Just under one third of Australians **rent**. More people are renting, for longer, and at multiple stages of their lives, including as they have children and age.[98] More than half (54 per cent) of low-income renters face rental stress, which is increasingly likely to last for several years.[99]	Renters are at greater risk of persistent energy hardship than homeowners. Renters are more likely to live in homes with poor energy efficiency, and have less capacity than homeowners to make their homes more energy efficient.[100]
Australians are carrying an unprecedented level of **household debt,** at around 190 per cent of household income.[101]	People with high debt levels are more vulnerable to financial shocks and have less capacity to manage unexpected expenses if savings and/or incomes are low. One in five people feel over-indebted or just managing to keep up their repayments.[102]
More people are approaching **retirement with housing debt**: 47 per cent of people aged 55 to 64 have mortgage debt (an increase from 14 per cent in 1990).[103]	Outright homeowners can achieve a much higher standard of living than most renters and mortgage-holders because their housing costs are lower.[104]
Older, single women are more at risk of financial hardship than any other group. They have less superannuation and are more likely to live in poverty than older men. Homelessness has increased among older women, as has private renting. As a result of accumulated gender inequality and discrimination throughout the life course, 'Australia is facing a tsunami of poverty amongst ageing female baby boomers'.[105]	Older, single women on low incomes, particularly those who rent, are financially vulnerable and may have little money for energy costs. The Newstart Allowance, Age Pension and Commonwealth Rent Assistance payment are often inadequate to cover rent and post-housing living costs.[106]

95. Australian Council of Social Service and UNSW Sydney (2018) Poverty in Australia 2018, 15.
96. Bankwest Curtain Economics Centre (April 2018) Future of Work in Australia: Preparing for Tomorrow's World, Focus on the States Series, No. 6/18; Australian Bureau of Statistics (October 2019) Labour Force, Australia, September 2019, cat. no. 6202.0; Australian Bureau of Statistics (12 March 2019) Labour Account Australia, Quarterly Experimental Estimates, December 2018, cat. no. 6150.0.55.003.
97. Centre for Social Impact and NAB (December 2018) Financial Security and the Influence of Economic Resources: Financial Resilience in Australia 2018, 17.
98. Martin, C., Hulse, K. and Pawson, H. (January 2018) The Changing Institutions of Private Rental Housing: An International Review, Australian Housing and Urban Research Institute.
99. Pawson, H. 'Growing Numbers of Renters are Trapped for Years in Homes They Can't Afford' (21 October 2019) The Conversation (https://theconversation.com/growing-numbers-of-renters-are-trapped-for-years-in-homes-they-cant-afford-125216).
100. Victorian Council of Social Service (November 2018) Battling On: Persistent Energy Hardship, 20-21.
101. Reserve Bank of Australia (October 2019) The Australian Economy and Financial Markets: Chart Pack, 7.
102. Centre for Social Impact and NAB (December 2018) Financial Security and the Influence of Economic Resources: Financial Resilience in Australia 2018, 7.
103. Ong, R. and Wood, G. (12 June 2019) 'More People are Retiring with High Mortgage Debts: The Implications are Huge' The Conversation (https://theconversation.com/more-people-are-retiring-with-high-mortgage-debts-the-implications-are-huge-115134).
104. Australian Council of Social Service and UNSW Sydney (2018) Poverty in Australia 2018, 19.
105. National Older Women's Housing and Homelessness Working Group (August 2018) Retiring into Poverty: A National Plan for Change – Increasing Housing Security for Older Women; Russell, R. et al (November 2018) Financial Wellbeing: Older Australians, RMIT University and ANZ, 16.
106. Councils of Social Service (2015) Payment Adequacy: A View from those Relying on Social Security Payments; Council on the Ageing (29 April 2019) 'Anglicare's Rental Snapshot Paints Stark Picture of Housing Affordability for Pensioners'.

Australian consumers' circumstances	How does this affect use of the energy market?
Resilience	
Aboriginal and Torres Strait Islander people can experience higher levels of energy bill stress and barriers to accessing assistance. One study of Aboriginal households in Victoria found 86 per cent were renters, mainly living in housing more than 20 years old with low insulation levels. 13 per cent of households had no fixed heating.[107]	Aboriginal people can be at greater risk of payment difficulty, higher debts and disconnection.[108] Energy inefficient rental homes drive up bills, contributing to payment difficulty.[109]
Life events	
Over a third of couple families have **children living at home**. Sole-parent families have increased, from 6.5 per cent of families in 1976 to 10.2 per cent in 2016. Households with **extended family members** such as parents and grandparents are also a feature of Australian society, at 8.3 per cent of households. Extended households are more common among Aboriginal and some migrant households.[110]	Households with children (particularly sole-parent households) are at greater risk of energy hardship than those without children. Larger households with dependent children tend to have more difficulty paying energy bills than smaller households. Caring for children requires more energy for cooking, bathing, washing and drying, heating, cooling and education. Households with children often have inflexible energy needs that cluster in peak price periods.[111]
Australia's population is **ageing**. In 2017 people aged 65 and over comprised 15 per cent of the population, up from 9 per cent in 1977. The number and proportion of older Australians is expected to grow over the century.[112]	Particularly when combined with low incomes, older people can face a greater risk of energy hardship and barriers to market engagement because of: • multiple health conditions that make communication and understanding information more difficult, including sensory impairment, disability and cognitive impairment • digital exclusion and limited digital capability • extra energy requirements, including health-related heating, cooling and lighting needs, and due to more time spent in the home • a susceptibility to hidden energy hardship, i.e. energy under-consumption rather than bill payment difficulty.[113]

107. Consumer Utilities Advocacy Centre (December 2011) Wein, Paen, Ya Ang Gim: Victorian Aboriginal Experiences of Energy and Water; Bedggood, R. et al (2017) 'The Living Conditions of Aboriginal People in Victoria' Vol. 121 Energy Procedia 278.
108. Consumer Utilities Advocacy Centre (December 2011) Wein, Paen, Ya Ang Gim: Victorian Aboriginal Experiences of Energy and Water.
109. Bedggood, R. et al (2017) 'The Living Conditions of Aboriginal People in Victoria' Vol. 121 Energy Procedia 278.
110. Australian Institute of Family Studies, 'Population and Households' (https://aifs.gov.au/facts-and-figures/population-and-households).
111. Victorian Council of Social Service (November 2018) Battling On: Persistent Energy Hardship, 18-20.
112. Australian Institute of Health and Welfare (September 2018) Older Australia at a Glance, cat. no. AGE 87.
113. Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions, 12-14; Victorian Council of Social Service (November 2018) Battling On: Persistent Energy Hardship, 26.

<table>
<tr><th>Australian consumers’ circumstances</th><th>How does this affect use of the energy market?</th></tr>
<tr><td colspan="2">Life events</td></tr>
<tr><td>Bereavement can occur at younger and older ages, and is particularly experienced by women. Some 10 to 20 per cent of bereaved people experience persistent psychiatric difficulties.[114]</td><td>Bereavement has a major effect on people’s emotional, physical, social, cognitive and financial wellbeing. Bereaved people may need to express a range of emotions such as anger, frustration and fear. A person grieving the death of a partner may:
be left in a worse financial position and/or need breathing space while insurance, superannuation, government payments and bank accounts are accessed
need time to get on top of household finances if they did not previously manage the finances, including identifying debts and assets
have to contact energy retailers and other service providers about accounts held in the deceased partner’s name.[115]</td></tr>
<tr><td colspan="2">Capability</td></tr>
<tr><td>Australia is very culturally diverse. Nearly half of the population was either born overseas or has at least one parent who was born overseas. One fifth of Australians speak a language other than English at home. English is not the first language for 15 per cent of people.[116]</td><td>The complexity of the energy market is ‘exponentially greater’ for people with language barriers. In one study, the majority of culturally and linguistically diverse customers did not contact their retailers to negotiate a contract and their trust of energy suppliers was low. Many knew about payment assistance but few had used it. People who have recently arrived in Australia know less about and are less active in the energy market than others.[117]</td></tr>
<tr><td>Just under half (44 per cent) of all Australians have low literacy levels, i.e. below what is considered enough to get by in everyday life.[118]</td><td>Many customers will find it hard to understand communications such as websites, bills and emails unless they are designed with regard to Australian literacy levels. The Australian Government advises aiming communications at an age 9 reading level.[119]</td></tr>
</table>

114. Aoun, S. et al (2015) ‘Who Needs Bereavement Support? A Population Based Survey of Bereavement Risk and Support Need’ Vol. 10(3) PLoS One e0121101.
115. Council on the Ageing (May 2018) Death of a Partner: A Practical Guide for Partners and Family (https://www.moneysmart.gov.au/media/561071/death-of-a-partner-v3pdf.pdf).
116. Australian Institute of Health and Welfare (2018) Australia’s Health 2018: Culturally and Linguistically Diverse Populations, cat. no. AUS 221.
117. Ethnic Communities Council of New South Wales (April 2016) Experiences of Energy Consumption for Culturally and Linguistically Diverse (CALD) Communities.
118. Australian Bureau of Statistics (2013) Programme for the International Assessment of Adult Competencies, Australia, 2011-12, cat. no. 4228.0.
119. Australian Government, Digital Guides (https://guides.service.gov.au/content-guide/writing-style/#readability).

Australian consumers' circumstances	How does this affect use of the energy market?
Capability	
Digital inclusion is improving in Australia, but some groups remain less included than others, including people on low incomes, older people, people without a job, people with disability, and those living in regional Australia.[120] People experiencing homelessness have higher rates of mobile phone ownership than other people in Australia, but most find it difficult to fund mobile phone usage and a third are often disconnected.[121]	People who are digitally excluded (i.e. those who cannot afford digital devices, internet access and/or do not have the capability to use digital services): • cannot access online resources like comparison tools • are excluded from cheaper online-only deals • may pay extra for paper bills or Australia Post payments • cannot access energy consumption and bill management tools (e.g. apps and network customer portals) • may be less able to access information about payment difficulty support, concessions etc. • face broader financial vulnerability if they cannot engage with Centrelink and other government services online.[122]

120. Barraket, T. et al (2018) Measuring Australia's Digital Divide: The Australian Digital Inclusion Index 2018.
121. Humphry, J. (August 2014) Homeless and Connected: Mobile Phones and the Internet in the Lives of Homeless Australians, Australian Communications Consumer Action Network and University of Sydney.
122. Sarah Wise (September 2013) Trying to Connect: Telecommunications Access and Affordability Among People Experiencing Financial Hardship, Anglicare Victoria and Australian Communications Consumer Action Network, 3; South Australian Council of Social Service and Australian Communications Consumer Action Network (November 2016) Connectivity Costs: Telecommunications Affordability for Low Income Australians, 9-11.

3. Current regulatory arrangements

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

This section outlines:

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

3.1 Regulatory instruments

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

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

Legislative and statutory instruments

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

Industry codes of practice

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

Regulatory guidance

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

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

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

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

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

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

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

123. The family violence assistance standards commence on 1 January 2020.
124. *Essential Services Commission Act 2001* (Vic) s 8A.
125. *Utilities Act 2000* (UK) ss 9, 13.
126. *Communications Act 2003* (UK) s 3.
127. Ofgem (October 2017) Licence Guide: Standards of Conduct.
128. Insurance Council of Australia (June 2018) Final Report: Review of the General Insurance Code of Practice, 16.
129. Australian Energy Regulator 'Compliance & Enforcement Policy & Priorities' (https://www.aer.gov.au/about-us/compliance-enforcement-policy-priorities); Australian Competition and Consumer Commission 'Compliance & Enforcement Policy & Priorities' (https://www.accc.gov.au/about-us/australian-competition-consumer-commission/compliance-enforcement-policy-priorities).

3.2 Regulatory arrangements in the energy sector

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

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

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

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

The new Energy Charter is a further tool in the energy sector for guiding the behaviour of industry participants and encouraging good customer outcomes. The Charter is industry-led and has signatories from across the energy supply chain, including retailers and network businesses. The Charter comprises five principles to improve energy pricing and service delivery, one of which is supporting customers facing vulnerable circumstances. The Charter is not enforceable but signatories must publicly disclose how they are delivering against the principles, and these disclosures are reviewed and reported on by an independent accountability panel. The first disclosures were made in October 2019.[132]

3.3 Institutions and actors

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

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

130. Australian Energy Market Commission (12 September 2019) 'Consumer Protections Needed as Energy Technology Changes' (https://www.aemc.gov.au/news-centre/media-releases/consumer-protections-needed-energy-technology-changes).
131. Consumer Action Law Centre (April 2019) Sunny Side Up: Strengthening the Consumer Protection Regime for Solar Panels in Victoria.
132. See The Energy Charter Independent Accountability Panel (https://theenergycharterpanel.com.au/).

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

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

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

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

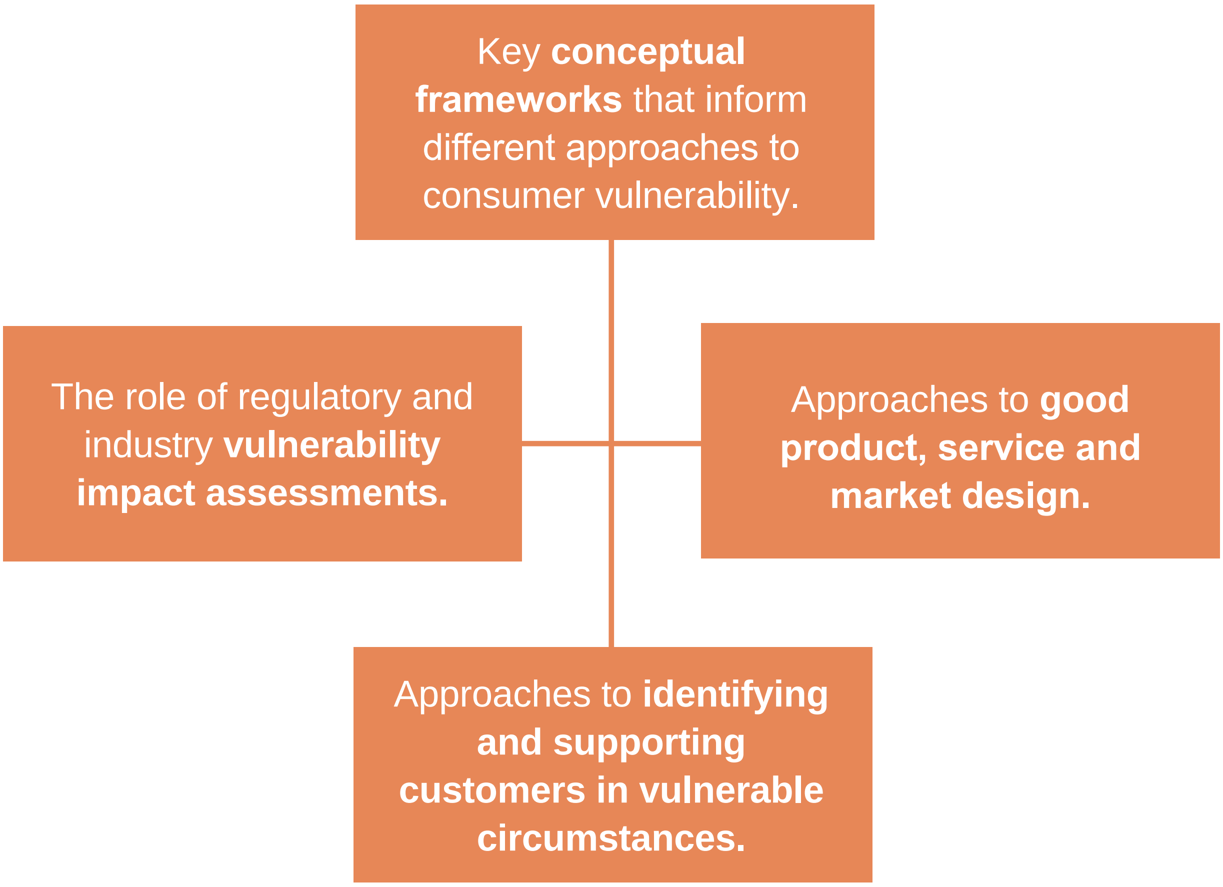
These types of cross-sector bodies are important for addressing the intersecting vulnerability issues that arise across essential services. People in financial hardship often have multiple problems across several services, or debt problems in one area create vulnerabilities in other areas, e.g. difficulty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

133. Australian Energy Regulator 'Consumer Challenge Panel' (https://www.aer.gov.au/about-us/consumer-challenge-panel); Australian Energy Regulator 'Customer Consultative Group' (https://www.aer.gov.au/about-us/customer-consultative-group).
134. UK Regulators Network (1 November 2018) 'Making Better Use of Data to Identify Customers in Vulnerable Situations: A Follow-up Report'.
135. Thriving Communities Partnership (https://thriving.org.au/).
136. Centre for Social Impact 'The Financial Inclusion Action Plan' (https://www.csi.edu.au/research/project/financial-inclusion-action-plan/).
137. Bourova, E., Ramsay, I. and Ali, P. (2019) 'The Experience of Financial Hardship in Australia: Causes, Impacts and Coping Strategies' Vol. 42 Journal of Consumer Policy 189, 203-206.

4. Supporting vulnerable consumers

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

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



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

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

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

4.1 Conceptual frameworks

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

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

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

4.1.1. Consumer empowerment or consumer protection

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

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

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

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

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

139. Ioannidou, M. (2018) 'Effective Paths for Consumer Empowerment and Protection in Retail Energy Markets' Vol. 41 Journal of Consumer Policy 135, 144.
140. Australian Competition and Consumer Commission (June 2018) Restoring Electricity Affordability and Australia's Competitive Advantage: Retail Electricity Pricing Inquiry – Final Report, xi.
141. Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions, 6.
142. Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 26.
143. Centre for Consumers and Essential Services (July 2014) Tackling Consumer Vulnerability: Regulators' Powers, Actions and Strategies, Research report for Citizens Advice, University of Leicester, 12.

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

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

4.1.2 Targeted or customer-wide measures

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

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

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

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

4.2 Vulnerability impact assessments

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

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

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

144. Holkar, M., Evans, K. and Langston, K. (2018) Access Essentials: Giving People with Mental Health Problems Equal Access to Vital Services, Money and Mental Health Policy Institute, 37.
145. Australian Energy Market Commission (28 June 2019) 2019 Retail Energy Competition Review, 207-222.
146. Ioannidou, M. (2018) ‘Effective Paths for Consumer Empowerment and Protection in Retail Energy Markets’ Vol. 41 Journal of Consumer Policy 135, 506.
147. George, M., Graham, C. and Lennard, L. (2016) Consumer Vulnerability – Mainstream, not Marginal, Centre for Consumers and Essential Services, University of Leicester, 1.
148. Ofgem (2016) Impact Assessment Guidance, 20.

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

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

4.3 Good product, service and market design

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

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

4.3.1 Inclusive design

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

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

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

149. Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 43.
150. George, M., Graham, C. and Lennard, L. (2016) Consumer Vulnerability – Mainstream, not Marginal, Centre for Consumers and Essential Services, University of Leicester.
151. Financial Conduct Authority (February 2015) Consumer Vulnerability – Occasional Paper No. 8, 11.
152. Ibid.

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

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

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

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

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

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

153. Ofwat (February 2016) Vulnerability Focus Report, 34.
154. Ibid 34-35.
155. Holkar, M. and Evans, K. (2017) Levelling the Playing Field: How Regulators can Support Consumers with Mental Health Problems, Money and Mental Health Policy Institute, 14.
156. Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions; Ofgem (2018) Vulnerable Consumers in the Energy Market: 2018, 11; Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 38.
157. Citizens Advice Bureau (January 2015) Treating Consumers Fairly: Flexible and Inclusive Services for All, 7-8.

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

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

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

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

Case study: inclusive services for people experiencing mental health problems

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

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

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

158. See Hagan, M. (2018) 'A Human-centred Design Approach to Access to Justice: Generating New Prototypes and Hypotheses for Intervention to Make Courts User-Friendly' Vol. 6(2) Indiana Journal of Law and Social Equity 199.
159. See Maker, Y. et al, Improving Access and Support for Consumers with Cognitive Disabilities: A Guide for Retailers, University of Melbourne and Thriving Communities Partnership.
160. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 5; Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions, 29.
161. Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions, 53.
162. Holkar, M., Evans, K. and Langston, K. (2018) Access Essentials: Giving People with Mental Health Problems Equal Access to Vital Services, Money and Mental Health Policy Institute, 19.

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

4.3.2 Product design and intervention powers

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

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

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

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

4.3.3 Best interests and clear advice obligations

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

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

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

163. Sustainability First (2018) Energy for All—Innovate for All, Project Inspire Summary Report.
164. Commonwealth of Australia (2019) Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry – Final Report, vol 1, 293; *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* (Cth); Australian Securities and Investments Commission (4 April 2019) 'ASIC welcomes approval of new laws to protect financial services consumers'.
165. Australian Securities and Investments Commission (July 2019) Using the Product Intervention Power: Short Term Credit, Consultation Paper 316; Australian Securities and Investments Commission (12 September 2019) 'ASIC makes product intervention order banning short term lending model to protect consumers from predatory lending'.
166. Australian Securities and Investments Commission (4 April 2019) 'ASIC welcomes approval of new laws to protect financial services consumers'.
167. Essential Services Commission (30 October 2018) Building Trust through New Customer Entitlements in the Retail Energy Market: Final Decision.

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

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

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

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

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

4.3.4 Default offers and best in show measures

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

168. Commonwealth of Australia (2019) Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry – Final Report, vol 1, 3.
169. Ibid 2, 73.
170. Australian Securities and Investments Commission (October 2019) Disclosure: Why it Shouldn't Be the Default: A Joint Report from the Australian Securities and Investments Commission and the Dutch Authority for Financial Markets.
171. Financial Conduct Authority (February 2015) Consumer Vulnerability – Occasional Paper No. 8, 77.
172. Victorian Labor (20 November 2018) 'Time is up for energy retailers ripping off Victorians'; Australian Securities and Investments Commission (18 July 2019) 'ASIC proposes to ban unsolicited telephone sales of life insurance and consumer credit insurance'; Australian Banking Association (1 July 2019) Banking Code of Practice, 40.
173. Australian Competition and Consumer Commission (30 March 2015) 'Origin to pay $2 million for unlawful door-to-door sales tactics'.

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

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

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

4.3.5 Market literacy schemes

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

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

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

174. Australian Energy Regulator (April 2019) Final Determination: Default Market Offer Prices 2019-20; Australian Competition and Consumer Commission (June 2018) Restoring Electricity Affordability and Australia's Competitive Advantage: Retail Electricity Pricing Inquiry – Final Report, 247-252; Essential Services Commission (3 May 2019) Victorian Default Offer to apply from 1 July 2019: Advice to Victorian Government.
175. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 65; Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 26; Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions, 35.
176. Daley, J. and Coates, B. (11 June 2019) 'Three retirement income priorities for the returned Morrison Government' (https://grattan.edu.au/news/three-retirement-income-priorities-for-the-returned-morrison-government/).
177. Australian Energy Market Commission (28 June 2019) 2019 Retail Energy Competition Review, 219-220; Australian Energy Market Commission (28 June 2019) 'Greater support needed for vulnerable energy consumers'.
178. Australian Competition and Consumer Commission (June 2018) Restoring Electricity Affordability and Australia's Competitive Advantage: Retail Electricity Pricing Inquiry – Final Report, xxiii.
179. Blue, L. (5 July 2018) 'Royal commission scandals are the result of poor financial regulation, not literacy' The Conversation (https://theconversation.com/royal-commission-scandals-are-the-result-of-poor-financial-regulation-not-literacy-99441).

Case study: EnergyInfoHub Project and the Energy Affordability Training Partnership

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

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

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

4.4 Identifying and supporting customers in vulnerable circumstances

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

These measures tend to focus on payment difficulty and debt management. In Australia, the AER has introduced a revised *Customer Hardship Policy Guideline*, which was published on 29 March 2019.[181] Retailers were required to implement their updated hardship policies by 2 October 2019 at the latest. The AER is closely monitoring energy retailers' conduct to ensure the strengthened protections are implemented by retailers. Enforcement of the new hardship guidelines is one of the AER's five compliance and enforcement priorities for 2019-20.

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

- 'standard assistance' available to all residential customers – entitling people to options that help them avoid getting into debt, including the ability to pay smaller amounts more often, changing how often bills are paid, delaying bill payment (once per year) and paying in advance[183]
- 'tailored assistance' available to residential customers who have an unpaid bill of $55 or more – entitling people to a payment plan of up to two years (or longer, at the discretion of energy retailers), information on lowering energy use, and advice on government concessions and other assistance. People who cannot afford their ongoing energy use are also entitled to additional help, including a pause on debt payments for six months, the ability to pay less than the full cost of energy use, practical help to reduce energy bills (for example, use of energy efficient appliances), and access to a more affordable energy deal.

180. https://energyinfohub.org.au/.
181. Australian Energy Regulator (March 2019) AER Customer Hardship Policy Guideline Version 1.
182. See Essential Services Commission (1 July 2019) Energy Retail Code, Version 13, Part 3.
183. Retailers must make at least three of these options available.

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

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

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

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

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

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

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

4.4.1 Proactive identification and early intervention

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

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

184. Consumer Action Law Centre (July 2019) Energy Assistance Report: Tracking how Victoria's Changing Energy Policies are Impacting Households in the State.
185. Energy and Water Ombudsman Victoria (October 2019) Annual Report 2019, 7; Energy and Water Ombudsman Victoria (September 2019) EWOV's Affordability Report, January-June 2019, 5-6.
186. Essential Services Commission (26 February 2019) Victorian Energy Market Report 2017-18; Essential Services Commission (10 October 2017) Payment Difficulty Framework: Final Decision.
187. Essential Services Commission (26 September 2019) Victorian Energy Market Update: September 2019, 5.
188. Australian Energy Regulator (March 2019) Notice of Final Instrument: AER Customer Hardship Policy Guideline Version 1.
189. Consumer Action Law Centre (July 2019) Energy Assistance Report: Tracking how Victoria's Changing Energy Policies are Impacting Households in the State.
190. Australian Energy Market Commission (28 June 2019) 2019 Retail Energy Competition Review, 220-221; Australian Energy Market Commission (28 June 2019) 'Greater support needed for vulnerable energy consumers'.

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

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

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

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

Case study: identifying customers in vulnerable circumstances

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

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

191. Australian Energy Regulator (March 2019) AER Customer Hardship Policy Guideline Version 1.
192. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 49; Holkar, M. and Evans, K. (2017) Levelling the Playing Field: How Regulators can Support Consumers with Mental Health Problems, Money and Mental Health Policy Institute, 22-23.
193. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 50.
194. Citizens Advice Bureau (January 2015) Treating Consumers Fairly: Flexible and Inclusive Services for All, 5-7, 38.
195. Financial Conduct Authority (February 2015) Consumer Vulnerability – Occasional Paper No. 8, 12.
196. University of Bristol Personal Finance Research Centre, Money Advice Trust, Plymouth Focus Advice Centre (March 2017) Vulnerability: A Guide for Debt Collection – 21 Questions, 21 Steps, 18-21.

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

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

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

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

4.4.2 Accessible support

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

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

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

197. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 50.
198. Australian Energy Market Commission (28 June 2019) 2019 Retail Energy Competition Review, 207.
199. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 58.
200. Ofgem and Ofwat (November 2018) Making Better Use of Data to Identify Customers in Vulnerable Situations: A Follow-up Report.
201. Thriving Communities Partnership 'One Stop One Story Hub' (https://thriving.org.au/what-we-do/projects/the-one-stop-one-story-hub).
202. Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 23; Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 28-29.
203. Essential Services Commission (10 October 2017) Payment Difficulty Framework: Final Decision, 11-13, 21.

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

4.4.3 Flexible, tailored services

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

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

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

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

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

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

204. Australian Energy Regulator (March 2019) AER Customer Hardship Policy Guideline Version 1.
205. Consumer Action Law Centre (July 2019) Energy Assistance Report: Tracking how Victoria's Changing Energy Policies are Impacting Households in the State, 33-34.
206. Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 32-33; Financial Conduct Authority (February 2015) Consumer Vulnerability – Occasional Paper No. 8; Ofwat (February 2016) Vulnerability Focus Report; Essential Services Commission (10 October 2017) Payment Difficulty Framework: Final Decision.
207. Westpac Group, Customer Vulnerability 2020 Action Plan (https://www.westpac.com.au/content/dam/public/wbc/documents/pdf/aw/sustainability/Customer_Vulnerability_Action_Plan.PDF).
208. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 7, 63.
209. Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions, 34.
210. Essential Services Commission (10 October 2017) Payment Difficulty Framework: Final Decision.

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

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

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

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

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

4.4.4 Industry partnerships with specialist service providers

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

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

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

211. Competition and Markets Authority (February 2019) Consumer Vulnerability: Challenges and Potential Solutions, 33.
212. Ibid 33-34; see Money and Mental Health Policy Institute, 'Mental Health Accessible' (https://www.moneyandmentalhealth.org/mentalhealthaccessible/).
213. Citizens Advice (22 August 2019) 'People with mental health problems need minimum standards of support' (https://wearecitizensadvice.org.uk/people-with-mental-health-problems-need-minimum-standards-of-support-7db023dc4c25).
214. Consumer Action Law Centre (25 January 2019) Submission to Royal Commission into Mental Health Terms of Reference.
215. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 4, 35-38.
216. NAB, 'How Uniting stops financial hardship before it hits' (https://www.nab.com.au/about-us/more-than-money/customers-community/supporting-communities/uniting-carering); NAB paid content, 'Hardship can strike at any age says financial counselling pioneer' The Guardian (https://www.theguardian.com/nab-meet-the-changemakers/2016/jun/21/hardship-can-strike-at-any-age-says-financial-counselling-pioneer).
217. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 6, 55-57.

Good use of partnerships and referral pathways might include where:

- a customer can benefit from holistic support to address multiple needs—for example, Uniting VIC/TAS runs the CareRing program nationally in partnership with utilities and financial institutions, which delivers wrap-around support services such as financial counselling, energy advice, family support and housing support[218]
- an organisation can help identify vulnerable customers and connect people to the right services in a business—for example, British Gas and ScottishPower have a partnership with the cancer charity CLIC Sargent, which provides the charity's social workers with direct access to customer care staff to help manage family energy bills when a child has cancer. The referral process ensures suppliers know about the situation a family is facing and review their energy needs. The charity found almost half of families with a child with cancer see energy bills increase, but only a minority seek help[219]
- an organisation can provide expert advice that is beyond the capability of a business, including on sensitive issues—for example, the Victorian Essential Services Commission's minimum standards of family violence assistance require energy retailers to help customers access specialist family violence assistance, and to take into account whether it is safe, respectful and appropriate before doing so.[220]

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

4.4.5 Support beyond payment difficulty

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

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

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

218. Uniting, 'CareRing' (https://www.unitingkildonan.org.au/programs-and-services/financial-support/carering/).
219. Ofgem (2018) Vulnerable Consumers in the Energy Market: 2018, 14. See also Ofwat (February 2016) Vulnerability Focus Report, 36.
220. Essential Services Commission (22 May 2019) Energy Retail Code Changes to Support Family Violence Provisions for Retailers: Final Decision.
221. Commission for Customers in Vulnerable Circumstances (2019) The Commission for Customers in Vulnerable Circumstances Final Report, 56-57.
222. Victorian Council of Social Service (November 2018) Battling On: Persistent Energy Hardship, 5, 14.
223. Ofgem (13 June 2019) Draft Consumer Vulnerability Strategy 2025, 26-27.

5. Conclusion

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

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

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

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

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Consumer Policy Research Centre

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The experiences of older consumers: towards markets that work for people

Ben Martin Hobbs and Emma O'Neill

July 2020

Consumer Policy Research Centre

ABOUT CONSUMER POLICY RESEARCH CENTRE (CPRC)

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

Introduction

Over the past few decades, competition, contestability and user choice have been introduced into a growing number of essential and important services. These reforms were promised to bring better consumer outcomes. Yet in recent years consumer detriment and poor outcomes have emerged across a wide range of markets. In this era of inquiry the financial services and aged care Royal Commissions each revealed shocking treatment of consumers and business misconduct. Numerous regulatory reviews into markets such as residential energy have shown the complexity of pricing strategies and information disclosure that people face when comparing and choosing between services. Consumer trust in many of these markets has remained stubbornly low for much of the last decade.[1]

In this report we turn to the experiences of older people in accessing, navigating and choosing products and services in complex markets. We draw in particular from CPRC's recent collaborative research into the experiences of older consumers when choosing between retirement villages and navigating the in-home care market. We explore the wider research into consumer experiences of complex markets which reveals the deficiencies and frailties of existing market design.

Older Australians are a nuanced group. Some face difficulties navigating increasingly complex markets through online platforms. For others, it can be a decline in health, limited digital access and/or literacy which heighten barriers to market engagement. Older people have lived through the deregulation of services and the substantial change that has accompanied it, requiring learning of new skills and processes to access markets. The experience of older people in navigating markets therefore provides a useful lens to identify key structural problems across different sectors. We have discerned four major themes in the experiences of older consumers—inaccessible marketplaces, unfair products and services, inattention to the realities of human decision-making, and too little recognition of the variability of market engagement and motivations to be a 'consumer'. These experiences are not unique to older people. They allow us to reflect on the barriers to good consumer outcomes more broadly and to suggest approaches that bring us closer to our aim of building markets that work for people.

The research informing this report predates the COVID-19 pandemic and social distancing measures adopted to mitigate a public health crisis. However, many of the consumer issues outlined in this report—the inaccessibility of marketplaces, the challenge of navigating complex and voluminous information and the difficulties particular groups encounter in accessing digital platforms—have been amplified by the pandemic. For older people this may have acute consequences. For example, the uptake of COVID-19 food boxes for older Australians through the My Aged Care website was extremely low.[2] The call centres of many service sectors have been overwhelmed.[3] Short-term shifts to online service delivery may result in a more lasting shift online. These structural changes will have profound effects for older people who face digital exclusion and may worsen the social isolation they already experience.

1. Edelman Trust Barometer 2019 – *Australia*, 2020.
2. Elias Visontay, "Government scheme delivers just 38 of predicted 36,000 Covid food boxes to older Australians", *The Guardian*, 5 June 2020 https://www.theguardian.com/australia-news/2020/jun/05/government-scheme-delivers-just-38-of-predicted-36000-covid-food-boxes-to-older-australians
3. Jared Mullane, "Why you may not be able to call your energy company right now", *Canstar*, 30 March 2020 nowhttps://www.canstarblue.com.au/electricity/energy-company-call-wait-times/

Structure of this report

This report draws together CPRC's consolidated insights into the common experiences of older people across essential and important consumer markets. It identifies the priority approaches for policymakers to take forward to improve consumer outcomes and better ensure markets work for people. The report covers four areas:

Why we should focus on older consumers

A summary of CPRC's previous work in this area revealed the unique needs and position of older people in markets, and the amplified vulnerabilities introduced by COVID-19.

How we reached the point we are at today

A brief review of the shift towards competition in essential and human services, the caveats issued by proponents of competition and the evolving attention given to consumer protections and outcomes, especially in the wake of recent controversies in energy and financial services markets and aged care.

Common experiences of older consumers across markets

An exploration of four major domains:

- Inaccessible marketplaces
- Unfair products, services and market design
- A lack of consideration for real-world decision-making
- Limited recognition of varying consumer engagement and motivation

Emerging approaches for policymakers

A discussion of strategies that will help bring about markets that work for people:

- Strong market stewardship in complex markets, and CPRC's Hierarchy of Stewardship Priorities
- Accessible marketplaces driven by market stewards
- Inclusive design for fair products and services
- Comprehension testing and product simplification to reflect real-world decision-making
- Appropriate choice architecture, assisted choice, and default options
- Focusing on and measuring consumer wellbeing in markets

Key lessons

Four key lessons emerge from CPRC's multi-year research into the experiences of older consumers navigating in-home care and retirement villages, as well as markets such as residential energy, finance and telecommunications.

Inaccessible marketplaces

In a range of complex consumer markets there is evidence of an inaccessible or ineffective marketplace. Where the marketplace itself is inadequate, consumers face excessive search, comparison and switching costs, which mutes the effectiveness of demand-side pressure in achieving good consumer outcomes. The development of online comparison tools and switching services (simply making information available online) has somewhat addressed these costs. However, while online digital comparison tools and platforms have the potential to partly address these deficiencies, the profit motive and incentives of commercial intermediaries may not align with consumers' incentives, skewing the marketplace and potentially misleading consumers. Independent or government run digital comparison tools can address misaligned incentives. However, in many markets these sites remain comparison tools without the capacity to switch providers. For some older people with limited digital literacy, access or confidence, online marketplaces can be difficult and may be a less preferred medium to engage in a market.

Unfair products, services and market design

There are some significant shortcomings in product, service and market design that lead to unfair consumer outcomes. Chief among these is an overreliance on, and sometimes deliberate misuse of, information disclosure. Disclosure requirements have historically been considered an adequate consumer protection tool relied on by regulators and businesses to address information asymmetries and to enable effective consumer choice. However this approach to regulation relies on misplaced assumptions about consumer behaviour. Our findings across retirement villages, in-home care and essential service markets show there are contexts where businesses fail to meet these obligations either unintentionally or deliberately. Firms may lack incentives to disclose comprehensible information and may be limited in their capacity to develop comparable market-wide information.

The outcome of an increasingly legalistic approach to compliance has been complex, lengthy disclosure documents which are overwhelming and almost universally unread. Evidence suggests some businesses provide strategically complex information in an effort to confuse consumer choice. One solution has been to call for simplified information disclosure. However this often fails to resolve the problem where the underlying complexity with the product or service remains. Products and services that are inherently or deliberately complex by design are very rarely simple to understand, no matter the quality of information disclosed.

In other instances of unfair practice, where consumers vary in their engagement, businesses have been able to segment consumers and exploit low levels of engagement by 'taxing' loyal or inactive customers.

Market stewards cannot continue to rely on compliance with disclosure requirements as the default consumer protection to address information asymmetries and ensure firms provide fair products and services. Nor can market stewards necessarily rely on a critical mass of active consumers to ensure good outcomes for the whole consumer base if firms can segment and overcharge more loyal or unengaged consumers. As markets become more data-driven, the ability of firms to discriminate between individuals will increase.

A lack of consideration for real world decision-making

The design of consumer markets has predominantly been premised on people making rational decisions which 'discipline' the market. But the behavioural economics literature provides a wealth of evidence demonstrating that people often depart from rational decision-making, often in systematic ways. When faced with overly complex information, consumers can make poor decisions or no decision at all. Decision-making styles also vary widely, as does the kind of information people prefer to seek out. Decision-making is further affected by the context.

The cognitive effects of ageing are complex, varied and multidimensional. Age-related vulnerabilities may mean learning new processes and technologies can be inherently more difficult, making it more challenging to engage with increasingly complex markets. In the case of reduced cognitive capacity, we may be more vulnerable to exploitation of common behavioural biases or poor decision-making as we age. Further, a growing number of Australians are likely to experience cognitive limitations arising from dementia which will require more advanced support to ensure people can easily access essential services.

Limited recognition of varying consumer engagement and motivation

Consumer markets have largely been encouraged to develop on the assumption that people will inherently want to engage in the market, provided structural barriers such as language skills and digital access are not present. For a range of reasons, however, consumers' motivation to engage may be muted. As markets increasingly move online, younger generations may have the relative advantage of familiarity with this medium compared with older generations.

Consumer engagement is nuanced and varied. In some contexts, such as in-home care, older people may not realise they have a need for a particular product or service, and only reluctantly engage with a market. In other contexts, markets without a compelling product or service offering fall down the list of priorities for people with busy or complex lives, and people unconsciously disengage. Finally, some people 'choose not to choose' which may be driven by the reality or perception of an overly complex and time-consuming process. This is problematic in ambiguous choice contexts where people cannot easily learn from their choices because feedback about effectiveness is absent or delayed.

Key approaches to effective policy and program design

Having identified the key lessons above, we recommend policymakers adopt the following approaches to address these structural issues with consumer markets. This requires a new approach to consumer policy, shifting from a supply-side focus to genuinely consumer-centric. The actual needs, experiences and behaviours of people should be at the heart of product, service and market design. These approaches adopt elements from industry practice, research and regulation emerging locally and internationally.

Strong market stewardship in complex markets

Policymakers and regulators can take a stronger, clearer role in market stewardship, which involves 'steering' or shaping markets to ensure they deliver good outcomes for consumers. It involves shifting the focus from competition policy to a more considered view of how people are likely to engage with markets and make choices. This approach was advocated by the Harper Review with regard to quasi-markets but should be extended to complex markets where there is evidence or risk of poor consumer outcomes.[4]

Based on our analysis in this report, CPRC proposes a hierarchy of priorities for policymakers:

1. Market stewards create accessible, functional and sustainable marketplaces
2. Market stewards and businesses design fair and inclusive products and services
3. Product and service design reflects real-world decision-making
4. Consumers are assisted to make choices and those who cannot or do not want to engage are protected

4. Ian Harper, Peter Anderson, Su McCluskey and Michael O'Bryan, *Competition Policy Review: Final Report* (March 2015), 36.

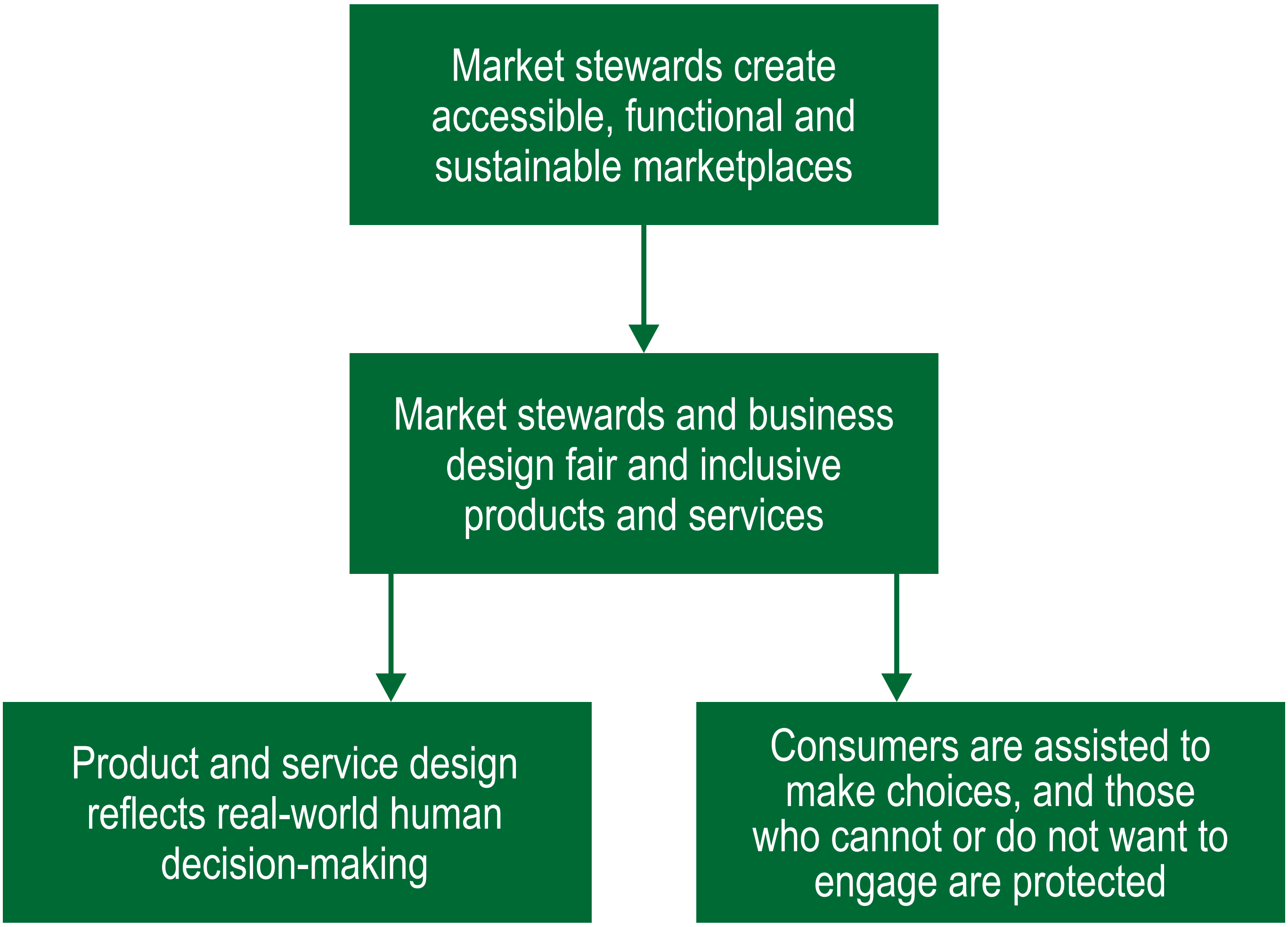


Figure 1: CPRC's ***Hierarchy of Stewardship Priorities***

Accessible marketplaces driven by market stewards

An inaccessible, dysfunctional or underdeveloped marketplace limits the ability of people both to engage in markets and make informed and effective choices needed to make markets work. Market stewards must ensure consumers have awareness of the marketplace; genuine access to the marketplace; comprehensible information and minimal search costs; an ability to easily compare service providers; and easy switching processes.

In the case of 'thin markets', where there is a fundamental lack of provider diversity, stewards need to be able to take an interventionist role and ensure consumers receive the products and services they need. Where markets fail to provide adequate market diversity or sufficiency, stewards may need to consider whether a market delivery model is appropriate at all.

Inclusive design for fair products and services

Adopting an 'inclusive design' approach can help guide both market stewardship and better business practices. Inclusive design involves adjusting norms and crafting products and services to meet the needs of 'edge users' rather than asking those at a disadvantage to find another way to access a service. Far from simply adding cost, evidence suggests inclusive design makes interaction easier for all consumers.

Comprehension testing and product simplification to reflect real-world decision-making

Market stewards can shift the burden of deciphering overly complex information from consumers to businesses, to ensure that information about their products and services is comprehensible before coming to market.

Simplifying information may be problematic for products or services with inherent complexity. The introduction of an unfair trading prohibition into consumer law would assist in preventing the manipulation of longform disclosure statements that produce unfair products and services.

Appropriate choice architecture, assisted choice and default options

Market stewards need to give greater thought to the 'choice architecture' within which consumers make decisions, incorporating variable decision-making approaches, preferred information and styles. This requires active consideration of the number and complexity of choices with which consumers are presented. Regulators may also need to audit the presentation of choices, particularly in the online context, given the possibilities for consumer segmentation.

For those groups who struggle to or cannot access the marketplace, market stewards must ensure effective intermediaries or purchase advisors are available to help users make decisions. For older Australians who have lower digital literacy and access, an independent intermediary to provide support accessing the marketplace may be required. For those with cognitive disabilities or limitations, supported decision mechanisms and training for call centre staff may better enable consumers to make decisions themselves.

Importantly, where consumers are required to make active choices but fail to do so, market stewards need to consider the choices that are implicit in the choice architecture. By actively designing the default options, market stewards can help prevent further harm and improve consumer welfare, while retaining choice for those who are able to engage.

Focusing on and measuring consumer wellbeing

To adopt a truly consumer-centric approach to product, service and market design, market stewards will need to evolve and adapt measurement and evaluation frameworks and better 'measure what matters'. Determining whether marketplaces are accessible and functional, whether businesses produce fair and safe products, and whether changes to the choice architecture improve consumer outcomes, will require market stewards to take a larger role in measuring outcomes. A more nuanced approach to evaluating consumer outcomes should be taken, rather than primarily focusing on supply-side metrics to determine the efficacy of a market.

Older people and markets: why focus on this group?

This chapter explains how and why CPRC came to focus on the experiences of older consumers in our research and sets out some of the particular consumer vulnerabilities faced by older Australians, including as a result of COVID-19.

CPRC's work in this area

Over the past few years, CPRC's work in energy, housing, online markets and in-home care has encountered significant differences in the way older people experience consumer markets. The flashpoint issue was the Aged Care Royal Commission, which revealed not only appalling deficiencies in residential aged care, but widespread problems accessing in-home care through the market for home care packages (HCP). Providing quantitative and qualitative evidence to the Royal Commission, CPRC undertook a research partnership with University of South Australia to better understand what is involved in navigating this system and exercising choice.

Older people's experiences are also a focus of our energy market analysis and education programs. CPRC has embarked on a new energy information program in 2020 to be co-designed with older people living in regional locations.

Our housing work has likewise considered the experiences of older people. *The Renter's Journey* report explored the experiences of women aged 55 and over, a rapidly increasing proportion of the private rental market and a group of especially vulnerable renters. More recently, we engaged in a research partnership with University of Melbourne to inform the Victorian Government's review of retirement villages regulation, a very complex market with major financial and wellbeing ramifications for people who make the 'wrong' choice.

After reflecting on this body of work we discerned several themes in the experiences of older consumers, which are explored in this report—inaccessible marketplaces, unfair products and services, inattention to the realities of human decision-making, and too little recognition of the variability of market engagement and motivations to be a consumer. While these experiences are not unique to older people, our collective work in this area provides a lens to explore the current shortcomings of consumer markets, and to suggest approaches that bring us closer to our aim of markets that work for people.

'Older consumers' are a nuanced group

Australia's population is ageing which means the needs and experiences of older people should figure prominently in market, product and service design. In 2017, people aged 65 and over comprised 15% of the population, up from only 9% in 1977. The proportion of older Australians is expected to grow over the century.[5] This brings unique demands and opportunities to positively include older people in the design of essential and important services.

Older people have traditionally been regarded as an archetypal group of 'vulnerable consumers' when accessing services like energy, telecommunications and banking. There are good reasons for this. Some health conditions arising in older age can make it more difficult to communicate and understand information including sensory impairment, disability and cognitive decline.[6] Dementia is a major cause of cognitive decline in older people and one that is only just starting to be recognised by essential service providers. Almost 10% of Australians aged over 65 and 30% aged over 85 have dementia, with women over-represented in dementia-related deaths.[7]

Digital exclusion is another important dimension of older people's vulnerability in consumer markets. People aged 65 years and over are one of the most digitally excluded groups in Australia, greatly affecting their ability to interact with rapidly digitising marketplaces.[8] This disadvantage has been amplified in the context of COVID-19 with more businesses (such as banks) moving to predominantly online service delivery.

Social isolation, a further risk arising from COVID-19, also creates barriers to market engagement and good consumer outcomes. The Commissioner for Senior Victorians has done much to document the impact of social isolation among older people, which can lead to lower quality of life, reduced mental health leading to further isolation, poor physical health limiting social interaction, and decreased self-esteem and confidence. Social isolation and a lack of trusted supports reduce people's capacity to make financial decisions and make it more likely people will 'do nothing' when confronted with difficult financial decisions.[9]

Finally, as we age we may experience increased demand for particular essential services, such as additional energy if more time is spent in the home or caring for others. Generational differences in consumer behaviour can also create unique vulnerabilities. There is some evidence that older people are more prone to energy under-consumption than younger age groups to prioritise bill payment over meeting basic needs for warmth.[10]

Despite these clear vulnerabilities, older consumers are a nuanced group with varying capacities and opportunities for market engagement and different risks of vulnerability. Significant intra-generational inequalities exist among older Australians, in relation to income and wealth, housing and health status.[11] Gender-based disparities are also clear. Older, single women are more at risk of financial hardship than any other group. They have less superannuation and are more likely to live in poverty than older men as a result of gender inequality and discrimination throughout their lives.[12]

5. Australian Institute of Health and Welfare, *Older Australia at a Glance,* (September 2018).
6. Ibid.
7. Australian Institute of Health and Welfare, *Dementia in Australia* (2012).
8. Thomas J Barraket et al, *Measuring Australia's Digital Divide: The Australian Digital Inclusion Index 2019* (RMIT University and Swinburne University of Technology, 2019).
9. Commissioner for Senior Victorians, *Ageing is Everyone's Business: A Report on Isolation and Loneliness Among Senior Victorians* (2016).
10. Victorian Council of Social Service, *Battling On: Persistent Energy Hardship* (November 2018), 26, 40.
11. Peter Davidson et al, *Poverty in Australia 2020: Part 2, Who is Affected?* (ACOSS and UNSW, 2020), 32; Helen Hodgson and Alan Tapper, "Superannuation and Economic Inequality Among Older Australians: Evidence from HILDA," eJournal of Tax Research 16(1) (2018): 236; Australian Institute of Health and Welfare, Older Australia at a Glance (September 2018).
12. National Older Women's Housing and Homelessness Working Group, *Retiring into Poverty: A National Plan for Change – Increasing Housing Security for Older Women* (August 2018); Roslyn Russell, Jozica Kutin, Mark Stewart, Ru Ying Cai, *Financial Wellbeing: Older Australians* (RMIT University for ANZ, November 2018).

Importantly, older people's experiences of consumer markets will also vary as we challenge what it means to 'age' and be an older person. This presents new opportunities for more inclusive product, service and market design. Ageing should not be equated with a need for aged care. Regulators, policymakers and businesses cannot presume that an older person will have retired from full-time work and will be spending more time in the home than others. Older people are increasingly participating in paid employment, active in the community, caring for family members and others, and pursuing further education and other enrichment.[13] Conversely, some older people are shut out of work because of discrimination or inflexible work practices that do not accommodate caring obligations or disability. Those denied work may struggle with financial insecurity.[14]

Experiences of markets will also vary between the different cohorts of older people, with each generation having different capabilities and needs.[15] Those in the upper cohorts will have had the least experience with privatised and deregulated essential services, and little expectation to be an active consumer and engage digitally. Younger generations have the relative advantage of familiarity with these structures as many would struggle to remember a time when the essential services landscape was populated by Telecom, state-owned utilities and a handful of banks.

With all of this in mind and a strong body of research behind us, we provide an overview of older people's experiences across key markets such as energy, retirement housing and in-home care, and reflect on how the challenges faced by older people are actually the challenges faced by many, or indeed most, people in important consumer markets. It is from here that we can better design markets that work for people.

13. Russell et al, *Financial Wellbeing: Older Australians.*
14. Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability* (2016).
15. Russell et al, *Financial Wellbeing: Older Australians.*

How did we get here and where are we going?

This chapter provides an overview of the policy shift towards competition in essential and important services over the past few decades, the caveats issued by early proponents of competition, and the evolving attention given to consumer protections and outcomes, especially in the wake of recent controversies in energy, financial services markets and aged care.

Competition, choice and some caveats

Older people occupy a unique position in the competition policy reforms of recent decades. The move to competitive markets has perhaps been most disruptive for this group. Older people have been particularly affected by the introduction of competition and contestability in human services, including aged care.

During the 1980s and 1990s, Australian governments adopted an almost bi-partisan approach to increasing competition. From a consumer perspective, the ultimate aim of competition policy was to increase welfare by lowering prices, improving the quality of goods and services and providing greater choice and innovation in response to consumer needs. Consumer protection policy and competition policy were seen as conceptually distinct, despite an acknowledgement that ‘both policies benefit consumers and some consumer protection provisions improve the efficiency of markets’.[16] Perhaps above all else, governments were motivated to use competition policy to drive productivity and economic growth.[17]

One of the biggest developments in Australian competition policy was the Hilmer Review and the development of competition policy principles in the early 1990s.[18] This review was primarily concerned with structural micro-economic reform rather than consumer outcomes. It examined how public monopolies, such as state-owned utilities, could be restructured to deliver efficiency and productivity gains for the economy. The resulting National Competition Policy has had far-reaching effects on the Australian economy and our everyday lives, with many essential services corporatised, privatised or deregulated.

While increased consumer wellbeing and welfare is one of the purposes of competition policy, discussions of consumer experiences and outcomes were not prominent during this period of reform. Instead, the pursuit of competition itself was the primary focus. Consumer needs began to receive greater attention in the 2000s, with the Productivity Commission’s review of Australia’s consumer policy framework in 2008 and the subsequent introduction of the Australian Consumer Law in 2011.[19]

16. Independent Committee of Inquiry, *National Competition Policy* (Commonwealth of Australia, 25 August 1993).
17. See Productivity Commission, *Review of National Competition Policy Arrangements* (14 April 2005).
18. Independent Committee of Inquiry, *National Competition Policy.*
19. Productivity Commission, *Review of Australia’s Consumer Policy Framework*, Inquiry Report, vol. 2 (30 April 2008).

This review, and those that followed, made important observations about competition and the place of consumers. In its consumer policy review, the Productivity Commission noted the well-recognised role of active, informed consumers in providing signals to competitors on the types of products and services they require and driving competitive responses that lead to lower costs, improved quality and greater innovation. However, the Commission also thought it was not necessary for all consumers to be active in this way, and that competition can still be robust if there is a 'sufficient proportion of informed, "marginal" consumers who are willing to switch suppliers to secure a better deal'.[20] The Commission then cautioned that 'competition is a means to achieving an improvement in consumer wellbeing rather than an end in itself'. It also regarded competition as only one means of improving consumer wellbeing—even if competition is limited or absent, consumer policy can still drive wellbeing through responses such as business and product regulation, and support and redress measures for consumers.[21]

Further into the decade, competition and contestability in human services came under the spotlight. The Productivity Commission's 2011 Caring for Older Australians report found that the aged care system had limited services available, variable quality of services, and that people had difficulty navigating aged care. Perhaps more importantly, the Commission found older Australians 'did not want to be passive recipients of services, dependent on funded providers' and that there was a strong case for consumer choice in improving wellbeing. Consequently, the Commission proposed a model of consumer-directed care, in the expectation that older Australians could have choice and control over this important aspect of their lives.[22]

Similar themes emerged from the 2015 Harper Review, which further developed Australia's competition policy principles. The Harper Review affirmed that user choice should be placed at the heart of service delivery, recommending that government extend choice and contestability to human services. However, what has perhaps been somewhat overlooked since is the Review's caveats around the viability of user-centred choice. It advocated for strong safeguards, in the form of default options, for people unwilling or unable to exercise choice and advised that:

> in sectors where choice may be difficult, [government should] make intermediaries or purchase advisors available to help users make decisions, with policies designed to align the incentives of purchase advisors with the best interests of users.[23]

The Review also recommended government consider the needs and accessibility challenges faced by disadvantaged groups and provide 'greater assistance in navigating the choices they face' through the provision of 'accessible communications channels that suit their needs'. The Review was attuned to the realities of human decision-making, recommending government draw on the lessons from behavioural economics to present information and choices to consumers and in any regulation of information that businesses present to consumers. Finally, the Review concluded 'policy in human services cannot simply be set and then forgotten. It needs to evolve over time in response to user experience with different approaches to service quality and access'.[24]

The competition policy reforms of the past few decades therefore set up the expectation of enhanced consumer wellbeing as a result of product and service choice, and informed, rational decision-making that would drive competitive responses in people's interests. We now know that this vision was not realised across many markets. The caveats to this vision very much resonate today, given the controversies and consumer harms that have since emerged.

20. Ibid., 28.
21. Ibid.
22. Productivity Commission, *Caring for Older Australians*, Inquiry Report, vol 1 (28 June 2011).
23. Harper *et al., Competition Policy Review,* 36.
24. Ibid., 36, 53, 224.

Controversies and consumer harm

More than twenty years after a National Competition Policy was adopted, poor consumer outcomes have become evident across many sectors where competition was introduced and left untempered or unguided—in effect, where there has been a lack of market stewardship.

In residential energy markets, the Victorian Government's independent inquiry and the ACCC's subsequent inquiry into the electricity market uncovered a range of complex and exploitative practices by energy retailers that led to people paying higher prices than necessary, including those on low incomes and in other vulnerable circumstances. The ACCC provided a frank and informed assessment of the model of competition that emerged post-privatisation, which has not resulted in vigorous competition between retailers, efficiencies and good consumer outcomes. There are varying levels of active consumer engagement in the electricity market. Incumbent retailers have 'benefited from large parts of their customer base being inactive or disengaged from the competitive market', enabling these providers to compete only selectively and leaving smaller retailers to compete for the active, often low-margin part of the market.[25]

The ACCC found a two-tier market has emerged, with customer outcomes dependent on a person's willingness and capacity to engage with the market. This may be acceptable in a market for discretionary products and services but causes significant harm in those for essential services. The ACCC concluded:

> Those customers who have been active in the market, regularly reviewing options and switching between offers, have been the beneficiaries of competition. These customers are likely paying less than the average cost to retailers of supplying electricity. The full extent of costs associated with attracting and retaining customers are therefore borne by inactive or loyal customers and those unable to navigate the complexities of the market. The gap between the best and worst offers in the market has been widening, effectively acting as a tax on disengaged customers, whether a customer is disengaged by choice or because of the unnecessary complexity.[26]

Financial services markets are particularly notable for their failings to consumers and the effects of unguided competition. The Financial Services Royal Commission revealed egregious conduct by banks, insurers and superannuation funds including, in some instances, charging fees to people who had died, and selling people with cognitive disabilities products and services they did not understand. The Royal Commission was not an inquiry into competition, but its overall observations highlight the way in which a competitive model can backfire on consumers in the absence of appropriate market stewardship. At a systemic level, the Commission noted entities and individuals within financial services industries could act in the inappropriate ways they did 'because they could'. The presumption of informed consumer decision-making that underlies competition and good consumer outcomes was often absent:

> Entities set the terms on which they would deal, consumers often had little detailed knowledge or understanding of the transaction and consumers had next to no power to negotiate the terms. At most, a consumer could choose from an array of products offered by an entity, or by that entity and others, and the consumer was often not able to make a well-informed choice between them. There was a marked imbalance of power and knowledge between those providing the product or service and those acquiring it.[27]

25. Australian Competition and Consumer Commission, *Restoring Electricity Affordability and Australia's Competitive Advantage: Retail Electricity Pricing Inquiry – Final Report* (11 July 2018), xi.
26. Ibid.
27. Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report*, vol 1 (2019), 2.

Due to the complexity of financial products such as home loans, consumers often use an intermediary to navigate a market and purchase services. Financial services are not alone in attracting intermediaries. They have also emerged in other competitive markets such as energy and telecommunications. The very need for intermediaries calls into question the underlying design of the market, product or service. In a well-designed, accessible market priding itself on simplicity, would intermediaries be necessary at all? This question aside, the Royal Commission highlighted the risks for consumers in using commercial intermediaries, given 'the interests of client, intermediary and provider of a product or service are not only different, they are opposed. An intermediary who seeks to "stand in more than one canoe" cannot. Duty (to client) and (self) interest pull in opposite directions'.[28]

Other inquiries revealed poor consumer outcomes in competitive financial services markets. The Productivity Commission's superannuation inquiry found significant structural flaws in this market including entrenched underperformers and recommended the introduction of a 'best in show' shortlist of super products set by a competitive and independent process.[29] This type of mechanism seems to represent an evolution of competition policy by promoting a competitive model but recognising most consumers are poorly placed to drive competition in a market as complex as superannuation. As the Grattan Institute comments, by using a 'best in show' mechanism, '[m]arket discipline would come from experts with the time, resources and expertise to decide which funds to shortlist, rather than individuals that don't'.[30]

More recently, the ACCC has been asked to inquire into the transparency of home loan pricing. This includes barriers to switching to cheaper home loans, and the extent to which home loan providers may contribute to consumers paying more than they need to for home loans. One particular issue confirmed by the ACCC's interim report in this inquiry is the existence of 'loyalty taxes', or the discrepancy between the rates paid by new versus existing customers.[31]

For older people, one of the most significant consumer controversies in recent years is the shocking failure of the aged care system and the complexity and confusion of the market for in-home care. The interim report of the Royal Commission into Aged Care Quality and Safety described the in-home care system as 'cruel and discriminatory' and one that places great strain on older Australians and their relatives. To access a package, people must wait in the national prioritisation queue before a package is assigned and then try to find a service provider to deliver care, all of which can take a very long time. The Commission found that in 12 months alone, more than 16,000 people died waiting for a package. Others prematurely moved into residential care.[32]

In large part, the consumer detriment identified in the numerous inquiries and Royal Commissions over recent years can be attributed to a focus on competition policy at the expense of consumer policy. The controversies in energy, financial services and in-home care have inspired a greater focus on consumer outcomes, and a recognition of what is at stake when people cannot access basic services for dignity and wellbeing. As discussed further in this report, policymakers and regulators are now considering the limits of information disclosure in driving good consumer outcomes and the role of market engagement as a standard protective measure. The policy trajectory appears to be turning to focus more explicitly on actual consumer behaviours and outcomes, and the role of market stewardship and businesses in delivering fair and inclusive markets.

28. Ibid., 2-3.
29. Productivity Commission, *Superannuation: Assessing Efficiency and Competitiveness*, Inquiry Report (21 December 2018).
30. John Daley and Brendan Coates, "Three retirement income priorities for the returned Morrison Government", *The Grattan Institute*, 11 June 2019, https://grattan.edu.au/news/three-retirement-income-priorities-for-the-returned-morrison-government/.
31. Australian Competition and Consumer Commission, *Home Loan Price Inquiry: Interim Report* (March 2020).
32. Royal Commission into Aged Care Quality and Safety, *Interim Report: Neglect,* vol 1 (31 October 2019), 154.

What do we mean by market stewardship?

The shift from traditional government provision of services toward the use of market mechanisms in the public sector reflects the view that markets can deliver services more efficiently than government, and that competition can improve service quality while reducing costs.[33]

This shift has often been described as a change from governments 'rowing' to 'steering', or 'stewarding' the market.[34]

In markets for care and welfare-based services, the market design does not replicate other consumer markets. Providers may not compete for profit, prices might be fixed and consumer purchasing power is exercised differently than in traditional markets (i.e. consumers are allocated budgets) rendering them 'quasi-markets'. These quasi-markets retain an ongoing role for government in setting prices, funding and contracting services or ensuring strict quality measures are met.

Market stewardship is explored further in the 'Emerging Approaches' chapter.

33. Julian Le Grand and Will Bartlett. "Quasi-markets and social policy: the way forward?." In *Quasi-markets and social policy*, pp. 202-220. Palgrave Macmillan, London, 1993; Amanda M. Girth, Amir Hefetz, Jocelyn M. Johnston, and Mildred E. Warner. "Outsourcing public service delivery: Management responses in non-competitive markets." *Public Administration Review* 72, no. 6 (2012): 887-900 cited in Gemma Carey, Eleanor Malbon, Celia Green, Daniel Reeders, and Axelle Marjolin. "Quasi-market shaping, stewarding and steering in personalization: the need for practice-orientated empirical evidence." *Policy Design and Practice* (2020): 1.
34. Carey *et al.*, "Quasi-market shaping, stewarding and steering in personalization", 2.

Our research – common experiences of older consumers

In this chapter we identify a range of common experiences across different markets and market structures. We draw on CPRC's research examining in-home care, collaborative research into retirement villages, and the broader literature considering essential service markets such as residential energy, telecommunications and financial services.

We highlight four experiences resulting in poor consumer outcomes:

Inaccessible marketplaces

Unfair products, services and market design

A lack of consideration for real-world decision-making

Limited recognition of varying consumer engagement and motivation

Common experience 1: inaccessible marketplaces

Across a range of markets, a common problem for older consumers is the inaccessibility of marketplaces. We have identified three factors that contribute to inaccessible marketplaces:

- a lack of adequate market infrastructure to enable informed decision-making through easy searching, comparison and switching
- limitations with intermediaries in accessing marketplaces
- difficulty navigating online marketplaces.

Before considering each of these factors, we examine the difference between a market and a marketplace; an important distinction to make if essential and important services are to be truly accessible to older consumers and consumers more generally.

What's the difference between a market and a marketplace?

Ever since people began trading, markets have existed as a physical space where people could go to buy and sell a range of products. Buying milk, bread and the Saturday paper remains relatively unchanged, in physical spaces like supermarkets and convenience stores that remain widely accessible to consumers. In these physical marketplaces, a range of alternatives are available, enabling consumers to make side-by-side comparisons about price, quality and features thus providing them with meaningful choice. Marketplaces have also enabled people to trade services and to negotiate terms and prices in these physical spaces where people gather to buy other goods.

Here we distinguish a marketplace from a market. From a regulatory perspective, the development and health of a market is often measured by indicators such as the number of firms competing in the market, the market shares of firms and the level of concentration, the spread of prices, the extent of innovation and customer switching rates. Market dimensions as understood in competition law and policy include the product or service itself, its function, the geographic bounds of the market and the temporal bounds of the market.[35]

Adopting a consumer-centric perspective, a marketplace can be defined as a particular location where people can access key information about a range of goods or services, compare this range of suppliers, and choose/purchase a good or service. In this sense a marketplace is the infrastructure that brings into being the abstract concept of a market.[36] This location might be physical (for example, in the case of a supermarket), a digital platform or tool, or even verbally articulated by a broker, advisor or other intermediary. A marketplace can be considered on a continuum. At one end, there may be a highly deficient or imperfect marketplace (e.g. a single monopoly provider/product available). At the other end, a 'perfect' marketplace may offer significant diversity of products and providers that are well-understood, easily comparable and easy to switch between. A perfect marketplace is unlikely to exist. It appears closer to the theoretical concept of an efficient market.

35. *Queensland Cooperative Milling Association Ltd/Defiance Holdings Ltd, re proposed merger with Barnes Milling Ltd* (1976) ATPR 40-012 https://www.accc.gov.au/business/anti-competitive-behaviour/anti-competitive-conduct#what-is-the-market-
36. Florian Stahl, Fabian Schomm, Gottfried Vossen, and Lara Vomfell. "A classification framework for data marketplaces." *Vietnam Journal of Computer Science* 3, no. 3 (2016): 137-143. https://doi.org/10.1007/s40595-016-0064-2

Importantly, an effective marketplace as defined here necessarily enables comparison and the ability to choose a provider, with minimal search and switching costs between alternative products or services available. Search costs are caused by the time and effort required to find information about different products and services.[37] In the absence of an effective marketplace that minimises search costs and facilitates effective comparison, the burden lies with consumers to access information provided by various firms, understand this information, effectively compare this information and choose a particular service over another, each time they need to buy a service or want to switch providers.[38] And consequently, where consumers (or their agents) cannot easily compare and discipline the market through informed choices, firms can eschew competitive pressure with regards to price, quality and terms of sale. As noted by Diamond, even where there are multiple sellers, firms may be able to charge monopoly prices if consumer search is limited.[39]

CPRC developed a framework of preconditions for effective consumer engagement, which provides a useful starting point for thinking about what infrastructure is required to facilitate an effective marketplace.[40] These elements include:

- awareness of the marketplace
- genuine access to the marketplace
- comprehensible information and minimal search costs
- ability to easily compare product/service providers
- easy switching processes.

In addition to these demand-side or consumer-driven elements, market stewards need to consider who provides or facilitates the marketplace. Where policymakers rely on a commercial intermediary to provide or facilitate a marketplace, business incentives need to be aligned with consumers' interests. Where marketplaces are facilitated or developed by commercial intermediaries, they may face financial incentives to skew the range of products and services on offer, as well as the presentation of the marketplace.

Consequently, a key responsibility for market stewards is to ensure that these marketplaces exist, that they are effective, and that they are accessible to all people who need to use them.

Deficient marketplaces

In the absence of adequate market infrastructure—that is, a clear and accessible location in which people can obtain important information about products and services, compare, choose and switch—marketplaces may be deficient. Where marketplaces are deficient, the burden of significant search costs and effort falls to consumers. This can result in shallow searching and potentially ineffective comparison of different providers. This not only creates significant potential for poor consumer outcomes but may also increase market inefficiencies if firms compete to attract consumers through marketing rather than competing on price, quality or genuine innovation.[41]

37. Lionel Page, "Disclosure for real humans." *Behavioural Public Policy* (2019): 3. https://doi.org/10.1017/bpp.2019.23
38. Ben Martin Hobbs and Lauren Solomon, *Five preconditions of effective consumer engagement – a conceptual framework,* (Consumer Policy Research Centre, March 2018).
39. Amelia Fletcher, "Disclosure as a tool for enhancing consumer engagement and competition." *Behavioural Public Policy* (2019): 2. DOI: https://doi.org/10.1017/bpp.2019.28
40. Martin Hobbs and Solomon, *Five Preconditions of Effective Consumer Engagement.*
41. Office of Fair Trading, *What does Behavioural Economics mean for Competition Policy?,* (March 2010), 19.

There is a deficient marketplace for retirement villages in Victoria. Like other private housing markets in Australia, the retirement village market is premised on proactive consumer choice. There is no default option or allocated housing; people must choose between competing retirement villages and other forms of housing. However, unlike other forms of private housing, consumers must also assess the numerous options and contracts available within a particular retirement village, considering a range of services that are typically bundled into the purchase price and a highly complex cost structure. The 2017 Parliamentary Inquiry into the Retirement Housing Sector identified much of the complexity consumers face. The Inquiry found the total cost of a retirement village unit is difficult to estimate, comprising numerous, inconsistently calculated individual costs, including entry costs, ongoing fees and charges, exit costs such as deferred management fees, the costs of refurbishing or reinstating a unit on leaving, any sharing of capital gains or losses with the village, and ongoing charges after leaving a retirement village until the unit is sold or re-leased.[42] In many ways, the decision to enter a retirement village has a similar level of complexity to decisions about complex financial products.[43]

Comparison of different retirement villages, package options within villages, and alternatives to villages presents prospective buyers with a highly complex, multifaceted array of choices. For an older person seeking to find and compare different options, the marketplace is effectively non-existent and remains an abstract construct. While there are a handful of tools that help people to work out the costs of a single retirement village,[44] it is difficult for people to first identify different retirement villages, through sources such as ‘seniors’ newspapers, paper handouts, word of mouth or the limited comparison sites that list a highly select number of retirement villages on a commercial basis.[45] People must then seek out contracts and disclosure documents which outline complex fee structures. The complexity and legwork involved in navigating multiple information sources and locations means there is not an accessible, effective marketplace for retirement villages, placing an undue burden on the individual.

Research conducted for CPRC found a minority of retirement village residents considered only a few alternatives when making a decision about their housing. Of the sample of 950 retirement village residents, almost a third (30%) only considered one retirement village, a third (33%) considered different types of housing, and only 29% considered different options within a village. These findings suggest that search costs may be excessive, resulting in a highly limited consideration of alternatives. While the majority (91%) of respondents reported they were confident using the internet, 61% of respondents found information on online forums/websites only slightly useful or not useful at all.[46] Moreover, much of the information accessed across a range of sources was considered of low use by respondents.[47] These findings suggest there is limited competitive pressure placed on retirement villages by the demand-side of the market, in large part due to a lack of adequate market infrastructure such as an effective comparison tool, that enables easy searching and comparison of housing alternatives.

Across many complex markets and essential service sectors, there are few intermediaries that provide both a whole of market view and the capacity to switch providers. This can create significant search and switching costs and results in deficient marketplaces. In the residential energy market, commercial online comparators provide a comparison of a limited number of providers, typically those with whom they have commercial relationships. However switching is often facilitated through an affiliated call-centre. In the home loan market, comparison websites enable consumers to compare home loan information from a wider range of institutions but do not facilitate switching. Mortgage brokers help consumers to switch providers insofar as they can help prepare an application, but again, research suggests brokers tend to draw their comparisons from a small selection of financial institutions, from whom they receive commissions.[48] Where these intermediaries provide a different quality of comparison, or range of providers, this places the onus on consumers to compare the results of different intermediaries. The desirability of competing marketplaces raises questions around market efficiency given the effort required of consumers.

42. Parliament of Victoria, Legislative Council, Legal and Social Issues *Committee Inquiry into the Retirement Housing Sector*, (2017), 31-57.
43. Sue Malta, Maho Omori and Tim Kyng, *Improving consumer decision-making about retirement housing,* (Consumer Policy Research Centre, 2020).
44. See for example, the online Retirement Village calculator developed at Macquarie University http://www.rvcalculator.org/#/calculator
45. See Comparevillage.com.au – stakeholders indicated this comparator displays only high-end retirement villages.
46. Malta, Omori and Kyng, *Improving consumer decision-making about retirement housing*, 14.
47. Ibid.
48. ASIC, Looking for a mortgage: Consumer experiences and expectations in getting a home loan (REP 628), (2019).

Limitations with intermediaries

Online comparison websites and digital comparison tools have seen a rapid uptake across an increasing number of consumer markets. As noted in CPRC's *Five Preconditions of Effective Consumer Engagement* report, online comparison websites, platforms and aggregators ('digital intermediaries') can significantly reduce the time and effort required to compare a range of products or services through a single platform, compared with researching individual offers presented on providers' own websites. As noted by Byrne, de Roos and Beaton-Wells: 'websites that present retail price distributions and identify lowest-cost retailers to consumers correspond closely to the clearinghouses in theoretical models of consumer search'.[49]

Where digital comparison tools enable people to compare whole of market and seamlessly switch between different providers, they can provide an online marketplace. This is a function envisioned by the Open Banking and Consumer Data Right reforms. The Open Banking reforms are intended to provide consumers access to their own transaction data, which they can share between financial institutions to switch banks more easily and potentially access new low cost finance or other financial products. This transferability of services based on consumers' own usage data will subsequently be rolled out in residential energy markets and telecommunications. For market stewards, there are clear efficiency gains in shifting service delivery online.[50] Where products or services are especially complex, and particularly where service providers do not have consumer-facing storefronts (as in the case of residential electricity providers) or are geographically dispersed (as per retirement villages), these clearinghouse websites have the potential to become invaluable in facilitating a marketplace.

Likewise, in-person intermediaries, such as brokers, can help create a marketplace and/or facilitate access to existing marketplaces, by translating complex product or service information from a range of different providers. In-person intermediaries may be particularly important where people have limited access to the internet or low digital literacy. Evidence from our in-home care research suggests that even where an online marketplace is made available, face-to-face assistance from a trusted advisor may be a prerequisite for some consumers to access the marketplace. When making a choice about an in-home care provider, almost two thirds of respondents in our survey (61%) relied on another individual, often medical professionals or family and friends, to help them choose. Moreover, those who self-reported cognitive or sensory limitations (e.g. problems with concentration/decision-making) were less likely to make choices unassisted. Only a quarter (27%) of survey respondents with poor concentration made choices unassisted compared with those with good concentration (42%), while only 16% of those with poor decision-making capacity made a selection unassisted compared with 42% of those with good decision-making capacity. Where intermediaries themselves are potentially uninformed (which may be the case for family and friends) this raises questions about whether certain intermediaries are able to offer quality advice about how to access and navigate a marketplace.

Further, where policymakers and regulators have relied on commercial firms to develop marketplaces, the incentives of intermediaries (both online and in-person) may not be aligned with those of consumers. Where commercial intermediaries have a profit motive, there may be an inherent conflict of interest, particularly where intermediaries are intended to address search costs and information asymmetries.

Across a number of sectors, there is now a wealth of evidence to show that commercial incentives often depart from consumers' own interests, which requires a clearer role for market stewards to regulate intermediaries in complex markets or develop them directly. In the retail energy market, for example, there have been a number of examples of misleading and deceptive conduct among digital intermediaries.

49. Page, "Disclosure for real humans", 295.
50. Deloitte Access Economics, *Digital government transformation - Billion dollar benefits in driving digital transactions- A report commissioned by Adobe* (2015). https://www2.deloitte.com/au/en/pages/economics/articles/digital-government-transformation.html

The ACCC's final report of its Retail Electricity Pricing Inquiry outlined some of the concerns put forward by energy retailers about commercial comparator websites:

- businesses who rely on digital intermediaries raised concerns that commercial comparators' websites and their sales teams may not always adequately disclose their fees and commissions
- comparators do not ensure that customers are fully informed about their decisions
- commissions received by third party intermediaries may influence the offers they recommend.[51]

The ACCC has grouped concerns with digital intermediaries into two key categories:

- third party intermediaries do not always make recommendations that are in the best interests of consumers
- third party intermediaries do not always adequately disclose the number of retailers and offers that they consider in making a recommendation to a consumer. [52]

In its inquiry, the ACCC recommended the Australian Government prescribe a mandatory code of conduct for third party intermediaries.[53]

The Financial Services Royal Commission echoed the ACCC's concerns with commercial intermediaries, particularly mortgage brokers in the market for home loans. The Royal Commission found that the commercial arrangements provided significant opportunity for conflicted advice, resulting in large upfront commissions as well as trailing commissions.[54] The Financial Services Royal Commission recommended the introduction of a best interests duty requiring mortgage brokers to act in the best interests of consumers.[55] ASIC's own research into mortgage brokers also found some brokers provide a highly limited comparison of different loans, typically drawing from a select few financial institutions through which they earned a commission.[56]

Regulators have also sought to address conflicts of interest by requiring providers to declare these conflicts. However, ASIC's research has found consumers' trust in sales staff may paradoxically increase as a result of these disclosures.[57] Particularly when provided with financial advice, many consumers have a misunderstanding about the incentives and obligations of financial advisors. ASIC's research has found that nearly two in five (38%) consumers incorrectly thought that the financial adviser had a responsibility to consider the consumers' financial circumstances. A similar number (38%) incorrectly believed an adviser was required to act in the consumers' best interests.[58] This is particularly problematic where information asymmetries exist, and consumers expect these intermediaries to help them understand and compare complex products or services.

Evidence also suggests consumers are sensitive to design aspects of online comparison tools. ASIC conducted user testing with consumers to develop and refine a superannuation product dashboard tool, intended to simplify complex product disclosure statements on a website, with the intention to improve engagement. The testing found consumers were sensitive to seemingly insignificant design details including size, order, consistency, placement, format and terminology. This suggests online comparison tools designed and developed by firms with commercial incentives and arrangements with providers may be vulnerable to manipulation.[59]

51. ACCC, *Retail Electricity Pricing Inquiry – Final report,* 275.
52. Ibid., 275.
53. Ibid., 282.
54. Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report,* Vol. 1, 1 February 2019, 45.
55. Ibid.
56. Australian Securities and Investments Commission (ASIC) and the Dutch Authority for Financial Markets (AFM), *Disclosure: Why it shouldn't be the default* (REP 632), (October 2018).
57. ASIC and AFM, Disclosure: *Why it shouldn't be the default* (REP 632), (2019), 42.
58. ASIC, *Financial advice: Mind the gap* (REP 614), (March 2019).
59. ASIC and AFM, *Disclosure: Why it shouldn't be the default* (REP 632), (2019), 30.

As noted in the Harper review of competition policy, the incentives for intermediaries in markets for human services should be aligned with the older people being cared for.[60] In the current in-home care system, case managers who provide older Australians with advice about services tend to be housed within the service providers themselves, which raises questions about the independence of the advice provided. Even if this potential conflict can be resolved, a broader question for policymakers and regulators is whether commercial firms can be relied on to develop marketplaces for complex service sectors; that is, whether it is possible to align the incentives of commercial intermediaries with the consumers they are supposed to serve.

The alternative is for market stewards to develop their own marketplace tools. In the residential energy market, both the Australian Energy Regulator and the Victorian Government have developed independent comparison websites that provide whole-of-market coverage, with standardised key service information. All retail offers in the market must be uploaded to these websites in a format determined by the comparator. While these government run comparison sites enable consumers to compare different prices, they do not currently enable consumers to compare the quality of providers. Further, these comparison websites do not facilitate online switching, which limits the utility of these comparators as an effective marketplace. Moreover, these websites, as the designated marketplace for all consumers, hinge on consumers' ability to access these online tools and confidence to use them.

Difficulty accessing online marketplaces

Even where digital intermediaries provide universal coverage of a market and enable effective comparison of services with capacity for seamless switching, access can be problematic for particular consumer groups. In the case of some older Australians, there is evidence this group is less confident using the internet. They use the internet less to research products and services before purchase, to search for information about government services and less to buy products or pay bills.[61] This is not to suggest that older Australians cannot or will not use digital intermediaries and virtual marketplaces but the research shows they may not be as equipped as other demographic segments.

The 2016-17 Australian Household Use of Information Technology report found nearly one in seven Australian households (13.9%) still do not have access to an internet connected device at home, largely unchanged since the previous 2013-14 survey.[62] While internet use and fluency is improving across the board, there are still vast differences in ability and access among particular segments of the community. While 98% of those aged 15 to 17 years were internet users in the 2016-17 study, among those aged 65 years and over, only 55% were internet users.[63]

In their *Understanding Digital Behaviours of Older Australians* research, the Office of the eSafety Commissioner found that as Australians get older they are more likely to report they never use the internet to buy products or services, pay bills, research products and services before shopping instore, or even search for information about government services or companies online.[64]

60. Harper et al., *Competition Policy Review: Final Report,* 36.
61. Ipsos, *Understanding digital behaviour amongst adults aged 50 years and over,* (Office of the eSafety Commissioner, 2018), 91-92, https://apo.org.au/node/174271
62. Bureau of Statistics, *8146.0 - Household Use of Information Technology, Australia, 2016-17*, 28 March 2018. https://www.abs.gov.au/ausstats/abs@.nsf/mf/8146.0?OpenDocument
63. Ibid.
64. Ipsos, *Understanding digital behaviour amongst adults aged 50 years and over,* 91-92

Figure 2: Online behaviour of older Australians (Source: Ipsos, "Understanding digital behaviour amongst adults aged 50 years and over", A report for Office of the eSafety Commissioner, 2018, 91-92)

The presumption that digital literacy can be increased and that less digitally literate consumers can be taught to use the internet, may also conflict with the preferences of some older Australians. The Office of the eSafety Commissioner found:

> Close to two-thirds of participants agreed that they only learned how to do tasks that they really had to, followed by close to half who agreed they tended to forget how to do things on devices as they didn't do them often enough. About one-in-three did not like experimenting with devices as they would then have to ask for help or might find themselves accidentally changing things and needing help to set them right.[65]

Moreover, when older people were asked about what might encourage them to use the internet more, almost half (49%) said they 'didn't want to use the internet more'.[66]

Older Australians in need of in-home care reported low confidence and use of the internet. CPRC's research found that almost half of home care package recipients (44%) were either not at all confident or not very confident using the internet.[67] Moreover, those receiving level 3 or 4 package funding – typically those with higher assessed care needs – were less confident using the internet when compared with the total sample.[68] In the context of in-home care, those with higher levels of funding typically require a broader range of care and support services. The particular personal needs of the individual may further complicate or even prevent access and navigation of online marketplaces. Our research found few older people receiving in-home care used the government's online marketplace, the My Aged Care portal (6.8%), or had relied on an internet search more generally (5.8%) to find and compare information about their home care package.[69]

65. Ibid., 96.
66. Ibid., 79.
67. Ben Martin Hobbs, *Choosing care: the difficulties in navigating the Home Care Package market,* (Consumer Policy Research Centre, 2020), 33.
68. Ibid.
69. Ibid., 2.

Research demonstrates the importance of trusted individuals, rather than online tools, to assist people access in-home care. CPRC-funded qualitative research with older people in rural Victoria exploring experiences accessing in-home care found low awareness of the assistance that is available, and the difficulty older Australians can have navigating online systems:

> I think that the people are not - I know this, that people don't even know it exists and that has to be doctors or people who come in contact with older people. They're the ones that should be - I feel really strongly about that because even my little gardening girl that comes, she said that she goes to all these old people who have to pay for their assistance and they get nothing and they don't know - they can't go online. They don't know anything about things like that. So the people that they come in contact with, like a doctor or when they go for that they have to after they're 75, that's when it should be picked up.[70]

In-home care is primarily sought when someone encounters an issue with their health, illness or reduced mobility. Consequently, health professionals are instrumental in prompting older people to seek access and recommend assistance:

> it was [Health Service] that pushed the barrow and they got My Aged Care here to come and assess [my wife].
>
> I spoke with my GP and I said, what services do you think I need to get this right? We had a general discussion about it and then he encouraged me to put in an application to My Aged Care and it came about through that, through discussion with others that are consuming the service. The GP, who's now preparing quite a comprehensive medical care plan for us… Our GP … I think he referred us to the – for the assessment.[71]

Virtual or online marketplaces may be appropriate for forthcoming generations of Australians who are more digitally literate and more confident navigating virtual/online marketplaces. However, for many older Australians, online marketplaces can be difficult to access or navigate. Market stewards should consider how different groups of people will access the marketplace and the barriers they may face in traversing particular forms. Where barriers to access or navigation are significant, or compromise people's use of essential and important services, alternative channels or supports should be developed by market stewards.

70. Irene Blackberry, Clare Wilding, Marita Chisholm, David Wishart, William Keeton, Carina Chan, Mary Fraser, Jennifer Boak, Kaye Knight, Lynne Horsfall, *Empowering older people in accessing aged care services in a consumer market - Project final report*, (Wodonga: John Richards Centre for Rural Ageing Research, La Trobe University, May 2020), 17.
71. Ibid.

Key lessons

In a range of complex consumer markets there is evidence of an inaccessible or ineffective marketplace. Where the marketplace itself is inadequate, consumers face excessive search, comparison and switching costs, which mutes the effectiveness of demand-side pressure in achieving good consumer outcomes. The development of online comparison tools and switching services has somewhat addressed these costs. However, while online digital comparison tools and platforms have the potential to partly address these deficiencies, the profit motive and incentives of commercial intermediaries may not align with consumers' incentives, skewing the marketplace and potentially misleading consumers. Independent or government run digital comparison tools can address misaligned incentives. However, in many markets these sites remain comparison tools without the capacity to switch providers. For some older people with limited digital literacy, access or confidence, online marketplaces can be difficult and may be a less preferred medium to engage in a market.

Common experience 2: unfair products, services and market design

Another common experience among older consumers identified in our research is unfair products, services and market design. Even if people can access a marketplace, they can still be disadvantaged by:

- a lack of basic, comprehensible information about the products and services available to them
- complexity in information disclosure, resulting from lengthy disclosure and inherent complexity, or strategic complexity and obfuscation
- exploitation of low consumer engagement to the advantage of businesses.

A lack of basic, comprehensible information

Information disclosure has historically been policymakers' primary tool to address information asymmetries about products or services. Information asymmetries refer to a situation where firms know more about the cost, quality, features or terms of their good or service than consumers.[72] Because effective markets are premised on consumers making informed choices, information asymmetries create fundamental inefficiencies that undermine the effective functioning of markets. Firms may fail to meet disclosure obligations or fail to adequately refer consumers to this information, either unintentionally or deliberately.[73] Firms may lack incentives to provide particular information to consumers, to ensure information is comprehensible, and may even face barriers to standardising the disclosure of information. Consequently, the responsibility to ensure businesses provide this information lies with market stewards because businesses do not necessarily have incentives to provide this information and cannot be relied on to self-regulate.

Older Australians may be disadvantaged by a lack of basic information about their in-home care. One of the key tools assisting home care package recipients to manage their care is a 'care plan' (or 'support plan'), which outlines the services to be provided in order to meet the assessed needs of the individual. Providers are obligated to supply a care plan to in-home care recipients, yet our research found 39% of respondents to our survey reported they either were not provided with a care plan or were unaware whether they had one.[74] This tool is essential for an older person to hold a provider to account for the various services and hours of care contracted via their home care provider. Yet our research suggests many providers are either failing to meet this obligation or failing to ensure home care package recipients are aware of and assisted to use their care plan.

Information about the quality of a product or service is also necessary for efficient markets, but this information is often unavailable to consumers at the point of purchase. Akerlof first noted this issue in the market for second-hand vehicles, where buyers face significant difficulty in differentiating a 'lemon' (a dud vehicle) from a 'peach' (a well-working/good quality vehicle). Sellers have a good idea of the quality of their vehicle, but if they seek to profit maximise, they may not price their 'lemon' competitively with other market offerings – including 'peaches'. Consequently, where buyers have few (if any) indicators of quality, they are beholden to the honesty of sellers to price their vehicle commensurate with the quality.

72. See George A. Akerlof, 'The Market for "Lemons": Quality Uncertainty and the Market Mechanism', *Quarterly Journal of Economics* 84, no. 3 (August 1970): 488–500.
73. Petra Persson, "Attention manipulation and information overload." *Behavioural Public Policy* 2, no. 1 (2018): 78-106.
74. Martin Hobbs, *Choosing care,* 29.

This same principle can be applied to services which are often categorised as 'experience goods' – where consumers only fully understand the quality after consuming or experiencing the service. Quality can refer to either the 'customer care' aspects of a service or technical qualities; for example, the speed of a broadband connection. Where consumers cannot evaluate the quality of service before purchase, firms eschew competitive pressure to improve quality.

Resolving problems with services creates significant additional costs which are borne by consumers.[75] In many complex markets, including banking and finance and residential energy, there are few if any public facing measures of service quality, despite the damning findings uncovered in regulatory inquiries. Research has found Australians have low trust in these sectors, which may partly be a consequence of the poor quality of service.[76] As noted by The Ethics Centre, 'individuals and organisations will find it difficult (if not impossible) to operate effectively if they do not enjoy the trust and confidence of the community in which they are located.[77]

For information about aspects of quality to be useful to consumer decision-making, it needs to be comprehensible, comparable, and (ideally) market-wide. But as Spiegler notes, even where firms produce 'good' products or services they may have an interest in weakening consumer decision-making if they can thereby reduce market competition and increase profits.[78] There may be no incentive to develop comparable information about aspects of quality with competitors – and anti-collusion regulations may even inhibit businesses determining processes for collecting and publishing internal data. Consumers may perceive information supplied by businesses themselves to lack independence. And where businesses voluntarily fund third parties to produce quality comparison ratings, non-participating businesses have no obligation to participate, reducing the comparability of the entire market.[79] For these reasons, market stewards need to ensure that comparable information about the quality of products and services is provided.

In some sectors, basic information about service quality to ensure consumer protection is provided through regulatory requirements, but this often lacks the detail to enable consumers to differentiate between 'lemons' and 'peaches'. In our in-home care research, the quality and reputation of the service provider was identified as the most important characteristic when choosing between service providers (32% of survey respondents), and 80% of respondents endorsed the proposal for better information about the quality of providers.[80] In the case of in-home care, the My Aged Care website (effectively the primary marketplace for in-home care) provides information about provider non-compliance or sanctions. This does enable in-home care recipients to identify which providers have failed to meet minimum requirements but not to effectively differentiate high from low quality providers.

75. In the 2016 Australian Consumer Survey, the total cost to resolve problems and complaints in the residential energy, banking and finance (including insurance), internet and telecommunications sectors alone was estimated at $6.26 billion, see Ben Martin Hobbs, *"But are they any good?"*, (Consumer Policy Research Centre, 2018), 3.
76. Roy Morgan*, Bunnings, ALDI and Woolworths on top in Net Trust Scores,* 12 November 2019 https://www.roymorgan.com/findings/8199-roy-morgan-risk-monitor-november-2019-201911110700
77. The Ethics Centre, *Trust, Legitimacy and the Ethical Foundations of the Market Economy,* (2018), 4.
78. Ran Spiegler, 'Competition over agents with boundedly rational expectations,' *Theoretical Economics, Econometric Society,* 1(2) (2006): 207–231 cited in Amelia Fletcher "Disclosure as a tool for enhancing consumer engagement and competition." *Behavioural Public Policy* (2019): 10.
79. Consumer Affairs Victoria, "Designing Quality Rating Schemes for Service Providers", *Research Paper No. 5,* (March 2006), 14.
80. Martin Hobbs, *Choosing care,* 27.

While information about the quality of products and services is important in most markets, it will not always be appropriate to rely on consumers to interpret this information and make assessments about quality themselves. For example, in the financial services sector, most consumers lack the necessary specialist skills, knowledge and experience to accurately judge the quality of a service, despite the provision of disclosure statements. In a small-scale study, ASIC conducted shadow shopping research with real consumers who sought retirement advice and found a significant gap between the technical quality of the advice (as assessed by ASIC) and consumers' own assessment of that advice. Although 86% of consumers considered the advice they received to be 'good', the ASIC assessors considered only 3% of the advice was good, with the remainder rated as 'adequate' or 'poor'.[81] This points to limitations of disclosure about quality or features where markets are particularly complex, such as retirement villages, where consumers are strongly encouraged to seek both legal and financial advice before entering into a contract (see p.34).

Translating complex service quality information for consumers: quality of NBN speeds

In the context of the COVID-19 pandemic, access to a quality internet connection has become an important way to remain connected to others.

In 2018 the ACCC introduced a public facing measure of broadband speed for a selection of broadband providers in Australia – effectively measuring a technical aspect of service quality. In consulting on the proposal for the measure, the ACCC's found 'four out of five consumers have trouble comparing broadband speeds… causing a high level of complaints, confusion, and dissatisfaction'.[82] The introduction of this measure also followed a number of ACCC actions against Telstra, Optus, TPG, Dodo, iPrimus and Commander, MyRepublic, iiNet and Internode, and Active8me in relation to misleading broadband speed claims.[83] This measure was developed despite initial industry opposition in 2013, on the basis that the market did not need this information.[84]

The ACCC's program relies on Australians volunteering to install probes to measure the service delivered to their home – effectively providing an ongoing audit of service quality. The inaugural Monitoring Broadband Australia report – which measured four providers – found that 'five per cent of services tested operated at less than 50 per cent of their maximum plan speeds' – which highlights speed variability within even a few providers.[85] The measure also provides easily comparable information about the speed of different kinds of technology being used in the roll out of the National Broadband Network, and compares this to ADSL – dispelling misinformation that the NBN was slower than the previous technology.

81. ASIC, *Shadow shopping study of retirement advice (REP 279)*, (March 2012).
82. ACCC, "Confusion about broadband claims prompts ACCC guidance", 10 February 2017. https://www.accc.gov.au/media-release/confusion-about-broadband-claims-prompts-accc-guidance
83. ACCC, "Internet provider Activ8me in court for alleged misleading advertisements", 5 December 2018 https://www.accc.gov.au/media-release/internet-provider-activ8me-in-court-for-alleged-misleading-advertisements
84. Communications Alliance Ltd, Part 2 - *Response to ACCC Consultation Paper on Broadband Monitoring and Performance in the Australian Context,* 27 September 2013, 4. https://www.accc.gov.au/system/files/Communications%20Alliance%20submission%20-%2027%20September%202013.pdf
85. ACCC, *Australia's broadband speeds: first report,* (29 March 2018), https://www.accc.gov.au/media-release/australias-broadband-speeds-first-report

Complexity in information disclosure

As a consumer protection tool, information disclosure is premised on the notion that information is ‘cheap’ for consumers to process.[86] On this basis, consumers are considered informed once firms disclose relevant information, and it is supposed people will choose according to their preferences and thereby discipline the market, forcing suppliers to self-regulate to stay competitive.[87] But there is growing evidence to demonstrate the limitations of disclosure. Information disclosure is often lengthy or complex, which may be an unintentional outcome, including as a result of regulatory requirements. However, firms may also disclose information that is *strategically complex* – which meets compliance obligations but seeks to obfuscate key information and exacerbates information asymmetry. This strategic complexity often relies on the cognitive overload and stretched attention of consumers – also referred to as *behavioural inattention*.[88] Growing evidence indicates consumers do not read lengthy disclosure documents across a range of sectors.[89]

Lengthy disclosure and inherent complexity

The complexity of retirement village contracts and the associated disclosure statements demonstrates the limitations of disclosure requirements. As previously discussed, retirement village agreements are akin to highly complex, multifaceted financial products. This complexity is typically the product of the range of leaving/exit costs imposed on residents (including deferred management fees), which each retirement village calculates differently. Some large village operators offer several products within the one village, each with different fee structures, further confusing prospective buyers. In its Inquiry into the Retirement Housing Sector, the Parliament of Victoria noted that retirement village contracts are long (exceeding 100 pages) and technical, which means understanding rights and obligations is particularly difficult.[90] However, people are not well-equipped to deal with this inherent complexity, nor are they necessarily expected to. Consumers Affairs Victoria recommends consumers seek advice from a legal and/or financial advisor who understands the implications of retirement village contracts, in order to understand the information in contracts and disclosure documents.[91] Yet our research with residents of retirement villages found less than half (48%) had sought legal advice and less than 10% had sought financial advice prior to entering a retirement village.

This recommendation is also problematic because legal advice on retirement village agreements can be difficult to find, and even when obtained, few practitioners specialise in retirement housing legislation or provide advice on contracts.[92] In the research conducted for CPRC, of those retirement village residents who did seek advice, only 34% found the information provided by legal advisors to be extremely/very useful, and 40% perceived the information as slightly or not useful at all. The results were even more pronounced for accountants/financial advisors, with 45% of respondents rating their advice as not at all or only slightly useful.[93] Qualitative evidence further supported these findings; one respondent reported that ‘[I] did use a lawyer but they don’t really seem to understand retirement village contracts’ and ‘[It was] really difficult to find a solicitor who understands these contracts.’

The retirement village market highlights the limitations of relying on firms to provide comprehensible information through disclosure requirements. It also provides a case study of the limits of a secondary market (i.e. a commercial intermediary) to address the complexity and information asymmetry which is not resolved through disclosure requirements. Even the nominated experts – one of the main protective mechanisms for consumers – struggle to understand the information disclosed.

86. Lionel Page, “Disclosure for real humans”, *Behavioural Public Policy*, (Cambridge University Press, 2019) doi:10.1017/bpp.2019.23
87. Page, “Disclosure for real humans”, 4.
88. See Xavier Gabaix, “Behavioural inattention.” In *Handbook of Behavioral Economics: Applications and Foundations* 1, vol. 2, pp. 261-343. (North-Holland, 2019).
89. Insurance Council of Australia, *‘“Too Long; Didn’t Read” - Enhancing General Insurance Disclosure Report of the Effective Disclosure Taskforce to Insurance Council Board’*, (October 2015); ASIC and AFM, *Disclosure: Why it shouldn’t be the default - REP 632,* (2019).
90. Parliament of Victoria, Legislative Council, Legal and Social Issues Committee, *Inquiry into the Retirement Housing Sector,* (2017), xvi.
91. Consumer Affairs Victoria, “Before signing a retirement village contract” https://www.consumer.vic.gov.au/housing/retirement-villages/choosing-a-retirement-village/before-you-sign-a-retirement-village-contract [accessed Jan 10, 2020]
92. Parliament of Victoria, Legislative Council, Legal and Social Issues Committee, *Inquiry into the Retirement Housing Sector,* xvi.
93. Malta, Omori and Kyng, *Improving consumer decision-making about retirement housing,* 14.

Strategic complexity and obfuscation

Firms may circumvent the intent of information disclosure requirements with strategically complex information – as providers may have an economic incentive to exploit or confuse consumers.[94] Strategically complex information may take advantage of consumers' behavioural biases, their 'bounded rationality' – which refers to consumers' limited cognitive capacity to process all information available – and the demands on their attention. As noted by Persson:

> when a consumer's attention is limited, her ultimate purchasing decisions may hinge on what she pays attention to; this, in turn, incentivizes firms to engage in attention manipulation – that is, strategic actions to influence how she allocates her attention.[95]

Across a range of markets there is evidence of firms employing strategic complexity in their pricing. In the residential energy sector, for example, there has been widespread use of strategically complex pricing, which recent federal and Victorian reforms have sought to address.[96] It has been common for energy retailers to advertise large pay-on-time discounts, often in excess of 30%, which were often artificially inflated by changing the basis from which the discount applied.[97] Discounting as a pricing mechanism exploits the 'anchoring' heuristic, where consumers rely on a reference point as the basis for decision-making.[98] In the case of these pay-on-time discounts, the underlying tariff (the standing offer) provided an anchor or reference point against which retailers competed on discount size.[99] Inflating discounts is not unique to the energy market; the ACCC has taken action against retailers selling consumer goods online for increasing prices during a promotion period to inflate the size of discounts advertised.[100]

Evidence indicates that consumers make decision-making errors when making decisions about complex financial products. Lunn and colleagues have found that once people have to take into account more than two or three different factors in making a decision, our ability to identify good and bad deals becomes strikingly inaccurate.[101] This becomes particularly pertinent where firms bundle various products together (e.g. energy and telecommunication services), prices are partitioned (i.e. they do not include additional taxes, fees or surcharges), or consumers are required to comprehend and trade-off different aspects of a product or service.[102] For example, research into personal loans tested whether consumers' decisions were affected when different information was made explicit in the offer. The results indicate that consumers chose to repay the loan over a longer period when the size of the monthly repayments (a smaller amount) was highlighted rather than when the overall financial cost was highlighted (a larger total repayment cost).[103]

94. Jon D. Hanson and Douglas A. Kysar. "Taking behavioralism seriously: The problem of market manipulation." *NYUL Rev.* 74 (1999): 630.
95. Petra Persson, "Attention manipulation and information overload." *Behavioural Public Policy* 2, no. 1 (2018): 78-106.
96. See Essential Services Commission, "Electricity and gas retail markets review implementation 2018", https://www.esc.vic.gov.au/electricity-and-gas/inquiries-studies-and-reviews/electricity-and-gas-retail-markets-review-implementation-2018; and Department of Industry, Science, Energy and Resources, "Prohibiting energy market misconduct", https://www.energy.gov.au/government-priorities/energy-markets/prohibiting-energy-market-misconduct
97. ACCC, *Retail Energy Price Inquiry,* 257
98. For more on the anchoring heuristic see Petr Houdek, "A perspective on consumers 3.0: they are not better decision-makers than previous generations." *Frontiers in psychology* 7 (2016): 848.
99. ACCC, *Retail Energy Price Inquiry,* 257
100. ACCC, "Kogan in Court for alleged false or misleading discount advertisements", 23 May 2019 https://www.accc.gov.au/media-release/kogan-in-court-for-alleged-false-or-misleading-discount-advertisements ACCC, *Kogan pays $32,400 penalty for alleged false or misleading representations in a Father's Day promotion,* 18 January 2016. https://www.accc.gov.au/media-release/kogan-pays-32400-penalty-for-alleged-false-or-misleading-representations-in-a-fathers-day-promotion
101. Pete Lunn, Marek Bohacek, Jason Somerville, Aine Ni Choisdealbha & Feidhlim Mcgowan, *PRICE Lab: An investigation of consumers' capabilities with complex products,* (Economic & Social Research Institute, May 2016).
102. Greenleaf, "Partition Pricing".
103. The Economic and Social Research Institute, "Consumers Are Confused by Personal Loans", 7 July 2016, http://www.esri.ie/news/consumers-are-confused-by-personalloans/

The use of lengthy disclosure documents may also reflect the use of strategic complexity. In its Digital Platforms Inquiry, the ACCC found evidence of a range of practices considered 'significantly detrimental for consumers' relating to the digital platforms' terms of use and privacy policies.[104] The ACCC noted that significant information asymmetries and bargaining power imbalances were caused by unfair contract terms hidden in lengthy contracts. In particular, the ACCC drew attention to practices such as:

- changing terms on which products or services are provided without reasonable notice, including in cases of subscriptions or contracts that automatically renew
- inducing consent or agreement by offering very long contracts or providing insufficient time to consider them, or all-or-nothing 'click wrap' consents.[105]

Through the Open Banking reforms, it is anticipated that online marketplaces will be able to draw on consumers' own personal usage data to provide comparisons of complex products, or even to provide cheaper services. However, consumers may be required to navigate and consent to lengthy disclosure contracts in order to share their data with these marketplaces. In the absence of adequate protections against the use of strategic complexity in lengthy contracts, these reforms may result in poor consumer outcomes and may inhibit the development of trusted and effective digital marketplaces.

Difficulties simplifying complexity and disclosing conflicts

In seeking to address complexity, regulators have often tried to simplify information through prescriptive disclosure requirements. Yet even where disclosure requirements are met for simplified information, evidence suggests consumers may not understand the information presented. As noted in ASIC's recent report on the limitations of disclosure, one of the fundamental shortcomings of disclosure interventions is that they do nothing to reduce the underlying complexity of a product or service.[106]

Consumer research has shown the limited impact of attempts to simplify more complex pricing information on consumer outcomes. A study for the Financial Rights Legal Centre examining consumer choices about home insurance showed only 41% of people provided with 'simple' key fact sheets selected the objectively best insurance product, and 59% of people provided with either the 'simple' key fact sheet or longer product disclosure statement made suboptimal choices. In some groups, up to 42% of people chose the worst product on offer.[107] Likewise, research conducted by the BI Team found 90% of respondents were unable to determine a relatively simple calculation about electricity use with a time-of-use tariff using a pricing table developed by the regulator as part of a Basic Plan Information Document.[108] The research also found the best formats of this basic information document saw just over half (54%) of consumers choosing the best of four plans, while 11% chose an objectively inferior plan seemingly because it had a higher discount on usage.[109] Ben Shahar and Schneider argue that 'simplifying fails because the complex isn't simple and can't easily be made so'.[110] There are a range of contexts where market stewards should consider addressing the underlying complexity of a product or service rather than seeking to simplify disclosure through prescriptive regulation.

104. ACCC, *Digital Platforms Inquiry – Final Report,* (June 2019), 26
105. Ibid.
106. ASIC and AFM, *Disclosure: Why it shouldn't be the default,* (2019), 5.
107. Ibid., 14.
108. BI Team, *BIT review of Basic Plan Information Document – Final Report,* (Australian Energy Regulator, 2018), 14. https://www.aer.gov.au/system/files/Review%20of%20Basic%20Plan%20Information%20Document%20-%20Final%20Report%20-%20April%202018_0.pdf
109. Ibid.
110. Omri Ben-Shahar and Carl E. Schneider. *More than you wanted to know: The Failure of Mandated Disclosure.* (Princeton University Press, 2014) cited in Page, "Disclosure for real humans".

Exploitation of low consumer engagement

Traditional economics anticipates that the active choices of more ‘sophisticated’ consumers (well informed and engaged consumers) help to shield less sophisticated consumers (ill-informed and disengaged consumers) from being taken advantage of by firms.[111] Where firms face competitive pressure from this group of engaged, informed consumers, they will, in theory, compete to provide higher quality and lower prices, from which the entire demand-side benefits.[112] This theory relies on the assumption that firms cannot offer a homogenous product at different prices, or on different terms for different consumers. But if more engaged/informed consumers can be targeted separately from less engaged/uninformed consumers, firms can segment the market and potentially charge different prices to different types of consumers, even if the number of engaged consumers increases.[113]

In markets for ongoing essential and important services, evidence from recent years indicates businesses seek to impose a ‘loyalty tax’, to take advantage of consumers who rarely engage in the market. In the residential electricity market, research for the AEMC’s 2017 Retail Energy Competition Review found that approximately 37% of consumers had not searched for a better offer in the past five years, concluding that those consumers are more likely to be on higher-priced offers than engaged consumers.[114] The ACCC’s Retail Electricity Pricing Inquiry found evidence of both widespread disengagement among consumers and deliberate attempts to segment consumers based on their degree of engagement. The ACCC’s inquiry found one retailer’s internal document set out a proposed strategy for communicating with disengaged consumers to minimise the chance that the customer would be prompted to enquire about a better deal: ‘succinct and written in a friendly tone but worded to limit customer responses.’[115] Moreover, for inactive or ‘loyal’ customers, retailers appear willing to intentionally increase their prices and use the customer’s loyalty against them. For example, the ACCC found a strategy document referring to the disengaged (passive) customer segment, comprising 87% of that big three retailer’s customers, contemplated that ‘[t]he aim is to increase customer value to this passive group via increased margin’.[116]

111. Oxera, *Behavioural insights into Australian retail energy markets,* 2016, 41, citing Hal Varian, ‘A Model of Sales’, *The American Economic Review*, 70:4, September (1980): 651–9.
112. Ibid.
113. Oxera, *Behavioural insights into Australian retail energy markets.*
114. ACCC, *Retail electricity pricing inquiry,* 236.
115. Ibid.
116. Ibid., 144.

The problem of loyalty taxes for older consumers

The ‘loyalty tax’ or ‘loyalty penalty’ occurs when firms are able to charge higher prices to their existing customers, expecting that these customers are unlikely to switch providers to a cheaper deal. It is particularly prevalent where services are an ongoing purchase – i.e. where service providers are automatically renewing or rolling customers’ contracts over to a higher rate. It also occurs when introductory prices expire, where successive price increases take place each year or where longer-term customers pay higher prices for similar services to new customers. The result is that in many cases, people who stay loyal to their supplier end up paying significantly more than new customers. This is particularly problematic in essential services and other important services where service is necessarily ongoing.

In the UK, consumer group Citizen’s Advice made a super-complaint to the Competition and Markets Authority (CMA) about firms taking advantage of consumers through the loyalty penalty in five markets: mobile; broadband; cash savings; home insurance; and mortgages. The CMA noted estimates suggest this penalty could amount to £4billion in total across the five markets considered.[117] The loyalty penalty causes frustration for people and may have the additional effect of eroding people’s trust in the market to produce good consumer outcomes, which may have flow on effects for subsequent engagement. The loyalty penalty also has distributional impacts. The CMA has observed that the loyalty tax can cause particular harms to older people – as often mechanisms to switch provider are online.[118]

Segmentation of customers appears to be problematic across other essential service sectors. Fels and Cousins have identified similar problems in the market for insurance. Their research from 2018 showed, on average, customers renewing their insurance policy paid 27% more than new customers, while data from July 2019 indicates the difference between new customers and existing customers has risen to 34% – amounting to hundreds of dollars for the average home and contents insurance policy.[119] In banking, ASIC has identified that some Australian banks defaulted loyal customers whose term deposits had expired into ‘new’ term deposits with significantly lower interest rates than available alternatives.[120] The ACCC’s interim report on home loan pricing found a loyalty tax is being charged to existing customers compared with new customers.[121] The Reserve Bank of Australia has similarly found consumers with existing loans had discernibly higher interest rates than those with newer loans.[122]

If markets and marketplaces become increasingly data driven, market stewards may not be able to rely on a critical mass of active consumers to ensure good outcomes for the whole consumer base if firms can distinguish between engaged and less engaged consumers. Personalised usage data may enable firms to segment the consumer cohorts and charge different prices to different types of customers (referred to as third degree price discrimination).[123] This might extend beyond the loyalty tax to charging different consumers different prices depending on other characteristics – examples already indicate attempts to price according to whether individuals access comparator websites via a Mac/Apple-device or a PC/android-device or location.[124] Moreover, where firms are able to draw on more behavioural data that is unique to the individual, they may be able to steer consumers to products and services that closer match what they are willing to pay in real-time – referred to as first degree price discrimination.[125]

117. Competition and Markets Authority, *Tackling the loyalty penalty - Response to a super-complaint made by Citizens Advice on 28 September 2018*, (19 December 2018), 6. https://assets.publishing.service.gov.uk/media/5c194665e5274a4685bfbafa/response_to_super_complaint_pdf.pdf
118. Ibid., 7.
119. Emergency Services Levy Insurance Monitor, *Pricing differences: New vs existing customers Discussion Paper,* (2018), 28. https://www.eslinsurancemonitor.nsw.gov.au/sites/default/files/DiscussionPaper_Pricing_New%26Renewals_FINAL.pdf; Alan Fels, “Simple fixes could help save Australian consumers from up to $3.6 billion in ‘loyalty taxes’”, *The Conversation*, 15 July 2019, https://theconversation.com/simple-fixes-could-help-save-australian-consumers-from-up-to-3-6-billion-in-loyalty-taxes-119978
120. ASIC and AFM, *Disclosure: Why it shouldn’t be the default* (REP 632), 26
121. ACCC, *Home loan price inquiry*, 14 October 2019. https://www.accc.gov.au/focus-areas/inquiries-ongoing/home-loan-price-inquiry/ministerial-direction
122. Michael Janda, “Existing borrowers gouged by banks offering new mortgage discounts, RBA says”, *ABC News*, 7 February 2020 https://www.abc.net.au/news/2020-02-07/existing-borrowers-gouged-banks-offering-new-mortgage-discounts/11943508
123. Phuong Nguyen and Lauren Solomon, *Consumer data and the digital economy,* (Consumer Policy Research Centre, 2018), 24.
124. Ibid.
125. Ibid., 24

Key lessons

Disclosure requirements have historically been considered an adequate consumer protection to address information asymmetries, and to enable effective consumer choice. However, our findings across retirement villages, in-home care, and essential service markets suggest there are many contexts where businesses fail to convey information in a way consumers can understand, either unintentionally or deliberately. Firms may lack incentives to disclose comprehensible information and may be limited in their capacity to develop comparable market-wide information.

Complex, lengthy disclosure documents are now common, which are overwhelming and almost universally unread. There is also evidence of businesses providing strategically complex information in an effort to stymie consumer choice. One solution has often been to call for simplified information disclosure, however this fails to resolve the problem where the underlying complexity with the product or service remains. Finally, where consumers vary in their engagement, businesses have been able to segment consumers and exploit low levels of engagement by ‘taxing’ loyal or inactive customers.

Market stewards cannot continue to rely on compliance with disclosure requirements as the default consumer protection to address information asymmetries and ensure firms provide fair products and services. Nor can market stewards necessarily rely on a critical mass of active consumers to ensure good outcomes for the whole consumer base if firms can segment loyal or unengaged consumers. As markets become more data-driven, the ability of firms to discriminate between individuals will increase. This requires a new approach from market stewards to ensure markets deliver fair outcomes.

Common experience 3: a lack of consideration for real-world decision-making

Another common theme emerging from our research is a lack of consideration for real-world decision-making, in both designing markets and providing products and services. Competition policy and market deregulation has been premised on the assumption that consumers will make rational decisions if they are provided with perfect information. But the evidence from behavioural economics and psychology paints a different picture – that consumers often make choices that are not in their own best interests. In fact, they often systematically depart from the rational-decision making model.[126] Older consumers are no exception, and like others, are affected by:

- ‘bounded rationality’ and the burden of information overload
- varying decision-making processes and styles
- the ‘choice architecture’ presented to them, which surreptitiously guides and influences their choices.

‘Bounded rationality’ and the burden of information overload

Behavioural economics has long challenged the idea that consumers make perfectly rational decisions. Herbert Simon’s theory of *bounded rationality* holds that individuals have a limited capacity to assimilate and digest all the information required to make perfectly rational decisions. There is evidence that more choice does not guarantee that people will choose well or choose at all. In their widely cited study on shoppers’ decision-making about different kinds of jam, Iyengar and Lepper observed that ‘though consumers prefer contexts that offer them more rather than fewer options, subsequently the very contexts that offer more options can prove debilitating during the choice process’.[127]

When faced with complex choices or a large array of choices (‘choice sets’), people may encounter choice overload. Two key consequences can arise from choice overload. First, choice overload may lead to choice paralysis, where people are overwhelmed to the extent that they simply do not choose at all. Second, choice overload can result in people making decisions that are less optimal, or that result in poor outcomes. Simon argued that individuals often rely on ‘heuristics’, or rules of thumb, when required to make complex decisions. Rather than making perfectly rational decisions, Simon contended that people reverted to satisficing[128] – identifying the options that are ‘good enough’, rather than processing all the information available to maximise their welfare or preferences.[129]

There is a long (and growing) list of behavioural biases that affect decision-making.[130] People may draw on readily available information that is easily accessible in memory and springs to mind quickly (availability bias), especially personal anecdotes of family/friends.[131]

126. Daniel Kahneman and Amos Tversky, “Judgment under Uncertainty: Heuristics and Biases”. *Science* 185, no. 4157 (1974): 1124–31. https://doi.org/10.1126/science.185.4157.1124
127. Simona Botti and Sheena S. Iyengar. “The dark side of choice: When choice impairs social welfare.” *Journal of Public Policy & Marketing* 25, no. 1 (2006): 24-38.
128. Herbert Simon, *Models of bounded rationality*, (Cambridge, MA, MIT Press: 1982).
129. Ibid.
130. For a recent review of biases see Petr Houdek, “A perspective on consumers 3.0: they are not better decision-makers than previous generations.” *Frontiers in psychology* 7 (2016): 848.
131. Elisha R. Frederiks, Karen Stenner, and Elizabeth V. Hobman. “Household energy use: Applying behavioural economics to understand consumer decision-making and behaviour.” *Renewable and Sustainable Energy Reviews* 41 (2015): 1388.

This is particularly important in reaching older people who need support though in-home care. Our research with rural Victorians accessing in-home care suggests there is low awareness of the various supports available:

> The only reason I know there's somebody who will take you, say, to hospital, and bring you home from hospital, because next door has used it and she goes through the same health [service]. So, it's word of mouth.[132]

People may also rely on trust as a simple decision-making heuristic when assessing risks and making cost-benefit appraisals.[133] Again evidence from rural Victorians indicates individuals trust and rely on local health services – one respondent noted a GP recommended in-home care would be necessary and this advice "helped make my decision that I should go ahead with it".[134]

In the previous chapter we identified long and complex disclosure agreements as problematic because they unfairly burden consumers with comprehension. As part of consumers' bounded rationality, Simon has argued our time and attention is a key resource which is limited further by overwhelming information, like long disclosure agreements:

> In an information-rich world, the wealth of information means a dearth of something else: a scarcity of whatever it is that information consumes. What information consumes is rather obvious: it consumes the attention of its recipients. Hence a wealth of information creates a poverty of attention and a need to allocate that attention efficiently among the overabundance of information sources that might consume it.[135]

There is now a wealth of literature finding consumers are overwhelmed by and often do not read unreasonably long disclosure statements. CPRC's own research into in-home care for rural older Australians found consumers are often overwhelmed with the information provided. One interviewee noted that:

> I selected about half a dozen [home care packages] and by the time they sent their packages, I had such a wad of stuff that I used to hide it behind the couch there because it was so much of it… It didn't tell you enough and it was sort of written in their kind of style that it occurred to me that so many people just wouldn't know what they were getting at… it was an overload of information. It was just too much … Really, it took me a couple of months where I did very little in the evening beside trying to work these packages out. I felt quite stupid, actually.[136]

132. Blackberry *et al.*, *Empowering older people in accessing aged care services in a consumer market,* 14.
133. Frederiks *et al.*, "Household energy use," 1390.
134. Blackberry *et al., Empowering older people in accessing aged care services in a consumer market*, 12.
135. Herbert Simon, "Designing Organizations for an Information-Rich World", in M. Greenberger (Ed.), *Computers, Communications, and the Public Interest.* (Baltimore, MD: Johns Hopkins Press 1971).
136. Blackberry *et al.*, *Empowering older people in accessing aged care services in a consumer market,* 17.

Findings from our retirement village work suggest residents struggle to properly understand contracts and disclosure documents. 42% of respondents to the survey said they had a very good understanding of their contract and disclosure statements, yet reported a low level of understanding of some important contract features, such as the time taken to receive exit payments on departure.[137]

Qualitative responses also revealed difficulties with understanding contracts and disclosure documents, with many respondents commenting they should be made simpler and clearer as they were too difficult to understand: "Simple contract, more detailed information in plain wording, found it difficult to understand."[138]

Another respondent found the information provided lacked clarity about what was actually provided: "Would have preferred more factual info, not so much misleading marketing puffery."[139]

Others indicated the ownership arrangements in their contract were inherently complex and confusing, leaving them unclear about what they had bought into: "A clear description of the type of contract [is needed]. We pay an upfront fee from which a certain percentage is deducted each year for five years and the remainder is paid out on exit. This is not a lease or ownership or a rental. So what is it?"[140]

While consumers need to be provided with key information about products and services, the information disclosure paradigm – which assumes more informed consumers will make more informed choices – has been proven flawed. Regulators and policymakers need to consider more carefully how consumers actually make decisions to ensure marketplaces are effective.

137. Malta, Omori and Kyng, *Improving consumer decision-making about retirement housing,* 42, 24.
138. Ibid.
139. Ibid.
140. Ibid.

Varying decision-making processes and styles

Mandated disclosure requirements and interventions often take a 'one size fits all' approach. However, evidence demonstrates that decision-making processes and styles differ from person to person. People have varying preferences about the kinds of information they rely on and how they engage with information. An individual's decision-making process and style may change depending on the context and choice architecture presented to them.

People may use distinctly different decision-making processes when making a choice about the same product or service. Ethnographic research conducted by the Insurance Council of Australia examining how individuals purchase home insurance found consumers varied in how they engaged in decision-making processes. The only two stages in the process shared by most consumers were 'starting to look' and 'deciding', and consumers often conducted stages in a different sequence. When asked whether they had read the key fact sheet, 8% reported they had not; 22% reported they read some but not all of the document; and 69% conducted either a detailed or quick read of the information.[141]

Decision-making styles are often diverse and context specific, changing according to the product or service. Segmentation analysis conducted by the Dutch Financial Regulator found that consumers might be classified under different segments in different contexts, and consumers might shift from one segment to another over time. In some cases consumers may be far more confident and choose unassisted. In others they may seek confirmation, while at other times decision-making may be dictated by how convenient the choice is.[142] Notably, a consistent theme in ASIC's consumer research is that many consumers pay more attention to, and are more influenced by, what they are told by sales staff than disclosure documents.[143] CPRC's retirement villages research found commercial sources, such as retirement village open days, tours and salespeople, were some of the most relied on information sources when making the major financial commitment to enter a retirement village. However, such sources can be highly conflicted or partial. The research found that despite relying quite heavily on salespeople, only 36% learned about major exit costs such as deferred management fees via a salesperson.[144]

Even where certain types of information are regulated and aspire to simplification, it is problematic to assume people will seek out this information. Forthcoming CPRC research, conducted in collaboration with RMIT's Behavioural Business Lab, has found that a segment of consumers prefers to receive what we refer to as 'rational information' – that is, hard data about the products or services they are comparing – while others prefer to rely on the views and opinions of others. Some people indicated a preference for both kinds of information, while others preferred *neither* – which might suggest more impulsive decision-making. These findings tend to cut across traditional socio-economic indicators. For example, our research found no correlation between income and those who were more likely to be rational information seekers. Policymakers may need to consider and trial information provision via multiple channels to reach different consumer segments, recognising these preferences.

For those encountering vulnerability or disadvantage, decision-making can be more difficult. Mani and others have found that scarcity of time, money and attention can directly impact individuals' decision-making. In particular, 'preoccupations with pressing budgetary concerns leave fewer cognitive resources available to guide choice', and they conclude that there may be a direct causal link between poverty and temporarily reduced cognitive capacity.[145]

141. ASIC and AFM, *Disclosure: Why it shouldn't be the default.* 34-35.
142. Ibid., 36.
143. Ibid., 24.
144. Malta, Omori and Kyng, *Improving consumer decision-making about retirement housing,* 29.
145. Anandi Mani *et al.*, 'Poverty Impedes Cognitive Function', *Science* 341, no. 6149 (30 August 2013): 976.

The effect of context and choice architecture on decision-making

The rational choice model assumes consumers can and will choose according to their tastes, referred to as preferences. A key insight from behavioural economics is that our preferences are not necessarily stable or consistent over time; instead they can be affected by the context in which we make them.[146] In one experiment, workers choose a snack from a menu containing unhealthy options (e.g. Mars bars) or healthy options (e.g. apples) to be delivered at a designated time the following week.[147] The experiment was randomly controlled and found individuals' snack preferences changed according to whether they were asked immediately after lunch (more likely to choose healthy snack) or mid-afternoon (more likely to choose Mars bar), which provides us evidence of context based preferences.[148] Thomadsen and others define context as 'factors that have the potential to shift the choice outcome by altering the process by which the decision is made'.[149] This includes our physical environment (choosing online vs with a salesperson), social factors (how do others choose and if our social network has a vested interest), our own habits and learned responses, the presentation of information and the presence of default options.

This means that choices can never be framed completely neutral. As noted by Johnson and others, 'any way a choice is presented will influence how the decision-maker chooses'.[150] It also means that firms may seek to shape the *choice architecture* to their benefit. Choice architecture can be defined as the way choices are presented to consumers resulting from both government regulations, and businesses' presentation of their product or service (through marketing etc) and varying degrees of compliance with these regulatory requirements. Firms may minimise any frictions to enable more impulsive choices and purchases, while key information which might give us pause for thought may be obscured in a lengthy terms and conditions document.[151] As outlined by Sunstein and Thaler, 'choice architecture is inevitable' and the 'choice architect has the responsibility for organizing the context in which people make decisions' to reduce harm and enable consumers to maximise their own welfare.[152]

The medium through which consumers access information also creates an additional contextual factor. Research suggests people take less time to process information presented on a screen, and can be more likely to skim read and rush thinking. This effect may be stronger when using devices with smaller screens, such as mobile phones. And again, this effect may be amplified when people use mobile phones when distracted, or 'on the go', increasing the potential for rushed, shallow thinking, or for visual biases to affect our decisions.[153]

146. Gerardo Infante, Guilhem Lecouteux, and Robert Sugden. "Preference purification and the inner rational agent: a critique of the conventional wisdom of behavioural welfare economics." *Journal of Economic Methodology* 23, no. 1 (2016): 1-25.
147. Daniel Read and Barbara van Leeuwen, "Predicting hunger: the effects of appetite and delay on choice", *Organizational Behavior and Human Decision Processes* 76, (1998): 189– 205 cited by Infante et al., "Preference purification and the inner rational agent".
148. Ibid.
149. Raphael Thomadsen, Robert P. Rooderkerk, On Amir, Neeraj Arora, Bryan Bollinger, Karsten Hansen, Leslie John et al. "How context affects choice." *Customer Needs and Solutions* 5, no. 1-2 (2018): 3-14.
150. Eric J Johnson, Suzanne B. Shu, Benedict GC Dellaert, Craig Fox, Daniel G. Goldstein, Gerald Häubl, Richard P. Larrick et al. "Beyond nudges: Tools of a choice architecture." *Marketing Letters* 23, no. 2 (2012): 487-504.
151. Richard Thaler, "Nudge, not sludge." *Science* 361 (2018): 431-431.
152. Richard Thaler and Cass Sunstein, *Nudge: Improving decisions about health, wealth and happiness,* (New Haven: Yale University Press, 2008).
153. See, for example, J Dunaway, *Mobile vs. computers: Implications for news audiences and outlets* (PDF 352 KB), Discussion Paper #D-103, (Shorenstein Center on Media, Politics and Public Policy, August 2016); and Shlomo Benartzi, *The smarter screen: Surprising ways to influence and improve online behavior,* (Portfolio, New York, 2015).

Older people and decision-making

There is a growing interest in the differences in behaviour of older consumers, though the literature is still emerging and somewhat fragmented. The research now points to a range of dimensions that affect ageing beyond a simple chronological trend. The social, psychological and biological dimensions of ageing affect our behaviours and decision-making in different ways.[154]

The existing research suggests older people's consumer decision-making is nuanced and diverse. Normal cognitive ageing may result in greater knowledge accumulation but slower information processing.[155] Research suggests a negative correlation between financial literacy and age – one large study (n=3873) found a decline in financial literacy levels, with each year after the age of 60 being associated with a decline of 1.36 percentage points.[156] Older consumers tend to engage in a more limited information search process which can create greater difficulty in selecting a preferred option.[157] Reduced cognitive capacity can also cause problems in discerning between relevant and irrelevant information owing to increasing field dependence (i.e. the inability to separate details from the surrounding context).[158] Consequently, where businesses deliberately disclose complex information or engage in 'shrouding' – highlighting certain attractive features of a product (such as upfront entry fees) while making other equally important features less visible (for example, the deferred management fee in retirement villages) – older consumers may be vulnerable to making poor decisions.[159]

Decision-making styles of older Australians

ASIC research on the financial decision-making styles of older Australians highlights the diversity of experience, capability and vulnerabilities among older people:[160]

Choice limited (22 per cent): Most financially vulnerable and prioritising meeting day-to-day expenses and paying rent; less likely to be able to cover unexpected expenses; less likely to be well informed about financial issues day-to-day or planning for their future; more likely to find financial matters to be difficult to understand; least likely to seek professional financial advice.

Today-focused (19 per cent): Less likely to plan for the future, unlikely to seek financial information or advice until a problem arises; less likely to stay informed about financial issues.

Reactive risk takers (6 per cent): Less confident about the future, naïve investors, vulnerable to scams; find dealing with money to be stressful and overwhelming; more likely to find financial matters to be difficult to understand.

Cautious investors (16 per cent): Relatively comfortable but lack confidence in dealing with financial issues.

Savvy investors (26 per cent): Comfortable and enjoying life, well informed, confident in financial issues.

Choice rich (11 per cent): The most well-off of all older people with high confidence; able to enjoy life; prioritise investments and helping their family financially; stay informed about financial issues; more likely to have a long-term financial plan.

154. Dominik Hettich, Stefan Hattula, and Torsten Bornemann. "Consumer decision-making of older people: a 45-year review." *The Gerontologist* 58, no. 6 (2018): e349-e368; Robert Zniva and Wolfgang Weitzl. "It's not how old you are but how you are old: A review on aging and consumer behavior." *Management Review Quarterly* 66, no. 4 (2016): 267-297.
155. CMA, *Consumer Vulnerability: Challenges and Potential Solutions*, (February 2019), 12.
156. Michael S. Finke, John S. Howe, and Sandra J. Huston. "Old age and the decline in financial literacy." *Management Science* 63, no. 1 (2017): 213-230, cited in Russell et al., *Financial wellbeing: Older Australians,* 11, https://bluenotes.anz.com/content/dam/bluenotes/documents/ANZ%20Financial%20Wellbeing%20Report%202018_web.pdf
157. Hettich et al., *"Consumer decision-making of older people".*
158. Ibid.
159. Xavier Gabaix and David Laibson. "Shrouded attributes, consumer myopia, and information suppression in competitive markets." *The Quarterly Journal of Economics* 121, no. 2 (2006): 505-540.
160. ASIC, *Building seniors' financial capability - Overview of market research conducted to support strategy development for the 55+ population (Report 537)*, (2017) http://download.asic.gov.au/media/4416939/rep-537-published-17-august-2017.pdf

The literature also suggests that some aspects of our cognitive abilities and capacity can remain largely intact as we age, while other kinds decline. Taking a psychological approach, cognitive abilities are determined by two kinds of intelligence – crystallised intelligence and fluid intelligence.[161] Crystallised intelligence refers to knowledge and skills that accumulate from prior learning over a lifetime, and includes vocabulary, facts and procedural knowledge. Without cognitive impairment, this kind of intelligence can continue to develop, or remains steady into someone's 70s or 80s.[162] Fluid intelligence can be defined as 'the speed and capacity for generating, transforming and manipulating information', or the capacity to learn new things and solve unfamiliar problems.[163] Psychologists suggest that fluid intelligence peaks around 40, though others suggest it may be even earlier.[164] For older consumers, this means learning how to use new technologies or navigate new marketplaces may become difficult.

Where older Australians have difficulty accessing marketplaces themselves, they may seek assistance from key trusted individuals. Research from the UK suggests older consumers often resort to workarounds or 'coping mechanisms' in accessing and dealing with retail banking products (for example), as well as drawing on existing support networks where possible.[165] Where internal knowledge about a product or service is non-existent or inconsistent, older people are inclined to rely on both impersonal sources (such as mass media) as well as personal sources such as family members or experts.[166] As noted, our research into in-home care found a high reliance on healthcare professionals as well as family and friends to access and navigate the market. Where newly deregulated markets require consumers engage in complex choice processes – such as in-home care – ensuring that older people have access to independent, reliable intermediaries to assist with choice is essential.

However, more intensive assistance is required for a subset of older people who experience greater degrees of age-related decline and severe forms of cognitive impairment such as dementia. Almost 10% of Australians over the age of 65 and 30% aged 85 and over have dementia, and dementia is the single greatest cause of disability in Australians aged 65 and over.[167] People with dementia are likely to be particularly vulnerable and at risk when navigating markets.[168] The condition will affect a large and growing part of the population in future. Developing supported decision-making mechanisms to facilitate choice for those with more limited cognitive abilities will be essential across *all* consumer markets, but this is particularly true of markets where older consumers encountering dementia may be expected to make more complex decisions, such as in-home care.

161. Denise Park and Nobert Schwarz, *Cognitive aging: A primer,* (Center for Retirement Research at Boston College Research Brief, 2012), 16-17.
162. Ibid.
163. Russell et al., *Financial wellbeing: Older Australians,* 65.
164. Ibid.
165. CMA, *Consumer Vulnerability: Challenges and Potential Solutions,* (2019),13; Hettich *et al.*, "Consumer decision-making of older people".
166. Hettich *et al.*, "Consumer decision-making of older people".
167. Russell *et al., Financial wellbeing: Older Australians,*11.
168. CMA, *Consumer Vulnerability: Challenges and Potential Solutions,* 13

Key lessons

The design of consumer markets has predominantly been premised on people making rational decisions which 'discipline' the market. But the behavioural economics literature provides a wealth of evidence demonstrating that people often depart from rational decision-making, often in systematic ways. When faced with overly complex information consumers can make poor decisions or make no decision at all. People's decision-making styles also vary widely, as does the kind of information sought out. Further, decision-making is affected by the context in which decisions are made.

The cognitive effects of ageing are complex, varied and multidimensional. Age-related vulnerabilities may mean learning new processes and technologies can be inherently more difficult thus making it more challenging to engage with increasingly complex markets. In the case of reduced cognitive capacity, we may be more vulnerable to exploitation of common behavioural biases or poor decision-making as we age. Further, a growing number of Australians are likely to experience cognitive limitations arising from dementia which will require more advanced support to ensure people can easily access essential services.

Common experience 4: limited recognition of varying consumer engagement and motivation

The fourth common experience highlighted by our research is the issue of low motivation or even no motivation to engage in complex markets. Consumers may not recognise their own need, they may place a low priority on making a choice, they may face significant barriers to making a choice or they may prefer not to choose at all. A muted demand-side creates clear problems for market functionality. Markets rely on consumer engagement – the absence of 'consumer sovereignty' limits the competitive pressure on suppliers to improve their offering. Yet evidence, including our own research, suggests there are contexts where older people may have low motivation to engage in a market, or even may have a preference not to choose. The consumer choice model is also limited in contexts where people cannot learn from their mistakes due to the infrequency of choosing or delayed feedback on whether we have made a 'good' or 'bad' choice. A 'reluctant demand-side' may also have distributional impacts. This section examines:

- the limitations of the consumer choice model
- reluctant consumer engagement
- unconscious disengagement
- the experience of 'choosing not to choose'.

The limitations of the consumer choice model

Consumer policy has traditionally sought to improve consumer outcomes through the requirement that people choose for themselves in markets, rather than governments adopting paternalistic allocations. According to this view, governments should preserve freedom of choice even if it means people choose poorly and reduce their own welfare, and even where this is a consequence of common behavioural traits such as cognitive bias, bounded rationality or scarcity of cognitive capacity.[169] This 'choice equals autonomy' syllogism asserts that people know what is best for themselves, and that unfettered freedom of choice is important for personal growth.[170] While it is reasonable to assert that governments face an intractable knowledge problem in determining people's own preferences, it is also reasonable to design default measures, where no choice is made or choosing is very difficult or consequential, to prevent more material harms.[171]

Consumer decision-making in essential services sectors has revealed consumers often choose poorly. In addition to the experimental research into choices of insurance (discussed above), research into real world outcomes has found consumers making active choices may end up worse off. In their 2010 study of consumer switching activity in the UK, Wilson and Waddams-Price found only a small fraction of switching customers chose the lowest-priced residential retailer. They found switching consumers realised only between 30% and 52% of possible savings on aggregate.[172] While this behaviour may be consistent with consumers facing high search costs, the study also found that 17% to 32% of switching consumers appear to have lost surplus (that is, they made a choice that made them worse off).[173]

169. Barry Schwartz and Nathan N. Cheek. "Choice, freedom, and well-being: Considerations for public policy." *Behavioural Public Policy* 1, no. 1 (2017): 106-121.
170. Ibid.
171. Friedrich Hayek, "The use of knowledge in society." *The American Economic Review* 35, no. 4 (1945): 519-530.
172. Chris M. Wilson and Catherine Waddams Price, 'Do Consumers Switch to the Best Supplier?', *Oxford Economic Papers* 62, no. 4 (October 2010): 648.
173. Ibid.

More interventionist measures are warranted where it is difficult for consumers to learn from their mistakes. This is determined by the frequency of choice and the consequence of poor choices, and the ability of the individual to recognise this harm through feedback. Individuals can learn which flavours of ice-cream they dislike relatively quickly with minimal harms and at low cost. By comparison, choosing a retirement village often entails a large upfront sunk cost with some contract structures creating the potential for significant costs for residents staying only a short time. Older people buy into a retirement village as a one-off purchase – a home to live in during their retirement. The consequence of the choice may not be apparent until the individual – or their family – pays far larger than expected costs upon leaving a retirement village, or realises they cannot switch because the exit fees and other costs are too large. In our research into retirement villages, more than half of respondents (51%) reported some difficulty comparing exit fees (such as deferred management fees) when choosing retirement villages, and 36% were somewhat or very unsatisfied with the exit costs structure once they became a resident.[174] Qualitative responses suggest some residents feel trapped by the financial consequences of their choice:

> "[we've] been here 9 years and still no promised centre, completely feeling trapped and annoyed, would lose too much money if we left"

> "Leaving would be detrimental to our finances as the deferred payment is so high so we are trapped here"

> "How financially difficult it is to leave if unhappy. There is no choice but to stay if not financially able to relocate"[175]

Ongoing services, such as utilities and in-home care, are also more complex, in that they require a single upfront choice but result in ongoing supply of a service. Feedback about the consequence of the choice may also be difficult to determine in the absence of comprehensible and easily comparable information about the price and/or quality of the service. This is particularly problematic where the underlying cost of an ongoing service changes.

174. Malta, Omori and Kyng, *Improving consumer decision-making about retirement housing,* 27.
175. Ibid.

Distributional impacts

Where people encounter vulnerabilities this can exacerbate difficulties in the decision-making process – increasing the actual or perceived search costs. Duflo has argued that choosing is inherently more difficult for those in poverty:

> While the poor have to be responsible for every aspect of their lives, if the rich make no decisions and let the status quo obtain, they are likely to be largely on the right track. For most of the poor, if they do nothing, they are on the wrong track.[176]

Those with more wealth and resources to fall back on can be more confident things will work out if they make mistakes when choosing – referred to as cognitive 'slack', which provides room for mistakes when choosing fails.[177] By comparison, Mullainathan and Shafir found financial stress and urgency has an effect on cognition. This research concludes that when people experience scarcity it taxes their cognitive 'bandwidth' making it difficult to pay attention, deliberate and resist temptation.[178] People experiencing poverty pay a high 'bandwidth tax', making them more likely to make inadvertent mistakes in their decision-making which may perpetuate their poverty further.[179] But importantly, the cognitive pitfalls of those experiencing poverty are contextual rather than inherent. Mullainathan and Shafir found decision-making improved for those individuals who encountered a reprieve from scarcity.[180]

These findings have consequences where choice architecture is already complex and overwhelming. Those already facing cognitive overload due to poverty may find decision-making errors are exacerbated, including the 43% of Australian renters aged 65 years and over who live in poverty.[181] Rather than blaming people for failing to make choices, policymakers should recognise 'the poor are less capable not because of inherent traits, but because the very context of poverty imposes load and impedes cognitive capacity'.[182]

A particularly important finding from behaviour economics is that choices often entail a default option, which results in the status quo. Until recent years, this implicit default has been ignored by policymakers on the presumption that people will inherently make a choice. The behavioural literature demonstrates this status quo bias is one of the most powerful behavioural biases. In a collective energy switching exercise run by British consumer organisation WHICH?, participants opted-in to the process, provided their own consumption information and received a personalised offer and an invitation to switch to a lower cost offer from the participating retailer.[183] However, only 27% of participants completed the process and transferred provider. Many participants who were offered large savings left money on the table – approximately 50% of participants who received an offer equivalent to a saving of £300 per year did not finalise the switch.[184] The study found that 'simply being shown two offers rather than one reduced the probability of switching, all other things being equal'.[185] The research found that 'well-educated, highly-engaged, savings-seeking' participants in the process encountered "pure switching costs" even after all tangible switching costs were eliminated (i.e. wholly perceived or psychological barriers).[186] They concluded that 'policymakers should lower their expectations about the power of consumer engagement to promote competition'.[187]

176. Esther Duflo, "Human values and the design of the fight against poverty" *Tanner Lectures*, (May 2012).
177. Sendhil Mullainathan, and Eldar Shafir. *Scarcity: Why having too little means so much.* (Macmillan, 2013), 83.
178. Ibid., 41–42.
179. Kendra Tully, "Odd bedfellows: how choice architecture can enhance autonomy and mitigate inequality." *Behavioural Public Policy,* (October 2019): 14.
180. Mullainathan and Shafir, *Scarcity*, (2013) 144–145
181. P Davidson *et al*., "Poverty in Australia", 38-39.
182. Mani *et al*, "Poverty impedes cognitive function", 908.
183. Chris Wilson and Catherine Waddams Price. "Do Consumers Switch to the Best Supplier?" *Oxford Economic Papers,* 62, no. 4 (October 2010): 647–68.
184. David Deller et al., "Switching Energy Suppliers: It's Not All about the Money", *SSRN Scholarly Paper* (Rochester, NY: Social Science Research Network, 2017).
185. Ibid.
186. Ibid. 15.
187. Ibid.

Reluctant consumer engagement

For a range of reasons, consumers may be reluctant to engage in a market or have low motivation to actively choose.

In the context of in-home care, for example, the need for care and support is often identified by someone other than the recipient of the service, often a GP, social worker or other health professional, but also may include friends or family. Our research found almost a third (31%) of our sample indicated the primary reason they sought an assessment for in-home care was a recommendation from a health professional.[188] Sometimes this referral begins in hospital:

> I was in … Hospital having a bowel resection done and the social worker there said I needed help when I went home, which was quite right… so the social worker said I needed this care package.[189]

There is also evidence that at times home care package recipients 'essentially had their provider chosen for them' when incapacitated.[190] In one example, an individual was hospitalised after a stroke and was not discharged until they had been assigned a HCP service provider, chosen by the health service.[191]

For others, a conversation with a GP resulted in the referral:

> We had a general discussion about it and then [my GP] encouraged me to put in an application to My Aged Care and it came about through that…Our GP … I think he referred us to the – for the assessment.[192]

In the case of in-home care, there is evidence that some older people had to be persuaded that they needed care and support, particularly as a preventative measure:

> [the health service] convinced us to go with it [a Commonwealth Home Support Package] … because they could see where we would be in 10 years' time – we couldn't.[193]

Other interviewees conceded they were somewhat reluctant to seek assistance:

> they convinced us that we should have it for reasons known only to Health Care Service. I could understand where they're coming from, but it's one of those things you very slowly take up because you think "oh not for me".[194]

The Aged Care Royal Commission heard evidence that those encountering particular limitations might be unaware they needed care and not necessarily in a position to make this choice:

> Ms Dietrich, the primary carer for her mother Beryl, reported that her mother did not realise that she needed help, and if asked her mother would have said that she did not need much.[195]

188. Martin Hobbs, *Choosing care,* 20.
189. Blackberry *et al*, *Empowering older people in accessing aged care services in a consumer market,* 12.
190. Braam Lowies, Christine Helliar, Kurt Lushington and Rob Whait, *The financial capability of older people: a report prepared for Financial Literacy Australia,* (University of South Australia Business School, Australia, 2019), 17, https://apo.org.au/node/223456
191. Ibid.
192. Blackberry *et al.*, *Empowering older people in accessing aged care services in a consumer market,* 12.
193. Ibid.
194. Ibid.
195. Royal Commission into Aged Care Quality and Safety, *Interim Report: Neglect,* vol.1, (2019), 138.

For those without a support network, it may be particularly difficult to access the in-home care system, particularly when faced with certain limitations, such as cognitive limitations or limited English. These findings also reflect the additional burden on health professionals to convince individuals they may need care, refer them for assessment and even help navigate the choosing process. This highlights the limitations of 'user choice' in consumer-directed care markets, resulting in a muted demand-side. A reluctance or low motivation to seek out support and care necessarily limits the competitive pressure that consumers will place on the supply side of a market.

More broadly, research suggests people have varying preferences about the kinds of consumer choices they want to make. In the UK, research from GFK and Consumers Advice found evidence that consumers have their own hierarchy of priorities both about the markets they prefer to engage in, and about markets in which they prefer to spend more or less of their time.[196] Typically, people are more likely to seek a larger variety of options when making hedonic (or self-expressive) choices compared to more utilitarian choices (such as an energy provider).[197] One survey in the US found that people sought more choice in mundane, everyday domains (e.g. flavours of jam) than more consequential domains, such as health care decisions.[198] Chernev and others found that people are more likely to find a large array of choices overwhelming when they are unfamiliar with the product or services, when the choice is relatively complex and difficult and when they are relatively uncertain about their preferences.[199] Finally, there may be key differences in preferences about the number of options between consumer segments. Research from Reed and others found older adults prefer substantially less choice than young adults across a range of health domains (physicians, medicines and hospitals) as well as ordinary consumer goods (cars, apartments and jam).[200]

Unconscious disengagement

Fletcher suggests there is a second category of low consumer engagement and motivation, where people unconsciously disengage. In her example, a working parent may have every intent of switching energy provider but after working all day, cooking, cleaning and putting the kids to bed, researching energy providers is forgotten, reflecting an *intent-action gap*.[201] As outlined above, people have bounded rationality and limited attention – often juggling a range of different priorities and demands on their attention due to life events. The introduction of new markets and their constant evolution places enormous demands on consumers to continue to learn how the market works. This raises questions about the extent to which we *ought* to learn how to engage in different markets. For those who may struggle to access or understand the new market and its marketplace, engaging may be a low priority and continue to fall through the cracks.

196. GFK, "Consumers' hierarchies of priorities", A research report for Citizens Advice, May 2014; Temi Ogunye, *Against the Clock: Why More Time Isn't the Answer for Consumers,* (Citizens Advice Bureau, 25 November 2016).
197. Ibid.
198. Schwartz and Cheek. "Choice, freedom, and well-being", 113.
199. Alexander Chernev, Ulf Böckenholt, and Joseph Goodman. "Choice overload: A conceptual review and meta-analysis." *Journal of Consumer Psychology* 25, no. 2 (2015): 333-358.
200. Andrew E. Reed, Joseph A. Mikels, and Kosali I. Simon. "Older Adults Prefer Less Choice Than Young Adults." *Psychology and Aging* 23, no. 3 (2008): 671-675.
201. For more on the intent-action gap see Frederiks *et al.*, "Household energy use," 1389.

Choosing not to choose

Some consumers may deliberately choose not to engage and make active choices in a market even when choosing might improve overall welfare.

People may consciously choose to disengage. They may consider choosing is burdensome and costly with perceived search costs outweighing the welfare gains.[202] People may overestimate these costs where they have little experience making choices in a market. But this decision might even be considered rational if search costs, comparison costs, and switching costs are indeed excessively high. The evolution of the market can limit the ability to learn how to choose effectively. For example, the Financial Conduct Authority's *Mortgage Market Study* into non-switching consumers found they tend to be loyal to their current provider, they overestimate the difficulties switching, and underestimate the benefits of doing so.[203]

People may find the number of choices overwhelming, leading them to question if they made the right choice or resulting in lower decision satisfaction. When a poor choice leaves someone worse off, they may choose to remain with the status quo out of *loss aversion*. Loss aversion is a particularly strong behavioural bias whereby people feel losses more keenly than similar sized gains, and may then stick with what they have got rather than risk losing by choosing an alternative.[204]

Research has found more choice does not guarantee that people will choose well, or that they will choose at all. Iyengar's jam study highlights how more choice can actually be debilitating, and consequently she argues that the real power of choice involves 'constructing those most meaningful combinations', rather than choosing between a proliferation of more superficial choices that are less meaningful.[205] Where innovation among providers does not result in product diversity that offers genuine value to consumers, there may not be a compelling reason to engage in a market.

When people prefer not to make a decision, Sunstein has argued market designs requiring consumers to make active choices can be as paternalistic as making choices on behalf of an individual – 'to be sure, nanny states forbid choosing, but they also forbid the choice not to choose'.[206] Forcing people to make active choices in a context where they make common and systematic decision-errors might both reduce welfare and violate the agency of individuals who prefer not to choose.[207] This is especially the case for essential services where the consequences of making the wrong choice are more grave, including unaffordable energy supply or poor-quality aged care in the home. Consumer segmentation research identified a quarter of respondents (27%) reported low trust in their energy provider and low confidence to engage in the energy market. A further 20% reported trust in their provider and a preference for the status quo, due to particularly low confidence and uncertainty when faced with overwhelming choice.[208]

Our in-home care research found some respondents preferred to delegate decision-making about their care. Nearly one in five (18%) respondents indicated they would prefer to delegate decision-making to a trusted advisor, rather than receive independent guidance or retain heightened control to choose service providers directly.[209] While this constitutes a minority within our sample, it is important market stewards recognise that consumers with these preferences may exist in some markets and consider design features such as default mechanisms. This is particularly relevant in recently deregulated quasi-markets for human services, where people have only recently been exposed to and expected to make active choices.

202. Cass R. Sunstein, "Forcing People to Choose Is Paternalistic." *Missouri Law Review* 82, no. 3 (2017).
203. Savanta: ComRes, "Mortgage switching research", Financial Conduct Authority, 3 March 2020. https://www.fca.org.uk/news/news-stories/fca-issues-research-mortgage-switching
204. Daniel Kahneman and Amos Tversky, "Advances in prospect theory: Cumulative representation of uncertainty", *Journal of Risk and Uncertainty*, 5, 4 (1992): 297–323.
205. Hanna Rosin and Sheena Iyengar, "Choice & Authenticity" filmed at BX2019, (Behavioural Insights Team, 26 Sep 2019) https://www.youtube.com/watch?v=ZaSSMeT79k4
206. Cass Sunstein, "Choosing not to choose." *Duke Law Journal* 64, no. 1 (2014): 4.
207. Sunstein, "Forcing People to Choose Is Paternalistic", 663.
208. GfK UK Social Research, *Consumer Engagement in the Energy Market 2017 – A report on a survey of energy consumers,* (Ofgem, 2017)
209. Martin Hobbs, *Choosing Care,* 74.

Key lessons

Consumer markets have largely been encouraged to develop on the assumption that people will inherently want to engage in the market, provided structural barriers such as language skills and digital access are not present. For a range of reasons, however, consumers' motivation to engage may be muted. As markets increasingly move online, younger generations may have the relative advantage of familiarity with this medium compared with older generations.

Consumer engagement is nuanced and varied. In some contexts, such as in-home care, older people may not realise they have a need for a particular product or service, and only reluctantly engage with a market. In other contexts, markets without a compelling product or service offering fall down the list of priorities for people with busy or complex lives, and people unconsciously disengage. Finally, some people 'choose not to choose' which may be driven by the reality or perception of an overly complex and time-consuming process. This is problematic in ambiguous choice contexts where people cannot easily learn from their choices because feedback about effectiveness is absent or delayed.

Emerging approaches: towards markets that work for people

Drawing on CPRCs own research as well as recent national and international research, we have outlined four common experiences among older consumers across markets such as in-home care, retirement villages and energy. While the experiences we have described relate particularly to older Australians, they are consistent with the experiences of consumers more broadly. In this section we reflect on the lessons for market, product and service design, and set out five approaches for creating markets that work for people:

- accessible marketplaces driven by market stewards
- inclusive design for fair products and services
- comprehension testing and product simplification to reflect real-world decision-making
- appropriate choice architecture, assisted choice, and default options
- focusing on and measuring consumer wellbeing in markets.

Across different sectors, these features are necessary conditions to facilitate effective markets that work for people. Absent a commitment to a stewardship approach that adopts these strategies, policymakers may need to consider whether delivery through a market model is appropriate at all.

The emergence of market stewardship

In complex markets, policymakers and regulators need to take a greater role in ‘market stewardship’, which involves steering or shaping markets to ensure they deliver good outcomes for consumers. Market stewardship is distinct from regulation per se. It requires a range of actors across government and regulatory institutions to foster functional and sustainable markets. Stewardship therefore involves a more active and interventionist role than that usually ascribed to regulators. A steward creates and manages markets to guard against gaps that could harm citizens.[210]

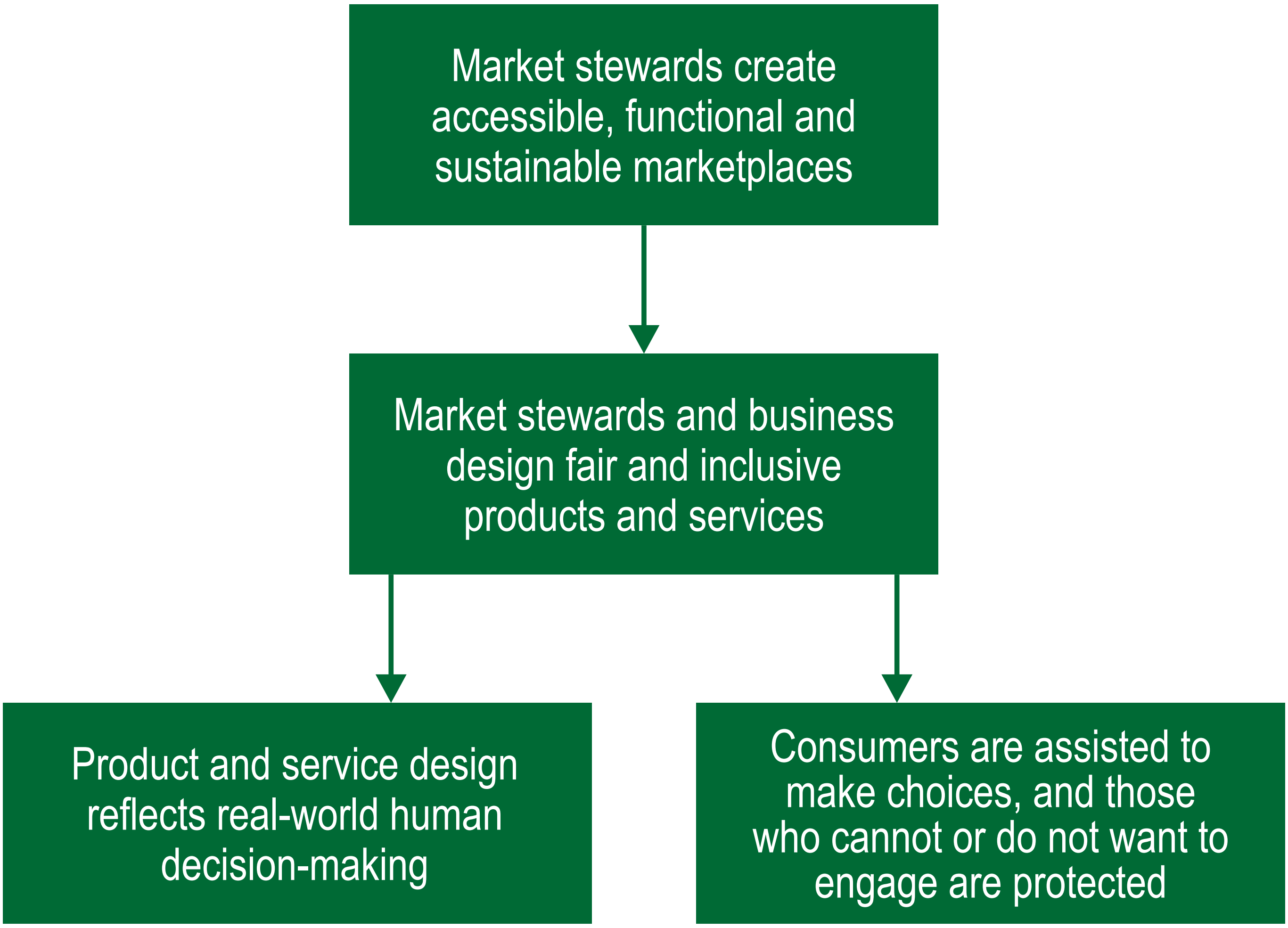
Market stewardship requires a shift in focus from competition policy and nurturing a supply side to a more considered view of how the demand-side, people, are likely to engage and make choices, and the interaction between the two sides of the market. A market stewardship function was advocated by the Harper Review in moving from government delivery of human services to quasi-markets.[211] As outlined by Carey and others, stewardship requires government to:

- ‘engage closely with users, provider organisations and others to understand needs, objectives and enablers of successful delivery
- set the “rules of the game” and allow providers and users to respond to the incentives this creates
- constantly monitor the ways in which the market is developing and how providers are responding to these rules, and the actions of other providers
- adjust the rules of the game in an attempt to steer the system (much of which is, by design, beyond their immediate control) to achieve their high-level aims’.[212]

This greater stewardship role is required both in human services markets as well as other complex consumer markets, such as retirement villages. It is also required in essential services such as energy, finance and telecommunications, where recent inquiries have found evidence of consumer detriment and poor consumer outcomes.

210. Gemma Carey, Eleanor Malbon, Celia Green, Daniel Reeders, and Axelle Marjolin. “Quasi-market shaping, stewarding and steering in personalization: the need for practice-orientated empirical evidence.” *Policy Design and Practice* (2020): 3.
211. Harper et al., *Competition Policy Review: Final Report,* 36.
212. Carey, *et al*., “Quasi-market shaping, stewarding and steering in personalization”, 3.

CPRC's ***Hierarchy of Stewardship Priorities*** is outlined below, which proposes four essential elements for good consumer outcomes.



Flowing through this hierarchy is the need for clearer market stewardship. At the top of the hierarchy is what we consider to be market stewards' primary function -- to address structural questions and ensure effective market infrastructure is in place to create an accessible marketplace.

The second priority is for market stewards to guard against unfair practices by businesses which may be deliberately exploitative, increase the costs of searching for a suitable product or service, complicate comparison, hinder choice or prevent switching altogether. Businesses have a complementary responsibility for fair and inclusive products and services.

Unlike traditional approaches to competition policy that require consumers to be the major drivers of better business practice, pricing and offerings, consumers are ascribed a more realistic place in this hierarchy, recognising the inherent power imbalance between the consumer and business, and the limits of our capacity to engage with markets. Stewards and businesses can design products and services with real-world human decision-making in mind. They can consider why people might not be able to actively engage with a market to develop approaches to mediate and assist choice while protecting people who cannot engage or 'choose not to choose'.

Each of the four elements is described in detail over the following pages.

Accessible marketplaces driven by market stewards

An inaccessible, dysfunctional or underdeveloped marketplace limits the ability of people both to engage in markets and make informed and effective choices – which is required to enable the 'virtuous cycle' of the market to work.[213]

To this end, market stewards must ensure consumers have:

1. **Genuine access to the marketplace** – particular groups may need support accessing marketplaces where they face barriers to access. This might include phone or face-to-face support for people without the ability to access online marketplaces. It might require supported decision-making for those with cognitive disabilities or limitations.
2. **Comprehensible information and minimal search costs** – information in marketplaces needs to facilitate informed decisions. Where information is difficult to access, complex or requires an additional intermediary to address information asymmetries, market stewards might need to consider regulations about these secondary markets or whether this capacity needs to be provided directly by government.
3. **Ability to easily compare service providers** – consumers need to be able to easily compare different service providers through the marketplace, especially if information is complex. Where this is difficult, consumers engage in shallow search processes, enabling businesses to eschew competitive scrutiny. Market stewards may need to test or audit whether comparison through commercial- or government-provided marketplaces is effective.
4. **Easy switching processes** – consumers need to be able to easily switch through the marketplace. Where there are additional steps, contractual obligations, paperwork to complete, fees to pay, or even perceptions of complexity people may not switch. Reducing these actual barriers (through regulation) and perceived barriers (through awareness) is therefore essential to an effective marketplace.
5. **Awareness of the marketplace** – when consumers are unaware that the marketplace exists, how they can use it to find information, compare this information and switch between providers, marketplaces are likely to be ineffective. Large scale awareness campaigns may be required to ensure people are aware of marketplaces.

213. Amelia Feltcher, *The Role of Demand Side remedies in driving effective competition, A review for Which?,* (Centre for Competition Policy; 2016), 13.

Addressing thin markets

Market stewardship is particularly important when inadequate market diversity or sufficiency result in thin markets. In rural and regional Australia with comparatively sparser demand, particularly for individualised services such as in-home care, 'thin markets' may result. This is a term used to describe a range of market deficiencies including low numbers of providers, immature markets and market failure.[214] The market capacity framework outlined by Carey and others helps identify different types of thin markets.[215] The framework sets out two dimensions—sufficiency and diversity—which help distinguish between market failure (A), thin markets (B and C), and effective markets (D), where there are sufficient suppliers and diverse offerings. This framework helpfully shows that thin markets are not only a product of too few providers; they can also emerge where there are multiple suppliers but they offer a homogenous product and will not tailor their services to consumers' needs.

		Market Diversity	
		Non-diverse	*Diverse*
Market Sufficiency	*Insufficient*	**Market failure (A)** *"There are no providers offering services for me."*	**One provider with strong tailoring to client needs (B)** *"There is just one provider, but they tailor their service to me."*
	Sufficient	**Multiple suppliers of standardised services that compete on price (C)** *"There are lots of providers but they all offer the same thing, they won't tailor to me."*	**Diversified supply (D)** "I can choose from a range of providers offering different approaches to the service I need."

Figure 3: The Market Capacity Framework (Source: Daniel Reeders, Gemma Carey, Eleanor Malbon, Helen Dickinson, David Gilchrist, Gordon Duff, Satish Chand, Anne Kavanagh, Damon Alexander, "Market Capacity Framework", (Centre for Social Impact: Sydney, 2019).

Absent a diversity of suppliers, consumers cannot 'discipline' the market by switching provider – and consequently there is no incentive for firms to improve quality, offer a broader range of services, or compete on price.[216] For services that are necessarily bespoke to the individual, such as in-home care, this absence of diversity in services may result in particular care needs going unmet. In this context, homogenous service offerings may limit consumer engagement – if choice is not meaningful it may not be compelling to engage.

214. Ernst & Young, *Thin Markets NDIS Thin Markets Project: Discussion Paper.* (Canberra: Department of Social Services, Commonwealth Government of Australia; 2019), https://engage.dss.gov.au/wp-content/uploads/2019/04/Thin-Markets-Project-Discussion-Paper-2019-04-05.pd
215. Daniel Reeders, Gemma Carey, Eleanor Malbon, Helen Dickinson, David Gilchrist, Gordon Duff, Satish Chand Anne Kavanagh, Damon Alexander, *Market Capacity Framework,* (Centre for Social Impact: Sydney, 2019).
216. Rhonda Smith and Alexandra Merrett. *Competition Policy and Human Services: Where Theory Meets Practice*, (ACOSS and CHOICE, Sydney: 2015).

In the case of in-home care, there is evidence that in rural and regional areas there may only be one or no provider of services in town. In this context, there may be a limited range of services available. Older people may need transport to access services in other towns, or may not have the option of an alternative provider. Our research into the in-home care choices of rural and regional Victorians found evidence of limited or no choice of provider. When asked if she had considered switching service providers, one interviewee explained: 'Well, I haven't got no option [laughs]… No option'.[217] Where markets fail to provide adequate market diversity or sufficiency, market stewards may need to consider whether the delivery model is appropriate.

The incentives of marketplaces need to align with consumers' own incentives – where marketplaces are facilitated or developed by commercial intermediaries, they may face incentives to skew the range of products and services on offer and the presentation of the marketplace. Where this occurs, market stewards need to intervene and regulate, and/or seek to develop independent non-profit marketplaces. These requirements are particularly important for marketplaces located online. ASIC has noted the presentation of options on websites can also affect consumer choice.[218] This requires market stewards to more closely regulate and monitor, even audit, the choice presentation and outcomes provided by marketplaces.

Market stewards can consider the following elements to ensure marketplaces deliver more meaningful choices and are effective:

1. Market stewards need to ensure there is adequate **provider diversity** to enable competitive contestability. Where there are only few or no competitors, providers may not face competitive pressures and have no incentives to improve quality or reduce cost.

2. Market stewards need to ensure there is adequate **product or service diversity** to enable meaningful choices. This is particularly pertinent where people require individualised or bespoke services.

217. Blackberry *et al., Empowering older people in accessing aged care services in a consumer market*, 21
218. ASIC and AFM, *Disclosure: Why it shouldn't be the default* (REP 632).

Inclusive design for fair products and services

An approach known as ‘inclusive design’ can help guide market stewardship and better business practice. Inclusive design involves adjusting norms of design and crafting products and services to meet the needs of ‘edge users’ rather than asking those at a disadvantage to find another way or do something special to access a service. It means flipping the perspective on how we design markets, products and services – instead of setting up a system that purportedly works for the majority of customers and designing special measures to assist people who may struggle to engage, we can design systems around the needs of edge users from the outset.

Perhaps somewhat counterintuitively, the design approach that works for the edge user makes interaction easier for all consumers. In this sense, inclusive design is a pro-competitive measure because it enables easier consumer engagement, assisting those people who would like to more actively engage but who are currently frustrated by poor design features that do not take their needs into account. A report by the Centre for Inclusive Design found inclusive design can enable businesses to reach up to four times the number of intended customers.[219]

Inclusive design requires an understanding of diversity across the population and the way in which design itself can disable people in their pursuit of essential services. This diversity includes cultural and linguistic differences, family and caring needs, financial security, disability, mental capabilities, geographic location, and the full spectrum of age-related needs.

Researchers from the University of Cambridge’s Engineering Design Centre – one of the world’s leading centres for inclusive technological design – note ageing populations bring significant opportunities for inclusive design. Ageing is one of the main drivers of ability variation. While previous generations were perhaps more accepting of difficulties with products and services in older age, the researchers suggest the Baby Boomer generation is less likely to tolerate these difficulties, especially as technology is increasingly involved in accessing essential services. Frustration with excessive complexity and poor design is likely to be directed at product and service providers, rather than considered an individual failing.[220]

Mental health-related inclusion is another emerging area relevant to older consumers. The UK Money and Mental Health Policy Institute has developed mental health accessibility standards that promote easier use of essential services for people experiencing mental health problems. Their research found more than half of people with mental health issues face serious difficulty using the phone to carry out essential administration, and 40% have severe ‘admin anxiety’, making it extremely difficult to engage with essential services providers.[221] Some banks in the UK and Australia are introducing ‘dementia-friendly’ services. Staff training to recognise and respond to dementia, supportive banking plans that include tools like withdrawal notifications and limits and alternative contacts. A dementia-friendly built environment in terms of layout, lighting, signage and quiet areas.[222] Some of these design features can benefit everyone; much like the Coles spectrum-friendly ‘quiet hour’ shopping experiences.[223] Good design for people with dementia can benefit anyone who appreciates fewer distractions, clearer communications, and less sensory and cognitive overload when they need to shop, bank or access another essential service.

219. PwC Australia, *The Benefit of Designing for Everyone*, (Centre for Inclusive Design, May 2019).
220. Sam Waller, Mike Bradley, Ian Hosking and P. John Clarkson, “Making the Case for Inclusive Design,” *Applied Ergonomics* 46 (2015): 297, 300.
221. Merlyn Holkar, Katie Evans and Kate Langston, *Access Essentials: Giving People with Mental Health Problems Equal Access to Vital Services,* (Money and Mental Health Policy Institute, 2018), https://www.moneyandmentalhealth.org/setting-the-standards-minimum-standards-and-best-practice/.
222. See https://www.agedcareguide.com.au/talking-aged-care/australias-first-dementia-friendly-bank-announced.
223. PwC Australia, *The Benefit of Designing for Everyone.*

There is a growing focus on inclusion and an inclusive design approach among regulators and businesses in Australia and the UK. For example, inclusion is one of the four high-level visions for a well-functioning financial services market adopted by the UK Financial Conduct Authority. Inclusive design is one of the five principles adopted by the UK Competition and Markets Authority to develop remedies for vulnerable customers, and Ofgem's 2025 vulnerability strategy promotes inclusive innovation. In Australia, the new Banking Code of Practice also focuses on inclusion, aiming to provide banking services that are inclusive of all people including older customers and people with disability.[224]

Inclusive design has the potential to become an underlying principle of market stewardship, and standard practice in the creation of accessible marketplaces and the design of fair products and services by stewards and business.

Comprehension testing and product simplification to reflect real-world decision-making

Market stewards can shift the burden of deciphering overly complex information from consumers to businesses, to ensure that information about their products and services is reasonably comprehensible before coming to market.[225] This may require market stewards introducing requirements to test new and innovative products and services – perhaps through a regulatory sandbox – to ensure they meet a reasonable standard of comprehensibility.

Noting the prevalence of poor consumer decision-making in retail financial markets, Lunn and others propose testing consumer comprehension of some products 'before financial products come to the market'.[226] Policymakers and regulators will gain an understanding of likely consumer welfare implications, 'such that [they] could be more confident that innovative financial products offer genuine value to the consumer'.[227]

But requirements to simplify inherently or deliberately complex information, products or service structures may be problematic and of limited use. Ensuring that consumers are provided a short product disclosure statement written in comprehensible easy English may not address the underlying complexity of the contract that it summarises. This may require that market stewards address the underlying complexity of a product or service directly through regulation, shifting the burden of risk from individual consumers to businesses. For example, the introduction of an unfair trading prohibition in Australia could target the use of long and complex product disclosure statements by business to manipulate consumer decision-making and consent to problematic products and services. This might require market stewards to go further and conduct more thorough comprehension testing of product or service characteristics to determine whether inadvertent or strategic complexity remains problematic for consumer choices.

224. See Emma O'Neill, *Exploring Regulatory Approaches to Consumer Vulnerability: A Report for the Australian Energy Regulator,* (Consumer Policy Research Centre, February 2020).
225. Page, "Disclosure for real humans"
226. Pete Lunn, Féidhlim P. McGowan, and Noel Howard, "Do some financial product features negatively affect consumer decisions? A review of evidence6' *No. 78. Research Series*, (2018), 59-60.
227. Ibid.

Appropriate choice architecture, assisted choice and default options

In light of the behavioural evidence, market stewards need to give greater consideration to the choice architecture in which consumers make decisions. They must be cognisant of the context in which consumers are making decisions, the style of decision-making, the information they rely on and seek out. Market stewards – as choice architects – should give considered thought to the relative engagement of different consumer groups, considering how the choice architecture affect different groups.

Perhaps the most pertinent design aspect for market stewards to consider is the number of choices consumers should be faced with. Johnson and others suggest choice architects must trade off two key criteria. First, more options increase the probability of offering a preference match to the consumer. Second, more options place a greater cognitive burden on consumers because of the additional need to evaluate options.[228] But as noted in this report, there are particular markets where consumers seek out choice and variation – typically hedonistic goods and services – and others where they prefer smaller choice selections – typically utility products or services. Determining the number of choices might also depend on the ability of consumers to learn from their mistakes, and the size of the harm where individuals make poor choices.

Market stewards may need to more closely audit the framing presented to individuals through marketplaces – particularly where these marketplaces are online or provided through a commercial third-party broker or advisor. Framing of providers or product/service options, how attributes are placed, and which attributes are emphasised has a significant impact on the choices people make. Again, the burden of comprehension audits might be shifted to the marketplace provider themselves rather borne by the regulator in response to consumer complaints.

Assisted choice

For those particular groups who struggle to or cannot access the marketplace, market stewards need to ensure there are effective intermediaries or purchase advisors available to help users make decisions. For example, in the case of older Australians who have lower digital literacy and access, an independent intermediary to provide support accessing the marketplace may be required.

For those with cognitive disabilities or limitations, supported decision mechanisms and training for call centre staff may be required to facilitate effective choices.[229]

Commercial intermediaries do not necessarily have incentives aligned with the best interests of consumers – market stewards will need to consider what policies are required to ensure that these conflicts of interest are fully addressed. Where policies and regulation fail to (or cannot) address these issues, market stewards may need to develop their own mediated choice mechanisms.

Our research with in-home care recipients found 75% agreed with the need for independent advice about their home care package.[230] In considering the future structure of in-home care, the preferred option (41%) was enhanced support and guidance in making choices about their home care package.[231] Where marketplaces are online, this assistance when choosing and using independent advice is seen as particularly important by older Australians.

228. Johnson *et al.*, “Beyond Nudges”.
229. Yvette Maker, Jeannie Marie Paterson, Bernadette McSherry, Lisa Brophy, Anna Arstein-Kerslake, Alex Callahan and Eugene Teo, *Thanks a Bundle: Improving Support and Access to Online Telecommunications Products for consumers with Cognitive Disabilities,* (Australian Communications Consumer Action Network, Sydney and Melbourne Social Equity Institute, University of Melbourne; 2018), https://socialequity.unimelb.edu.au/projects/support-for-consumer-transactions/thanks-a-bundle
230. Martin Hobbs, *Choosing Care,* 74.
231. Ibid.

Fairer default options

Market stewards also need to consider the varying levels of consumer motivation, or the degree to which they are willing to engage with particular markets. Importantly, where consumers are required to make active choices but often fail to do so, or even choose not to choose, market stewards need to consider the choices that are *implicit* in the choice architecture. In other words, if someone does not proactively choose, what "option" do they end up with? In effect, the status quo. Given the prevalence of status quo bias in consumer decision-making, the default choice needs to be carefully considered to ensure consumers are not made worse off through inaction. There are a range of default 'choices' that maket stewards can employ, including:

- simple defaults (choosing one default for all)
- random defaults (assigning a configuration at random from a selection)
- forced choice (withholding a product or service until the recipient makes an active choice)
- sensory defaults (changing the default according to inferences about the user, for example, web sites that change language dependent on country of origin of the visitor).[232]

Default choice design may include reversing opt-in or opt-out framing, or it may require the regulator to develop a new default product, price or service for people who do not engage in the market. Australia's MySuper provisions, which offer a default superfund with low fees and simple features, help to minimise the harms caused by a failure to actively choose a super fund. In the retail energy market, the Victorian Default Offer provides individuals who fail to or cannot choose with a default tariff set by the regulator, which also acts as a reference point for all discounts.

Defaults are effective in part because they signal a recommended choice or endorsement of the choice architect to the consumer decision-maker.[233] The efficacy of a default therefore may depend on whom consumers perceive is the choice architect and their attitudes towards them – be it a firm, a policymaker or a regulator.[234] There may also be value in highlighting there is a default choice in the choice architecture, as research suggests that defaults are no less effective if individuals are made aware they exist. This may also help to mitigate perceptions of paternalism.[235] Importantly, the literature notes 'design choices that may have come about inadvertently and may seem inconsequential can have substantial consequences for the size of the default effect'.[236] Consequently, choice architects should assess how consumers evaluate the choice architect's intentions, how easy consumers felt it was to opt out, or to what extent consumers believed that the default reflected the status quo.[237]

Through making small adjustments to the choice architecture that do not change material incentives, including the adjustment of defaults, market stewards can effectively 'nudge' consumers towards better outcomes. In considering adjustments to the choice architecture, we suggest market stewards consider Cass Sunstein's Bill of Rights for Good Nudges:

1. Nudges must be consistent with people's values and interests
2. Nudges must be for legitimate ends
3. Nudges must not violate anyone's individual rights
4. Nudges must be transparent
5. Nudges ought not to take things from people without their consent

232. Jon M. Jachimowicz, Shannon Duncan, Elke U. Weber, and Eric J. Johnson. "When and why defaults influence decisions: A meta-analysis of default effects." *Behavioural Public Policy* 3, no. 2 (2019): 159-186.
233. Ibid.
234. Ibid.
235. George Loewenstein, Cindy Bryce, David Hagmann, and Sachin Rajpal. "Warning: You are about to be nudged." *Behavioral Science & Policy* 1, no. 1 (2015): 35-42.
236. Jachimowicz *et al.*, "When and why defaults influence decision", 176.
237. Ibid.

Focusing on and measuring consumer wellbeing in markets

Determining whether marketplaces are accessible and functional, whether businesses produce fair and safe products and whether changes to the choice architecture improve decision-making outcomes requires market stewards to take a larger role in evaluating consumer outcomes and wellbeing.

Ensuring marketplaces are accessible also requires market stewards take a more nuanced view to evaluating consumer outcomes. Historically, policymakers and regulators have tended to measure market effectiveness using predominantly supply-side metrics; including switching rates, market concentration, spread of prices and raw complaint numbers. Adopting a measurement framework that considers a richer range of metrics to measure consumer wellbeing in markets can enable regulators and policymakers to identify the effectiveness of a marketplace, as well as the impact of reforms and interventions over time.

The UK's Behavioural Insights Team also recommended policymakers and regulators adopt a more nuanced measurement framework that considered more demand-side oriented metrics. In the context of regulated markets they recommend the regulator measures:

- percentage and distribution of consumers not getting a 'bad deal', providing some insight into how significant the material harm is in a regulated market, given all consumers may be required to purchase the service
- consumer satisfaction
- actual consumer comprehension rather than self-reported comprehension (this requires the regulator to empirically test comprehension).[238]

CPRC's own COVID-19 survey provides another example of closer measurement of consumer wellbeing in markets, quantifying experiences and needs. In June 2020, CPRC published the results from the first month of our ongoing COVID-19 consumer survey. This survey provides key insights about affordability concerns, relative expenditure across a wide range of sectors, and the financial measures taken to manage income during the COVID-19 period. Importantly, our survey provides a means to measure the kinds of assistance sought by consumers and offered by providers, as well as the barriers individuals face in seeking support across different sectors – highlighting pain points in different sectors.

Consumer wellbeing is likely to become more of a focus for governments and regulators as we shift towards alternative measures of economic, social and market performance. These include 'wellbeing economy' initiatives led by Scotland, New Zealand and Iceland and alternative measures to GDP, which focus on whether economies are meeting fundamental human and ecological needs, fairly distributing resources, income and wealth, and enabling inclusion. One of the fundamentals of a wellbeing economy is the fair and just operation of markets.[239] By aligning with these theories and movements, measures of consumer outcomes and wellbeing can help market stewards determine and track whether consumer markets are actually working for the people they are meant to serve.

238. Elisabeth Costa, Katy King, Ravi Dutta, and Felicity Algate. *Applying behavioural insights to regulated markets,* (The Behavioural Insights team for Citizens Advice, 2016), 26.
239. Lisa Hough-Stewart, Katherine Trebeck, Claire Sommer and Stewart Wallis, *What is a Wellbeing Economy? Different Ways to Understand the Vision of an Economy that Serves People and Planet,* (Wellbeing Economy Alliance, 3 December 2019).

Upcoming research

Many of the issues explored in this report are linked to work CPRC is progressing over 2020-21, including, as noted above, our rolling survey examining the consumer impacts of COVID-19, with the first results published as part of a major report in June 2020, and further results to be published on a monthly basis until late 2020.

CPRC will also embark upon consultations for the development of a ‘Consumer Wellbeing Index’, seeking the views of policymakers, regulators, businesses and consumers themselves about the meaning and major dimensions of consumer wellbeing and how it can be measured on an ongoing basis. The Index will articulate a concept of consumer wellbeing and provide a foundation for identifying gaps in wellbeing and measuring the impact of market reforms over time.

Conclusion

The introduction of user choice as a central pillar to essential and human services in Australia has been intended to empower consumers to make decisions in their own interest, endowing individuals with the agency to express their autonomy. But it also places a significant burden of effort squarely on the shoulders of consumers. It requires they engage in sometimes deficient or inaccessible marketplaces they are not confident accessing or navigating. It requires they understand and compare unreasonably lengthy, sometimes even strategically complex product and service information developed deliberately to mislead and confuse. It requires people make perfectly rational choices, despite evidence on the contrary that we all regularly, even systematically, depart from this supposed rationality. It requires they actively choose, even when life gets in the way, when the costs of comparing and choosing loom large, when there is little or no genuinely innovative value offered between providers, or when people simply prefer not to be burdened with the choice. Evidence indicates a range of contexts where the result may be errors in decision-making or even reduced consumer welfare.

In this report, we outline an approach that requires policymakers take a stronger role in “steering” markets and to proactively evaluate outcomes to improve the welfare and wellbeing of consumers. Our Hierarchy of Stewardship Priorities for policymakers and regulators requires stewards to ensure marketplaces for essential services, human services and even complex products and services are accessible, functional and sustainable – supported by adequate market infrastructure. This requires stewards to steer businesses to design fair and inclusive products and services. It requires shifting the burden of risk and responsibility of comprehending overly complex disclosure – as well as products and services themselves – from individual consumers to firms, who are better placed to manage this. Finally, it requires stewards to give greater consideration to consumers’ ability to make choices, with defaults and assistance measures adopted to ensure those who do not engage for various behavioural reasons retain some protection. Where these priorities cannot be addressed, market stewards might evaluate whether the market delivery model is appropriate for all contexts. As markets increasingly shift online in the aftermath of COVID-19, these priorities will be increasingly important to ensure Australia’s economy recovers, delivering improved consumer welfare to all consumers.

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"But are they any good?"

The value of service quality information in complex markets

Ben Martin Hobbs

Consumer Policy Research Centre

ABOUT CONSUMER POLICY RESEARCH CENTRE (CPRC)
An independent think-tank established by the Victorian Government in 2016, CPRC produces evidence-based research to inform government policy and business practice reform. We work collaboratively across the government, regulatory, business and community sectors. We also conduct, support and promote interdisciplinary consumer research. Our goal is to deliver a fair outcome for all consumers. To find out more, visit: cprc.org.au

Executive Summary

Across a range of service sectors including residential energy, banking and insurance, and telecommunications, Australian consumers often experience poor customer service outcomes, causing frustration and a loss of trust in providers. A lack of information about the quality of service not impedes consumer decision-making but also makes it difficult for companies that invest in good customer service to differentiate themselves from the pack.

According to the 2016 Australian Consumer Survey, it cost consumers $16.31 billion (total out-of-pocket costs and time spent) to resolve problems with products and services in all consumer markets - of which the residential energy, banking and finance (including insurance), internet and telecommunications sectors accounted for $6.26 billion.[1] Roy Morgan's 2018 Net Trust Score, found Australia's utilities, telecommunications, banking and insurance sectors all attracted negative Net Trust Scores.[2] Perhaps more than ever before, Australian consumers are demanding better service quality, adequate dispute resolution and fair treatment. While the cost of products and services is of primary importance to many, survey data also indicates consumers also place significant value on customer service quality.[3]

Information asymmetry driving confusion

Effective markets rely on the premise that consumers actively participate by choosing between different products and services according to their preferences of price, quality and features. Yet consumers continue to encounter a range of difficulties in choosing providers in these markets, not least because of the proliferation of products and services, but also their increased complexity. While confusing pricing structures are increasingly scrutinised by regulators, clear, comprehensible and comparable information about the quality of providers' customer service remains largely absent from these service markets in Australia. This represents a key *information asymmetry* - where a buyer or seller has different information to the other party about a product or service - which inhibits consumers' ability to choose the service quality that suits their preferences.

Information gap increases reliance on inaccurate proxies

Evidence from behavioural economics indicates that individuals have *bounded rationality* - a limited cognitive capacity to assimilate and consider all the information required to make a perfectly rational decision.[4] Where decision-making is difficult due to overwhelming choice and a lack of clear information on key aspects like quality, some consumers may stick with their current provider as a way of "deciding not to decide".[5] Other consumers may rely on proxies, such as brand, pricing or word of mouth, in lieu of comparable information about service quality. Unfortunately, these proxies often have little or no direct relationship to customer service quality, which means consumers may be unable to effectively identify better quality providers.

Encouraging competition based on service quality

The absence of easily comparable measures of service quality may limit, or even inhibit, the extent to which industry competes to deliver a better quality service. Where consumers cannot identify better quality providers, they cannot choose between providers on this basis. Nor can better quality providers price accordingly, despite clear evidence that consumers are willing to pay for better quality service.[6] In mature markets where products are highly substitutable - even homogenous in the case of an energy tariff or a bank loan - the quality of service may be all that separates competitors.

1. EY Sweeney, *Australian Consumer Survey 2016* (The Treasury, on behalf of Consumer Affairs Australia and New Zealand, 2016), 63-66. EY Sweeney's estimated total average cost per person per year for resolving problems related to Banking or financial products/ services including insurance ($91.99) Internet service provider ($97.04) Telecommunication products or services ($101.37) and Utility services such as water, gas and / or electricity ($75.99) was $366.39. Consistent with EY Sweeney's methodology, this multiplied by the number adults over the age of 16 (17.1 million at time of publication) giving the figure $6.265 billion.

2. Roy Morgan, *Net Trust Score – Finding 7521*, 27 February 2018.

3. See for example, Newgate Research, *Consumer research for the Australian Energy Market Commission's 2017 retailer competition review*, (AEMC, 2017), 41, 43.

4. Herbert Simon, *Models of bounded rationality*, (Cambridge, MA, MIT Press: 1982)

5. Ran Spiegler, *Bounded Rationality and Industrial Organization* (New York; Oxford: Oxford University Press, c2011., 2011).

6. Wayne Huang *et al.*, "How Customer Service Can Turn Angry Customers into Loyal Ones", *Harvard Business Review*, 16 January 2018, https://hbr.org/2018/01/how-customer-service-can-turn-angry-customers-into-loyal-ones.

Moreover, the marketing literature indicates that better customer service leads to higher loyalty among customers.[7] Though businesses may be reluctant to increase transparency, evidence suggests ‘customers exhibit more trust and are willing to pay a premium to deal with transparent businesses’.[8] Absent clear, comprehensible and comparable information about competing providers, consumers may perform a limited search of the market, potentially resulting in industry overreliance and use of resources for marketing and advertising rather than providing a lower-priced or higher-quality product, resulting in market inefficiencies.[9]

CPRC notes that following widespread recommendation, the Department for Business, Energy & Industrial Strategy’s *Modernising consumer markets: green paper* outlined how the regulators of water, energy, banking and insurance, and telecommunications in the UK would develop and implement a variety of customer facing measures of service quality by December 2018 – providing this ‘sunlight remedy’ to improve consumer choice and industry practice.

Policy implications

To ensure consumers can make informed choices they need access to clear, comprehensible and comparable information about price, quality and features of products and services. While pricing and product features are increasingly scrutinised by regulators and policymakers, there is significant benefit in policymakers and regulators making service quality information available to consumers to aid decision-making. This may also improve competitive pressure between retailers to improve the quality of the customers service and experience that they deliver.

To that end, this paper outlines four actions for policymakers and regulators to enhance choice and competition in service quality:

1. Develop clear, comprehensible and comparable measures of service quality
2. Conduct rigorous consumer testing of measures of service quality
3. Increase transparency to improve industry performance
4. Ensure data sources are available for the public good

7. François A. Carrillat, Fernando Jaramillo, and Jay Prakash Mulki, “Examining the Impact of Service Quality: A Meta-Analysis of Empirical Evidence”, *Journal of Marketing Theory and Practice*, no. 2 (2009): 95.

8. Omar Merlo *et al.*, “The Benefits and Implementation of Performance Transparency: The Why and How of Letting Your Customers “see through” Your Business”, *Business Horizons*, 12 October 2017, 2; Simon Bell, Seigyoung Auh and Andreas B. Eisingerich, “Unraveling the Customer Education Paradox: When, and How, Should Firms Educate Their Customers?”, *Journal of Service Research*, Vol. 20(3) (2017): 306, 317

9. Ibid.

Introduction

Markets rely on the premise that consumers actively participate by choosing between different products and services according to their preferences.[10] Where consumers cannot identify products and services that meet their preferences, their ability to effectively choose may be inhibited, in turn undermining this fundamental premise.

When choosing between different service providers in complex markets – such as retail providers of electricity, broadband internet, a mortgage provider or car insurance - price is often a key driver of consumer choice. However, non-price attributes - such as the quality of customer service - are also important for consumer decision-making and the effective functioning of markets. The absence of clear, comprehensible and comparable information about these non-price attributes – known as *information asymmetry* – can result in poor outcomes for consumers. In a range of service industries, consumers often encounter poor quality customer service, or "customer care", including (though not limited to) service interruptions, inexplicable fees and charges, transfer issues and billing errors. As businesses rush to deliver short-run operational efficiencies, the quality of customer service can be further compromised by the automation of customer service systems, significant wait times to speak to human customer representatives, poor system and dispute resolution processes, or being bounced between different customer service staff to resolve simple queries. If consumers cannot assess and differentiate between firms based on these non-price attributes, they cannot choose according to their preference, and businesses will face little competitive pressure to improve their practices.

Repeated instances of poor customer service are not only frustrating but can result in reduced consumer trust in providers to deliver positive outcomes, even leading to reduced market participation. Not only do customers bear additional costs caused by issues with service provision and poor customer service, without the continuing trust of their customers, companies may struggle to deliver longer term profitability for shareholders - according to Simon McKeon AO, a former chair at AMP.[11]

This paper examines the issues faced by consumers where these information asymmetries exist and provides recommendations for policymakers and regulators to reduce such asymmetries, empowering consumers with the information they need to make an informed choice.

10. Consumer Affairs Victoria, "Designing Quality Rating Schemes for Service Providers", *Research Paper No. 5*, March 2006, 2

11. Sally Rose, "Edelman research exposes financial services' trust deficit", *Investment Magazine*, 9 June 2017. https://investmentmagazine.com.au/2017/06/edelman-research-exposes-financial-services-trust-deficit/

Challenges for consumers making choices in competitive markets

Definition and magnitude of the issue

Across a range of different sectors consumers continue to face poor customer service outcomes. This is particularly evident in complex service industries - such as utilities, telecommunications, banking and insurance - which have seen numerous government inquiries and reviews and a 'rolling thunder' of regulatory reform as a result.[12]

Though often relegated to secondary importance behind cost and pricing aspects, aspects of service quality are key drivers of an individual's decision to switch providers.[13] Marketing professor Susan Keavney's research examining the reasons why respondents switched from one service provider to another highlights the importance of service quality. Keavney found core service failure (e.g. service mistakes, billing errors and service catastrophes) was mentioned by 44 percent of all respondents, service encounter failures (where employees were uncaring, impolite, unresponsive, or unknowledgeable to customers) was mentioned by 34 percent of respondents, while price factors (including high prices, price increases, unfair pricing practices, and deceptive pricing practices) was mentioned by 30 percent of all respondents.[14]

Where consumers choose providers with poor customer service they may encounter significant additional costs to resolve issues that arise. The 2016 Australian Consumer Survey sought to quantify the total cost – in terms of out-of-pocket costs and time spent seeking to resolve the issue - borne by consumers to resolve problems with different products and services. Across the sectors of telecommunications products or services, internet service providers, banking or financial products/services including insurance and utility providers (electricity, gas and water), "poor customer service" accounted for between 28 percent of complaints (internet service providers) to 45 percent of complaints (the leading issue for banking or financial products and services).[15] However, it is notable that other categories which accounted for a significant proportion of complaints, such as "incorrect or misleading information provided", might also be considered by consumers to represent aspects of customer service. According to the 2016 Australian Consumer Survey, it cost consumers $16.31 billion (total out-of-pocket costs and time spent) to resolve problems with products and services in all consumer markets - of which the residential energy, banking and finance (including insurance), internet and telecommunications sectors accounted for $6.26 billion.[16] This represents a significant additional cost incurred by consumers, much of which could have been reduced or even avoided, if consumers had been able to identify and choose providers with better customer service and providers actively competed on the basis of customer service.

In the absence of attempts to guarantee consumer service outcomes – delivered through regulatory requirements or legal mechanisms such as contracts - effective consumer participation in markets requires that consumers trust service providers to deliver positive outcomes.[17] Economist George Akerlof argues that '[i]nformal unwritten guarantees are preconditions for trade and production'.[18] Yet there is evidence that consumer trust in various institutions and across various sectors is falling. The Edelman Trust Barometer indicates falling trust across all industry sectors, observing that 'the

12. James Eyers, "Banks suffering 'change fatigue', says Anna Bligh", *Australian Financial Review*, April 11 2018

13. See for example, Newgate Research, *Consumer research for the Australian Energy Market Commission's 2017 retailer competition review*, (AEMC, 2017), 41, 43.

14. Susan M. Keaveney, "Customer Switching Behavior in Service Industries: An Exploratory Study", *Journal of Marketing*, Vol. 59, No. 2. (Apr., 1995):74-7. Note that "service provider" in this setting included 25 different services but predates the deregulation of essential services, such as energy

15. EY Sweeney, *Australian Consumer Survey 2016*, 51-2, 55, 59.

16. Ibid., 63-66.

17. Consumer Action Law Centre, *Power Transformed: Unlocking Effective Competition and Trust in the Transforming Energy Market*, July 2016, 5.

18. George A. Akerlof, "The Market for "Lemons": Quality Uncertainty and the Market Mechanism", *Quarterly Journal of Economics* 84, no. 3 (August 1970): 500.

19. See the Edelman Trust Barometer 2018, which notes 48 per cent of Australian respondents trust the financial services sector – a 1 percent drop from 2017- while the energy sector saw a 11 percent drop to 39 percent between 2017-18; quote from Edelman Intelligence, 2017 Edelman Trust Barometer, 2017, 3

20. Roy Morgan, *Net Trust Score – Finding 7521*, 27 February 2018.

basic assumptions of fairness, shared values and equal opportunity traditionally upheld by "the system" are no longer taken for granted' (see figure 1).[19] According to Roy Morgan's 2018 Net Trust Score, sectors including banks, telecommunications, utilities and insurance all had a negative Net Trust Score once distrust is subtracted from trust ratings.[20] Declining trust may be attributed to the misconduct and poor consumer outcomes either directly experienced or unearthed by the various government inquiries either completed or currently underway.[21] Growing distrust has very real consequences for these sectors in the form of public support for increased government scrutiny and intervention, or even more centralised control over markets.[22]

The Ethics Centre notes 'individuals and organisations will find it difficult (if not impossible) to operate effectively if they do not enjoy the trust and confidence of the community in which they are located'.[23] Philosopher Onora O'Neill has argued that institutions must first demonstrate their trustworthiness in order to earn consumers' trust.[24] O'Neill argues that demonstrable measures of competence, reliability and honesty can provide an indicator or proxy for the trustworthiness of an institution.[25] These measures of competence, reliability and honesty are key characteristics of the post-sale customer service provided by businesses. Providing a customer-facing measure that captures some of these aspects of trustworthiness might enable businesses to improve their reputation and build trust in their brand.

21. See *Independent Bipartisan Review of Electricity and Gas Retail Markets*, August 2017; ACCC, *Retail Electricity Pricing Inquiry Final Report Executive Summary*, July 2018; *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*, (ongoing).

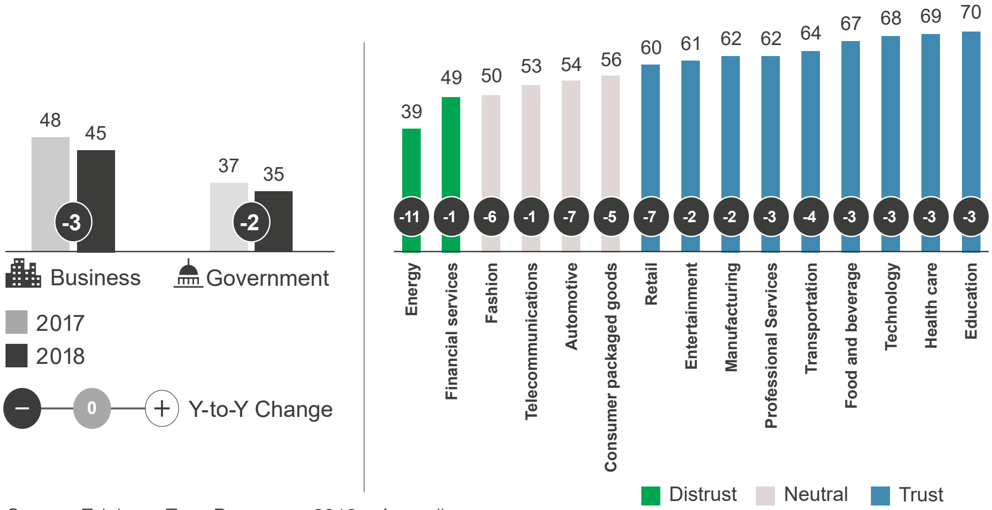
22. J. D. Harris. and A. C. Wicks, '"Public Trust" and Trust in Particular Firm – Stakeholder Interactions", *Corporate Reputation Review*, 13(2), (2010):152; The Guardian, *Essential Poll*, November 2017. https://www.theguardian.com/australia-news/2017/nov/27/most-australians-want-banking-royal-commission-guardian-essential-poll

23. The Ethics Centre, *Trust, Legitimacy and the Ethical Foundations of the Market Economy*, 2018, 4.

24. Onora O'Neill, *Onora O'Neill: What we don't understand about trust* (June 2013) [Video file]. Retrieved from https://www.ted.com/talks/onora_o_neill_what_we_don_t_understand_about_trust?language=en

25. Ibid.

FIGURE 1: TRUST IN INSTITUTIONS DECLINES AMONG GENERAL POPULATION (2017 – 2018)



Source: Edelman Trust Barometer 2018 – Australia.

Information asymmetries in markets

When comparing products and services, consumers need access to clear and comprehensible information about the price, quality and features or terms of sale. Though pricing can be complex, and terms and conditions often go unread due to their length and legalistic language, the focus of this paper is service quality information - defined here as customer service support, or customer care - which is seldom available in service sectors.

This represents a significant *information asymmetry* – as first articulated in economist George Akerlof's 1970 seminal paper *The Market for "Lemons"*.[26] Considering the market for second-hand vehicles, Akerlof notes the difficulty that buyers face in differentiating a "lemon" (a dud vehicle) from what could be deemed a "peach" (a well-working/good quality vehicle).[27] Sellers have a good idea of the quality of their vehicle through their own experience driving it. However, where sellers are incentivised to maximise their returns, they may price their "lemon" competitively with other market offerings – including "peaches". Where buyers have few if any indicators of quality, they are beholden to honesty of sellers to price their vehicle commensurate with the quality. This lemon principle is equally applicable to service industries. Service providers have a detailed understanding of their service offering - how many staff they employ to answer complaints, how quickly billing enquiries can be addressed, how effective their systems are to set up newly acquired customers or transferring them between different plans - and the cost to deliver this level of service. Moreover, businesses often collect detailed feedback from their customers about their experience as part of internal reporting processes. By comparison, consumers cannot effectively assess the post-sale customer service prior to making a choice, and only learn about the quality of customer service through direct experience with the seller.

Providing consumers with measure of service quality is also directly relevant to CPRC's conceptual framework - *Five Preconditions of Effective Consumer Engagement* (see figure 2).[28] This framework outlines the necessary preconditions for consumer decision-making throughout the customer journey to enable market participation and is applicable across a range of different sectors.

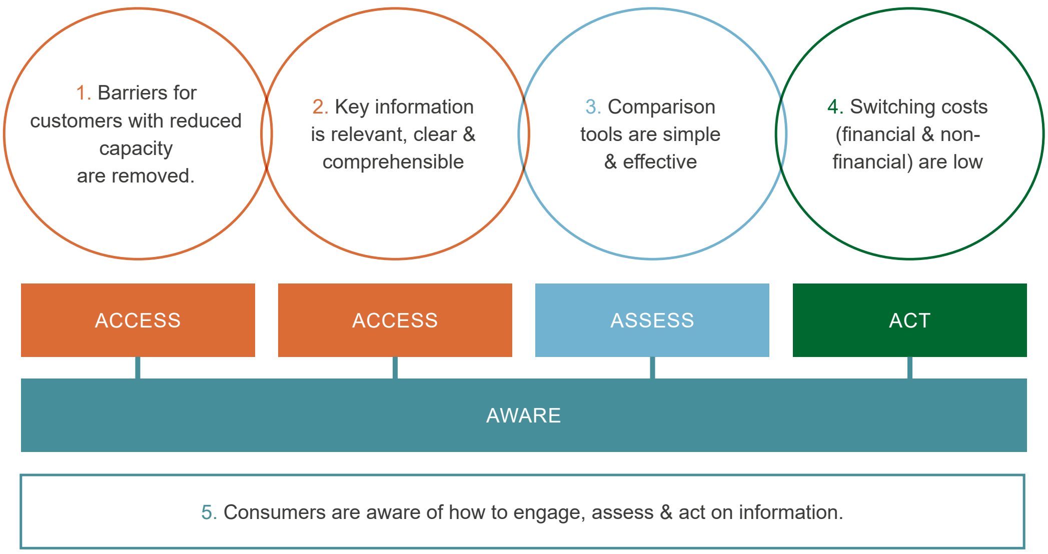


Figure 2: Five preconditions to improving consumer engagement

26. Akerlof, "The Market for "Lemons"".

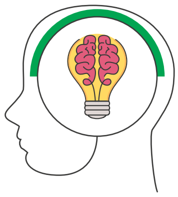
27. Ibid.

28. CPRC, *Five Preconditions of Effective Consumer Engagement – a conceptual framework*, March 2018.

Service quality - applying CPRC’s preconditions

A measure of service quality relates most directly to the second precondition – access to key information. However, this measure may enable consumers to assess different providers, and act - by reducing ambiguity or thinking costs in particular - when switching providers. Importantly, consumers must be made aware the measure exists.

Precondition 2 - Key information is disclosed, clear and accessible

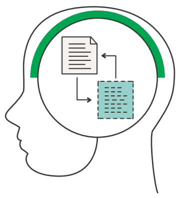


Consumers need access to clear and comprehensible information about price, quality and terms of sale to compare different offerings and make informed decisions – the absence of this results in information asymmetry. Historically, governments have addressed market complexity or uncertainty around outcome of choices by providing consumers with more information. Yet evidence suggests that this approach – providing more information - can impede decision-making rather than improve it. Therefore, information needs to be clear, comprehensible and comparable to enable effective choice.

Precondition 3 - Comparison tools are simple and effective

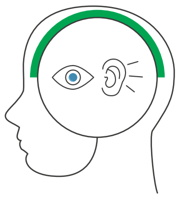
Consumers also need to be able to easily compare and assess different providers to identify the level of service that best meets their preferences at a given price point. Individuals may be prepared to pay more for higher level of service, however they currently have limited means to identify higher or lower quality providers. For this information to be of use to consumers, service quality information must be easy to compare through various tools - for example comparator websites or league tables.

Precondition 4 – Switching costs are low (both financial and non-financially)



When faced with significant thinking costs - due to high levels of complexity, choice, risk or uncertainty – consumers may stick with their current choice or make no choice at all, known as status quo bias. Service quality information may therefore provide a useful heuristic to aid consumer decision-making in complex markets. However, it is important that regulators and policy makers trial interventions before widespread roll-out. Any measure of service quality information needs to be presented in a way that enables meaningful choice, at the point of comparison and sale to ensure it is part of the customer journey.

Precondition 5 – Consumers are both aware of and able to act on information



Key to the preceding preconditions is consumer awareness about where to access key product and service information, how to compare information to assess different options and how to act on information to switch to a new provider where appropriate. In this case it refers to awareness about service quality information, how to compare different service providers using this information, and that this information is presented in way that aids consumer decision-making. This may require outreach and communication strategies to ensure consumers are made aware of this information, consumer testing to trial the format of the measure and incorporation of this measure into existing comparison tools.

Consequences of limited service & quality information

Low decision-making confidence and inertia

Participation in markets depends on consumers' ability and confidence to make effective decisions about the products and services that reflect their preferences (related to preconditions 3 and 4). Yet the behavioural economics literature indicates consumers often depart from rational decision-making, particularly when faced with uncertainty, complexity or too many choices.[29]

The proliferation of new products in complex markets can be overwhelming, particularly where barriers to entry for new suppliers and products are low. For example, there are typically more than 230 generally available energy plans in the Victorian residential energy market, 40,000 products available in the superannuation industry and more than 48,000 private health insurance policies currently in the market.[30] Where key information is difficult to find or is missing from a market, consumers make decisions in a 'boundedly rational manner'.[31] *Bounded rationality*, as originally described by economist Herbert Simon, posits that individuals often do not have the cognitive capacity to assimilate and consider all the information required to make a perfectly rational decision.[32] However, this notion can also be extended to reflect the constraints of a product-market environment with inconclusive or ambiguous information, in which the absence of certain information further limits a consumer's ability to make a rational decision.[33]

One model for how individuals make decisions entails two different kinds of thinking. According to psychologist Daniel Kahneman, 'system one' draws on experience and is quick, automatic, intuitive thinking, which often relies on mental rules of thumb – known as *heuristics* - to make decisions, while 'system two' thinking is more deliberate, systematic and rational, used to solve less familiar problems.[34] This can also be thought of as a continuum between effortless and effortful thinking, affected by the amount of available attention we have for any given choice.[35] In the context of choosing a service provider based on different attributes (e.g. price, quality and terms of sale), individuals may revert to system one thinking when overwhelmed by information, or faced with uncertainty, rather than adopting a careful and calculated approach.[36] Importantly, system one thinking can be subject to a range of cognitive biases, or systematic errors, including a preference for familiar options when outcomes are ambiguous, and a reversion to default options.[37] According to economist Ran Spiegler 'making an active decision [to switch providers] is cognitively and emotionally taxing' so where there is a default option - i.e. remaining with an existing provider – 'the consumer clings to it as a way of "deciding not to decide"'.[38] Often referred to as *inertia*, marketing academics David Gray *et al.* characterise this as an example of 'customer preference stickiness', which occurs due to the disconnect between consumer preferences and actual behaviour.[39] If consumers cannot easily access meaningful information about the non-price attributes of products and services, this creates ambiguity and consumers may consequently perceive decision-making to be risky. Decision science academics Onesun Steve Yoo and Rakesh Sarin have developed a multiattribute utility model characterising the boundedly rational decisions of consumers choosing between products with ambiguous qualities.[40] Their

29. Enrique Fatas, Amelia Fletcher, Shaun Hargreaves-Heap, Michael Harker, Chris Hanretty, Morten Hviid, Bruce Lyons *et al. Behavioural economics in competition and consumer policy*, (University of East Anglia, 2013); for an application in a complex market see Karen Stenner, Elisha R. Frederiks, and Elizabeth V. Hobman, "Household Energy Use: Applying Behavioural Economics to Understand Consumer Decision-Making and Behaviour", *Renewable and Sustainable Energy Reviews* 41 (January 2015): 1385–94.

30. Essential Service Commission, *Victorian Energy Market Report, 2016-17*,4; Productivity Commission, *Superannuation: Assessing Efficiency and Competitiveness*, April 2018, 48; CHOICE, *Submission to senate inquiry into the value and affordability of private health insurance and out-of-pocket medical costs*, July 2017, 5.

31. Onesun Steve Yoo, Rakesh Sarin, "Consumer Choice and Market Outcomes Under Ambiguity in Product Quality", *Marketing Science*, (Articles in advance) (2018): 18.

32. Herbert Simon, *Models of bounded rationality*, (Cambridge, MA, MIT Press: 1982)

33. Yoo and Sarin, "Consumer Choice and Market Outcomes Under Ambiguity in Product Quality".

34. Daniel Kahneman, *Thinking, Fast and Slow* (Macmillan, 2011).

35. Ibid.

36. Ibid.

37. Ibid.; Amos Tversky and Daniel Kahneman, "Judgment under Uncertainty: Heuristics and Biases", Science 185, no. 4157 (27 September 1974): 1124–31; Richard Thaler and Shlomo Benartzi, "Save more tomorrow: Using behavioural economics to increase employee saving". Journal of Political Economy 112 (2004):S164–S187.

38. Ran Spiegler, Bounded Rationality and Industrial Organization (New York; Oxford: Oxford University Press, c2011., 2011).

39. David Gray, Steven D'Alessandro, and Leanne Carter, "The Influence of Inertia on Brand Switching Behaviour", in Looking Forward, Looking Back: Drawing on the Past to Shape the Future of Marketing, Developments in Marketing Science: Proceedings of the Academy of Marketing Science (Springer, Cham, 2016), 780.

40. Yoo and Sarin, "Consumer Choice and Market Outcomes Under Ambiguity in Product Quality".

modelling demonstrates that ambiguous or inconclusive information about quality in the product-market environment results in a higher consumer predisposition towards existing providers.[41] This means consumer demand is more elastic when ambiguity is low but inelastic or sticky when ambiguity is high, suggesting that consumers need a larger price differential to switch to a competitor of ambiguous quality.[42]

Decision satisfaction may also be an important factor in creating or reducing market friction, particularly in complex markets. In their 2007 study, marketing academics Mark Heitmann, Donald R. Lehmann and Andreas Herrmann develop a model of choice satisfaction and its consequences, drawing on empirical data from a panel of consumers and their experience purchasing consumer electronics.[43] Their study finds evidence for a link between decision satisfaction and consumption satisfaction, and a negative relationship between choice overload and consumption satisfaction.[44] In the UK, a 2016 report prepared by Citizens Advice considered the time required and satisfaction of consumers' decisions in different sectors. The research found that consumers spend less of their time making decisions about regulated essential services (11 percent of their time) compared with other markets, such as infrequent consumer purchases including holidays, technology or private transport (18 percent).[45] Citizens Advice compared the experience of consumers who followed a 'good' decision-making process (as co-designed by researchers with focus group participants), and a 'natural' decision-making process (unprompted). Participants adhering to a 'good' decision-making process in consumer markets took longer to make decisions than consumers employing a 'natural' decision-making process.[46] However, when consumers were prompted to follow a 'good' decision-making process in a regulated market – such as prompting with financial incentives to read through terms and conditions - they reported lower levels of satisfaction that the process resulted in the 'very best decision for your budget needs'.[47] Where access to better quality information helps consumers make decisions more easily by reducing ambiguity, this may result in increased decision satisfaction, increased consumption satisfaction and reduced market friction.

41. Ibid.

42. Ibid., 18.

43. Mark Heitmann, Donald R. Lehmann, and Andreas Herrmann. "Choice goal attainment and decision and consumption satisfaction." *Journal of marketing research* 44, no. 2 (2007): 245-46.

44. Ibid.

45. Temi Ogunye, *Against the Clock: Why More Time Isn't the Answer for Consumers*, (Citizens Advice Bureau, 25 November 2016), 24.

46. Ibid., 11.

47. Ibid., 26.

Reliance on imperfect proxies - branding, price, reputation and word of mouth

In the absence of clear and comprehensible information around measures of service quality, consumers may rely on other proxies for service quality such as branding, price or reputation to choose a provider. However, these proxies may not accurately represent the service quality of a provider, resulting in consumer choosing products and services that do not reflect their preferences, and may even limit decision-making.

Marketing lecturer Thomas Boysen Anker has argued that consumers use brand reputation as an 'epistemic proxy' for product or service quality, and rely on reputation as a substitute for specific product claims - 'making redundant the need to check product information'.[48] In mature markets where products are relatively substitutable, Heskett *et al.* note that service quality is often linked to brand - as this may be all that sets one firm apart from its rivals.[49] According to marketing academics Debanjan Mitra and Peter Golder,

> 'perceived quality is the overall subjective judgment of quality relative to the expectation of quality. These expectations are based on one's own and others' experiences and various other resources, viz. reputation, price and advertising'.[50]

Elsewhere, researchers have defined reputation as 'the accumulated impression that stakeholders form of the firm, resulting from their interactions with and communications received about the firm'.[51] Others have argued consumer trust can be considered an outcome of an organisation's corporate reputation.[52] Evidence from the telecommunications sector indicates that brand reputation can be driven by perceptions of superior product – in this case signal coverage - without necessarily inspiring enduring loyalty to the brand.[53] These findings support the contention of marketing academics Jared Harris and Andrew Wicks that consumers' goodwill trust and competence trust in a businesses can be considered distinct, with the former relating to the ethical behaviour or stance of firms, while the latter relates to product delivery and customer service of the organisation.[54] Akerlof observed that brand names provide a kind of guarantee insofar as they offer an indicator of quality 'but also gives the consumer a means of retaliation if the quality does not meet expectations' by '[curtailing] future purchases'.[55] This reinforces the imperative for businesses to consider not just the product but also the customer service that supports the delivery of their product or service.

Reliance on branding has implications for emerging brands seeking to grow their market share where a product or service is highly substitutable. Consumers may attribute 'imaginary quality differences' to products or services where they are confused about product quality, or do not realise that products or services are largely homogeneous.[56] A study by marketing academics Bart Bronnenberg *et al.* investigated behaviour of informed consumers with typical consumers when purchasing aspirin. Though aspirin is effectively homogenous, as it is no longer protected by patent, the study observed that 'Bayer' branded aspirin was priced at $6.29 at the American pharmacy chain CSV, while CSV branded (i.e. "homebrand") aspirin was priced at $1.99.[57] The study found typical consumers buy brand name aspirin 26 percent of the time, while pharmacists – who have intimate knowledge of the quality of generic pharmaceuticals - do so only 9 percent of the time.[58] Bronnnenberg *et al.* concluded that a significant portion of the brand premium in aspirin is due to misinformation about the quality difference.[59] Where consumer facing

48. Thomas Boysen Anker, *Truth in Marketing: A Theory of Claim-Evidence Relations* (Routledge, 2016), 95.

49. James L. Heskett *et al.*, "Putting the Service-Profit Chain to Work," *Harvard Business Review*, 72 (March-April 1994): 164-174.

50. Debanjan Mitra and Peter Golder. "How does objective quality affect perceived quality? Short-term effects, long-term effects, and asymmetries", *Marketing Science*, Vol. 25, (2006): 231

51. Rosa Chun. "Corporate reputation: Meaning and measurement", *International Journal of Management Reviews*, 7(2), (2005) 92

52. Grahame Dowling, *Creating Corporate Reputations*, (Oxford University Press: 2001), 241.

53. Leanne Carter , David Gray, Steven D'Alessandro, and Lester Johnson, "The "I Love To Hate Them" Relationship with Cell Phone Service Providers", *Services Marketing Quarterly*, 37, no. 4 (2016): 234.

54. Jared D. Harris and Andrew C. Wicks. "Public Trust" and Trust in Particular Firm – Stakeholder Interactions", *Corporate Reputation Review*, 13(2), (2010):145

55. Akerlof, 'The Market for "Lemons"', 500.

56. Michael D. Grubb, "Failing to Choose the Best Price: Theory, Evidence, and Policy", *Review of Industrial Organization* 47, no. 3 (1 November 2015): 308, https://doi.org/10.1007/s11151-015-9476-x.

57. Bart J. Bronnenberg *et al.*, "Do Pharmacists Buy Bayer? Informed Shoppers and the Brand Premium", *The Quarterly Journal of Economics* 130, no. 4 (1 November 2015): 1669–1726, https://doi.org/10.1093/qje/qjv024.

58. Bronnenberg *et al.*, 1669.

59. Bronnenberg *et al.*, 1669. Note also that the study controlled for income.

measures about product or service quality are limited and the number of suppliers is large, brand name recognition may provide a heuristic of sorts to assist consumers to make a choice, even where the quality is no higher than an alternative generic product or service. Reliance on branding, rather than choosing products on the basis of price or quality also has implications for the efficiency of markets and consumer surplus.

Relying on price as a proxy for quality – according to the common adage "you get what you pay for" - is also problematic, as evidence indicates price can be a particularly poor indicator of quality.[60] Economist Heiner Imkamp compared evidence from a number of studies stretching back 65 years using the same methodological approach - correlating prices with comparative test results – have found low correlations (0.2 on average) between price and quality.[61] Articulated as a determination coefficient - 'only 4 percent of price variance among competing brands can be attributed to quality differences, whereas the remaining 96 percent have other causes, unrelated to product quality'.[62] Though there is some evidence that price plays a subjective role as an indicator for quality, this evidence suggests it is a poor *objective* indicator of quality for consumers.[63] Reliance on price as proxy for quality may have similar implications as branding, potentially reducing consumer surplus and the efficiency of markets.

Where consumers cannot test or evaluate services prior to purchase, they may rely on other consumers' experiences to make a judgement about a provider's reputation. This information is often gathered through more informal channels such as word of mouth or reviews on online forums.[64] Research from the Pew Research Centre found more than half (53 percent) of 18 to 29-year-olds and 47 percent of 30 to 49-year-olds report that they 'always' or 'almost always' read online reviews when buying something for the first time – indicating a consumers often seek further contextual information about products and services beyond price.[65] There is a growing literature on the influence of reviews from online forums on consumer decision making and purchase decisions. Online reviews may broaden the range of options available to us - a study examining the impact of online product reviews on retail sales found 65 percent of consumers chose a brand that was not within their original choice set on the basis of other consumer reviews.[66] Moreover, researchers Sia Wang *et al.* found approximately 90 percent of survey

60. Imkamp, Heiner, "Should Prices of Consumer Goods Be Better Indicators of Product Quality?" *Journal of Consumer Policy*, 41, no. 1 (2018): 77-81.

61. Ibid.

62. Ibid.

63. Studies have found marketing actions, such as pricing, can alter the actual efficacy of products to which they are applied. See Baba Shiv, Ziv Carmon, and Dan Ariely. "Placebo effects of marketing actions: Consumers may get what they pay for." *Journal of marketing Research* 42, no. 4 (2005): 383-393.

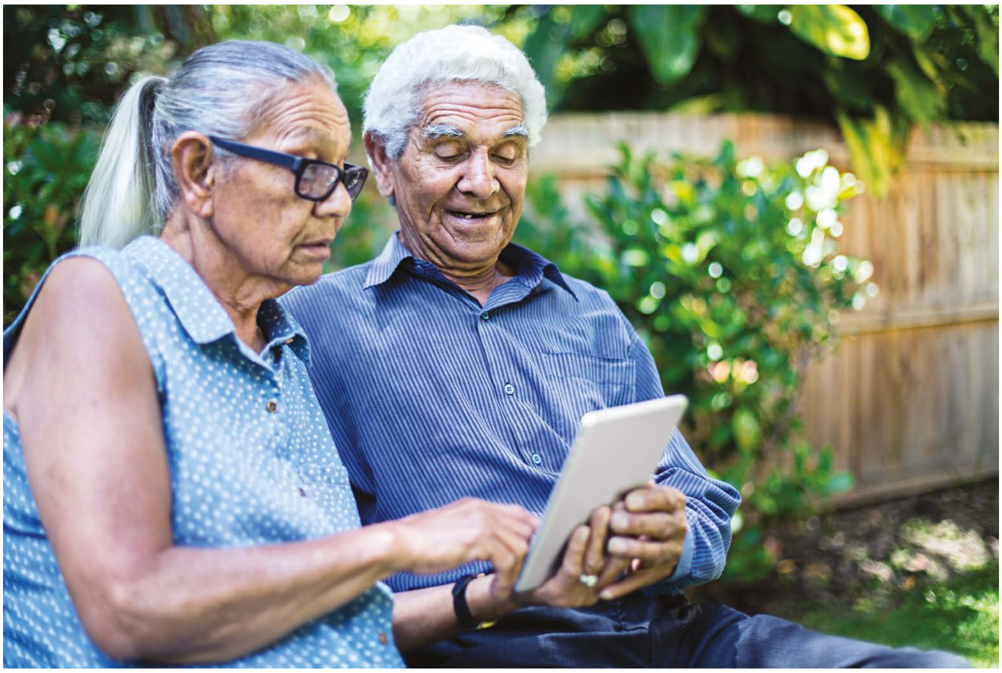
64. Carter *et al.*, "The "I Love To Hate Them" Relationship with Cell Phone Service Providers", 227; Newgate Research, *Consumer Research for the Australian Energy Market Commission's 2017 Retail Competition Review*, 27.

65. Aaron Smith and Monica Anderson, "Online Shopping and E-Commerce", *Pew Research Centre*, 19 December 2016, http://www.pewinternet.org/2016/12/19/online-reviews/

66. Kristopher Floyd *et al.*, "How Online Product Reviews Affect Retail Sales: A Meta-Analysis", *Journal of Retailing, Empirical Generalizations in Retailing*, 90, no. 2 (2014): 217–32.

respondents indicated online reviews directly influenced their purchase decisions.[67] There is also evidence that consumers value particular kinds of review information for different reasons or purposes. One study found positive reviews containing information on core functionalities, technical aspects, and aesthetics are considered helpful, while negative reviews containing service failure information are considered particularly informative by potential customers.[68]

However online customer reviews themselves can be problematic for a variety of reasons. Online customer reviews usually include an an overrepresentation of both highly unsatisfied customers and extremely satisfied customers, resulting in a two mode distribution of ratings.[69] A research team found a poor correlation between consumer feedback rantings on Amazon and the more objective quality ratings from online *Consumer Reports* scores, developed through actual product testing.[70] Further, the importance of this information as a driver of consumer decision-making has led to the emergence of a “pay per review” industry, where paid reviewers post highly positive or negative reviews of products depending on their client’s requirements.[71] According to ReviewMeta, an organisation that analyses Amazon’s listings to help consumers identify trustworthy reviews, its algorithm estimates that approximately 9 percent of the 58million Amazon reviews it has analysed are “unnatural” – a claim Amazon disputes.[72] Businesses are also increasingly aware of the value of review sites on consumer choice, in July 2018 Meriton Serviced Apartments was fined $3 million for deliberately preventing consumers posting negative reviews on TripAdvisor.[73] While survey results suggest some consumers are aware of these issues - the Pew Research Centre found slightly less than half (48 percent) of consumers who read online reviews indicate it can be hard to tell whether online reviews are truthful and unbiased - 51 percent reported that reviews generally give an accurate picture of the true quality of the product.[74] Again, reliance on other consumers own reviews in the absence of quality information can have implications for market efficiency and consumer surplus.



67. Sai Wang, Nicole R. Cunningham and Matthew S. Eastin, “The Impact of eWOM Message Characteristics on the Perceived Effectiveness of Online Consumer Reviews”, *Journal of Interactive Advertising*, 15:2, (2015): 151-159.

68. Shimi Naurin Ahmad and Michel Laroche, “Analyzing Electronic Word of Mouth: A Social Commerce Construct”, *International Journal of Information Management* 37, no. 3 (1 June 2017): 202–13.

69. Adrian Camilleri, “How to split the good from the bad online reviews and ratings”, *The Conversation*, 5 April 2017.

70. Bart de Langhe, Philip M. Fernbach, Donald R. Lichtenstein; “Navigating by the Stars: Investigating the Actual and Perceived Validity of Online User Ratings”, *Journal of Consumer Research*, Volume 42, Issue 6, (2016): 817–833.

71. Nicole Nguyen, “Inside The Ecosystem That Fuels Amazon’s Fake Review Problem”, *BuzzFeed News*, 8 May 2018. https://www.buzzfeed.com/nicolenguyen/amazon-fake-review-problem?utm_term=.vkWkD60Vo&utm_source=ifttt#.pf1bQDqjJ

72. Ibid.

73. David Chau and Stephen Letts,”‘Meriton fined $3 million for interfering with negative TripAdvisor reviews”, *ABC News*, 1 August 2018.

74. Smith and Anderson, ‘Online Shopping and E-Commerce’, http://www.pewinternet.org/2016/12/19/online-reviews/

Transparency to drive competition in customer service

Influencing industry behaviour to improve market outcomes

From a regulatory perspective, development and publication of customer service quality information and measures have been widely proposed as a “sunlight remedy” to improve consumer decision-making, particularly in markets with highly substitutable/nearly homogenous products or services.[75]

In their Applying Behavioural Insights to Regulated Markets report, the Behavioural Insights Team in the UK has recommended that regulators publish ‘the information they collect on customer satisfaction, complaints and other quality indicators’, adding that this information ‘should then be displayed on price comparison websites’ to facilitate easy comparison of different providers.[76] The Behavioural Insights Team considers this approach has competitive benefits as compared to other regulatory tools such as an accreditation scheme, which ‘deters poor behaviour but does not incentivise suppliers to perform better than the accreditation threshold’.[77] Their report argues this measure may assist policymakers and regulators to identify systematic issues earlier, and respond accordingly.[78]

The UK’s Competition and Markets Authority has also recommended regulators develop or coordinate a sector-wide set of quality indicators or metrics to assist the comparison of products on factors other than price.[79] In April 2018, the Department for Business, Energy & Industrial Strategy’s *Modernising consumer markets: green paper* notes that the UK’s key service regulators for water, energy, communications and banking and insurance will develop performance metrics for the sectors they regulate. Where appropriate, these regulators will ‘provide a set of comparable data on consumer outcomes such as price differentials, consumer engagement, service quality and complaints across these sectors’ with the intent to ‘hold suppliers and digital comparison tools to account for the customer outcomes’.[80]

Developing a comparable measure of service quality may incentivise providers to compete on service quality rather than solely on price. If we assume that consumers will choose providers with better customer service at the same price point, it is likely that poorly performing providers will see a benefit from improving their customer service, and better performing providers may be able to capture a larger market share or price according to the higher customer service quality they offer. Delivering higher service quality is also likely to be profitable. A meta-analysis of the literature around service quality produced by marketing academic François A. Carrillat *et al*. found ‘service quality plays a pivotal role in helping firms build relationships with customers because it has a large impact on customer satisfaction, attitudinal loyalty, and purchase intentions’.[81] In a report commissioned by the Australian Communications and Media Authority (ACMA), marketing academics Dave Stewart and Maurie Logan also note that ‘it is now generally agreed that service quality leads to customer satisfaction… which in turn has a positive impact on customer advocacy, attitudinal loyalty and retention [*sic*]’.[82]

However, the current absence of service quality measures in sectors such as residential energy, banking and insurance, and telecommunications means providers may not realise any benefit from investing in improved customer service and consequently, are not incentivised to do so. As noted in the ACMA’s *Reconnecting the Customer* report, ‘if service providers do not—and are not able to—include the quality of customer service in the areas in which they compete for customers, then good customer service is likely to be

75. Elisabeth Costa, Katy King, Ravi Dutta, and Felicity Algate. “Applying behavioural insights to regulated markets.” *The Behavioural Insights team for Citizens Advice*, 26 May 2016, 49.

76. Ibid.

77. Ibid., 34.

78. Ibid.

79. Competition and Markets Authority, *Digital Comparison Tools Market Study*, 26 September 2017, 20.

80. Department for Business, Energy & Industrial Strategy, *Modernising consumer markets: green paper*, 11 April 2018, 25.

81. François A. Carrillat, Fernando Jaramillo, and Jay Prakash Mulki, “Examining the Impact of Service Quality: A Meta-Analysis of Empirical Evidence”, *Journal of Marketing Theory and Practice*, no. 2 (2009): 95.

82. Dave Stewart and Maurie Logan, *Performance Metrics Research - Prepared for the Australian Communications Authority* (ACMA, 2011), 24.

Case study - Quality health insurance

In the Netherlands, a quality metric has been developed to assist consumers to choose health insurance and clinical providers in a healthcare system delivered through ‘managed competition’.[83] The Centre for Consumer Experience in Health Care produces the *Consumer Quality Index* (CQI), which allows consumers to compare the quality of health care delivered by insurers and the quality of health insurance providers themselves. Dutch insurers have gradually started to differentiate their coverage by selectively contracting with particular healthcare providers on the basis of price or quality.[84] This means that all consumers can still largely choose their preferred healthcare provider and differences in quality ratings primarily relate to the difference of service quality of providers themselves.[85] The Centre for Consumer Experience in Health Care notes that absent external pressure, insurers would have little reason to provide this information or align it with other providers. To this end, health insurance performance data is collected for the Inspectorate for Health Care, health insurers and patients/consumers alike through a collaborative process where questionnaires are developed in public-private partnership.[86] The project has split the responsibilities and funding accordingly – research and development of metrics has been conducted and funded by public bodies, while the collection of data is financed by private sources. The data itself is owned by these private financiers, but researchers are granted access in order to develop the metrics.[87] Data is collected via two consumer surveys which measure patients’ experiences - the *Consumer Assessment of Healthcare Providers and Systems* (CAHPS) and the Quality Of care Through the patients’ Eyes (QUOTE) methodology.[88] Data about a patient’s experiences is combined with data about consumer’s values and expectations with regard to health care.[89]

Evidence from survey data suggests this quality metric does have a bearing on consumer decision making in the Dutch health insurance market. A study produced in 2016 by health economist Lieke H. H. M. Boonen *et al* - drawing on consumer survey data from 2006-2012 - considered the influence of role of price, quality and consumer information search on switching behaviour in the Dutch health insurance market. Their study found that consumers are primarily driven to switch by a lower premiums, with switching rates remaining approximately 4 percent per year after the first year.[90] However, Boonen *et al* also found that consumers are more inclined to switch providers if their current health insurance provider has a lower quality rating.[91] The study found that consumers enrolled in a health insurer rated one star higher than average quality rating led to a reduction in the propensity to switch by 0.4 percentage-points relative to the 5.4 percent base rate.[92]

underprovided in the market compared to what customers both want and are prepared to pay’.[93] In his paper on *The Market for Lemons*, Akerlof had also concluded that information asymmetry relating to measures of quality might drive higher product or service quality out of the market altogether.[94]

In mature markets where products or services delivered are largely substitutable or nearly homogenous firms may encounter difficulty increasing their market share where consumers cannot differentiate between providers. In deregulated markets this problem may be accentuated - where government-owned service providers have been privatised this can create incumbent providers. New market entrants may encounter difficulties increasing their market share due to the natural advantage of incumbant(s). There are two key approaches to increasing market share. The first is to compete on lower price, the second is product differentiation of non-price attributes, as first articulated by economist Edward Chamberlin in *The Theory of Monopolistic Competition*. Chamberlin argued that even in markets with relatively substitutable goods and many suppliers, firms can compete on a range of non-price attributes, which in turn allow firms to price independently based on the value created by that differentiation.[95] In the case of service industries, one of the key remaining non-price attributes to distinguish one provider from another is service quality. In the absence of a comparable measure of customer service quality, service providers cannot differentiate themselves on this basis, nor effectively price a higher or lower provision of service quality accordingly.

While businesses may be reluctant to increase transparency about the quality of their service delivery, improving disclosure about service performance has a number of benefits, including customer retention and higher profitability. Marketing academic Omar Merlo *et*

83. A.C. Enthoven, Theory and practice of managed competition in health care finance, (North Holland, Amsterdam: 1988), 75.

84. H. H Lieke. M. Boonen, Trea Laske-Aldershof, and Frederik T. Schut, “Switching Health Insurers: The Role of Price, Quality and Consumer Information Search”, The European Journal of Health Economics, 17 (2016): 341–43.

85. Diana MJ Delnoij, Jany JDJM Rademakers, and Peter P. Groenewegen, “The Dutch Consumer Quality Index: An Example of Stakeholder Involvement in Indicator Development”, BMC Health Services Research 10 (6 April 2010): 88.

86. Ibid., 4-5

87. Ibid., 4.

88. Consumer Assessment of Healthcare Providers and Systems (CAHPS), see: AHRQ Agency for Healthcare Research and Quality https://www.cahps.ahrq.gov/default.asp; Quality Of care Through the patients’ Eyes (QUOTE), see: NIVEL http://www.nivel.nl/oc2/page.asp?PageID=8838&path=/Startpunt/NIVEL%

89. Delnoij, Rademakers, and Groenewegen, “The Dutch Consumer Quality Index”, 3.

90. Boonen, Laske-Aldershof, and Schut, “Switching Health Insurers”, 347.

91. Ibid., 345.

92. Ibid.

93. Australian Communications and Media Authority, *Reconnecting the Customer - Final Public Inquiry Report*, September 2011, 62.

94. Akerlof, ‘The Market for “Lemons”’, 489-90.

95. Edward Chamberlin, *The Theory of Monopolistic Competition* (Cambridge: Harvard University Press, 1933).

al. found widespread concern among managers in their qualitative study that increasing transparency through review tools/functionality created increased reputational risks, while other research found managers are concerned that providing this information better equips customers to switch to another provider.[96] Yet, Merlo *et al*. found that ‘customers exhibit more trust and are willing to pay a premium to deal with transparent businesses’.[97] Consisten with this, marketing academic Valarie A. Zeithaml *et al*. have argued that ‘delighting the customer with service encounters that exceed their expectations to a surprising degree can enhance customer loyalty, thus providing the firm with a competitive edge’.[98] Bell *et al*. also found that educating consumers with firm-specific knowledge, around aspects of technical service – how complex financial products work for example - ‘can be a catalyst for serving customers better, tying them more closely to the firm’.[99] According to marketing academic Denish Shah *et al*. the ‘true essence of the customer centricity paradigm lies not in how to sell products but rather on creating value for the customer and, in the process, creating value for the firm’.[100] This suggests that increased transparency provides opportunities for businesses to cultivate loyalty among customers as trusted advisors with regard to complex products, while reducing market friction and improving consumer decision-making through increased transparency around customer service quality.

A comprehensive comparator – the UK energy market

In the UK, the not-for-profit consumer organisation Citizens Advice has long reported on energy retailer complaints and has statutory duties to do so (Consumers, Estate Agents and Redress Act 2007 and Utilities Act 2000). In 2016, Citizens Advice used this data to develop a comparable star rating for retailers to compare customer service, which they have incorporated into their online comparator. The rating compares providers on “complaints”, “ease of contact”, “bill clarity”, “ease of switching”, “switch guarantee” and an “overall rating”.[101] The rating draws on complaints made to Citizens Advice Consumer Service, the Extra Help Unit and the Energy Ombudsman. Citizens Advice currently provides a rating for retailers with more than 150,000 customers, but has recently determined to include all retailers with more than 50,000 customers as of March 2018. They will also allow retailers below this threshold the option to voluntarily join the rating.[102] Though Citizens Advice does not have dedicated funding to publicise the rating, the rating data is published quarterly and often receives tabloid attention.[103] Anecdotally, the rating helps to drive competition among retailers near the top of the ranking to improve their service while retailers near the bottom of the ranking often approach Citizens Advice seeking feedback and suggestions as to how they can improve their service offering.[104]

Adopting a consumer centric approach to customer care – even simply by acknowledging or responding to consumer complaints – can be enough to increase a consumer’s willingness to pay for that product or service in the future. In 2018, a study for the Harvard Business Review found consumers indicated a higher willingness to pay for a brand when a customer service representative responded to their complaint or comment through social media.[105] The study involved conjoint analysis with individuals who had contacted the customer service team of leading airline and mobile providers and received a response via social media - to identify how that engagement had changed their perception of the brand. Those customers who interacted with a company’s customer service representative through social media were ‘significantly more likely to pay more for the brand, or choose the brand more often from a comparably-priced consideration set, compared to our control group of customers who had no such interaction’.[106] Where customers received any kind of response from airline providers’ customer service to a complaint or comment raised on twitter they ‘were willing to pay almost $9 more for a ticket on that airline in the future’ - ‘regardless of whether the customer used a negative, neutral, or positive tone’.[107] Where a mobile provider resolved a customer’s issue, customers were willing to pay $8 more for a monthly contract.[108]

96. Omar Merlo *et al.*, “The Benefits and Implementation of Performance Transparency: The Why and How of Letting Your Customers “see through” Your Business”, *Business Horizons*, 12 October 2017, 2.

97. Ibid., 2; Simon Bell, Seigyoung Auh and Andreas B. Eisingerich, “Unraveling the Customer Education Paradox: When, and How, Should Firms Educate Their Customers?”, *Journal of Service Research*, Vol. 20(3) (2017): 306, 317

98. Carrillat, Jaramillo, and Mulki, “Examining the Impact of Service Quality”, 97, citing Valarie Zeithaml, Mary Jo Bitner, and Dwayne Gremler, *Services Marketing: Integrating Customer Focus Across the Firm*, 4th ed., (New York: McGraw-Hill Irwin, 2006).

99. Bell, Auh and Eisingerich, “Unraveling the Customer Education Paradox”.

100. Denish Shah, Roland T. Rust, A. Parasuraman, Richard Staelin, and George S. Day, “The Path to Customer Centricity,” *Journal of Service Research*, 9 (2), (2006): 115.

101. Citizens Advice, *Compare domestic energy suppliers’ customer service* https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/citizens-advice-consumer-work/supplier-performance/energy-supplier-performance/compare-domestic-energy-suppliers-customer-service/

102. Citizens Advice, *How the scores are worked out* https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/citizens-advice-consumer-work/supplier-performance/energy-supplier-performance1/how-the-scores-are-worked-out/

103. Sophie Christie, “Best and worst energy firms for complaints – where does your supplier rank?”, *The Sun*, March 31st 2017. Available online at https://www.thesun.co.uk/money/3222427/best-and-worst-energy-firms-for-complaints-where-does-your-supplier-rank/

104. Conversation between CPRC and Citizens Advice, 18 January 2018.

105. Wayne Huang *et al.*, “How Customer Service Can Turn Angry Customers into Loyal Ones”, H*arvard Business Review,* 16 January 2018, https://hbr.org/2018/01/how-customer-service-can-turn-angry-customers-into-loyal-ones.

106. Huang *et al.*, “How Customer Service Can Turn Angry Customers into Loyal Ones”. Note the study found no statistically significant change in willingness to pay among customers who did not receive a response from the company.

107. Ibid.

108. Ibid.

Making the grade

In Canada and the US, the Better Business Bureau (BBB) seeks to improve marketplace trust across a range of industries by providing businesses with a customer facing rating "grade" from A+ through to F- according to information BBB is able to obtain about the business, including complaints received from the public.[109] Underpinning this grade are components including; "Business's complaint history with BBB", "Type of business", "Time in business", "Transparent Business Practices", "Failure to honour commitments to BBB", "Licensing and government actions known to BBB" and "Advertising issues known to BBB".[110] BBB also offers accreditation according to the BBB Code of Business Practices, where businesses affirm they meet and will abide by the standards outlined in the Code. This Code is based on a number of components including: "Build Trust", "Advertise Honestly", "Tell the Truth", "Be Transparent", "Honour Promises", "Be Responsive", "Safeguard Privacy" and "Embody Integrity".[111] This rating provides consistency for consumers across different product and service markets, creating a benchmark for quality service and trustworthiness that can be used as a simple heuristic when deciding to make a purchase. Evidence from a mixed-method analysis in Colorado suggests consumers are 4.7 times more likely to trust real-estate salesmen and 17 times more likely to trust an auto- or boat-salesman when they notice the BBB logo compared with when they do not.[112]

Even if the agent was unable to resolve this issue, consumers were still willing to pay $6 more – as compared with customers who did not receive a response.[113] Also notable was the significant boost in perceived value where companies responded quickly – when an airline responded to a customer's tweet in five minutes or less, that customer was willing to pay nearly $20 more (on average) for a future ticket with that airline.[114] This study suggests a clear link between perceived value of customers service and willingness to pay a premium for that brand.

Finally, if information asymmetry around service quality results in reduced consumer participation, it may also result in market inefficiencies. The absence of service quality information provides little incentive for suppliers to compete on changing demands around service quality and improve their service offering, resulting in poor technical and dynamic efficiency.[115] Where consumers perform only a limited search of the market, firms might compete to be the first to attract consumers, rather than competing to provide the best offer.[116] As noted by the UK's Office of Fair Trading, this potentially results in overuse of resources for marketing and advertising rather than providing a lower-priced or higher-quality product.[117] Moreover, where product-environment information is ambiguous, consumers may choose not to switch to lower cost providers with equal/greater quality than their current provider, diminishing demand-side competition and ultimately resulting in muted price competition or *X-inefficiency* – whereby firms lack adequate competitive incentives to reduce unit costs of production (see figure 3).

Figure 3: Amelia Feltcher, *The Role of Demand Side remedies in driving effective competition, A review for Which?*, (Centre for Competition Policy; 2016), 13.

109. Better Business Bureau, *Overview of ratings*, https://www.bbb.org/council/overview-of-bbb-grade

110. Ibid.

111. Better Business Bureau, *Code of Business Practices*, available online https://www.bbb.org/en/us/code-of-business-practices/

112. John Lee West, "A Mixed Method Analysis of the Better Business Bureau's Third-Party Seal and the Extent to Which It Inculcates Trust among Consumers", *Journal of Research in Interactive Marketing*, 9, no. 3 (29 July 2015): 214–38

113. Huang *et al.*, "How Customer Service Can Turn Angry Customers into Loyal Ones".

114. Ibid.

115. Consumer Affairs Victoria, "Designing Quality Rating Schemes for Service Providers", 2.

116. Office of Fair Trading, W*hat does Behavioural Economics mean for Competition Policy?*, March 2010, 19.

117. Ibid.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Policy implications

The absence of clear, trustworthy information about the service quality experienced by consumers of different retailers acts as a barrier to informed choice. Not only does the absence of this information hamper consumer decision-making, it also works to reduce competitive pressure between retailers to improve the quality of the customers service and experience that they deliver.

In an era where data is highlighted as an increasingly valuable resource – both to companies and consumers – we recommend policymakers, regulators, industry and the community sector closely explore the role of service & quality data to enhance consumer decision-making and increase competitive pressures for improved consumer experiences. We outline four key recommendations for policymakers to consider below:

1. Develop clear, comprehensible and comparable measures of service quality

Wherever possible, policymakers and regulators should publicise the performance information they collect about the non-price attributes of businesses they regulate to address key information asymmetries.

Relevant, accessible information presented in a clear and comprehensible format that allows consumers to easily compare different providers can greatly aid consumers in making choices that better suit their preferences.

2. Conduct rigorous consumer testing of measures of service quality

Where there are opportunities to develop measures of service quality, further consumer research would provide evidence as to whether a measure of service quality helps to reduce choice ambiguity and improves consumer decision-making.

In developing a measure for a particular industry, further research could consider the non-price attributes consumers consider meaningful when comparing companies, as well as and the relative importance of these attributes. It would also be valuable to understand how consumer expectations about these aspects differs across sectors.

This research could explore whether distinct consumer segments respond to the inclusion of particular attributes as compared with others and the most effective ways of presenting this information to consumers.

3. Increase transparency to improve industry performance

Consumer facing measures of service quality can also help to create competitive pressure for providers to deliver better customer service.

Policymakers and regulators can develop an environment that makes it advantageous for companies to improve and compete on service quality performance. Similarly, industry providers might also consider whether they have a competitive advantage in service quality, thus reaping the benefits of increased disclosure and transparency of comparable measures of competence, reliability and honesty. This can be an important way for companies to differentiate themselves in complex markets.

4. Ensure data sources are available for the public good

A range of measures and metrics are already collected by regulators, ombudsman and businesses, could be used as indicators of service quality by consumers. Further research might consider how different activities and outcomes are measured or defined, along with the development of consistent definitions across different businesses and industries.

As per the recommendations in the 2017 Productivity Commission's *Data Availability & Use* inquiry report, government departments and agencies could consider what publicly funded datasets they collect might be shared with public interest research bodies to benefit consumers and the community.

To investigate the opportunities to make service and quality information more available to energy consumers, CPRC has recently commenced a project in partnership with the RMIT Behavioural Business Lab, the Department of Environment, Water, Land and Planning (DELWP) the Essential Services Commission, and the Energy and Water Ombudsman Victoria. The project includes a number of research components investigating the non-price attributes consumers consider meaningful when comparing energy providers and whether provision of this information affects the decisions of real consumers. The research will entail:

- Qualitative research with consumers to identify the issues that are important
- Consumer research to find out how important these attributes are relative to price
- Consumer research to find out how consumers respond to particular formats of this information
- Consumer research in the lab, and subsequently the field, to identify whether the information assists consumers to make decisions or has an effect on decisions.

The project will garner a number of insights for policymakers and regulators around the kinds of information consumers value, how this information can be best presented to consumers and the datasets available to develop this information into a consumer facing measure.

CPRC and RMIT Behavioural Business Lab will shortly be undertaking outreach and engagement with energy retailers, regulators, policymakers, community organisations and others who may be interested in participating in this project. We would welcome parties interested in the project to contact us for more information.

Conclusion

Asymmetric information about service quality between buyers and sellers has several consequences which result in poor outcomes for consumers.

First, the absence of service quality measures reduces consumers’ ability to effectively compare and identify the service which best meets their preferences, delivered at a price they are willing to pay. Second, the absence of service quality measures results in some consumers incurring additional costs, including search costs, costs related with choosing the wrong product and costs incurred when making a complaint. Third, the absence of competitive pressures to improve service quality may result in poor customer service practices emerging, potentially tarnishing the whole sector, reducing consumer trust and market engagement more generally. Once lost, trust is difficult to rebuild, and can result in public support for more significant government intervention in a sector.

In the absence of clear information, consumers turn to a range of proxies for quality, including brand, pricing and other consumers reviews. Yet the evidence suggests that these may themselves be poor measures of quality, even problematic measures more generally. A measure of service quality not only addresses a fundamental information asymmetry impinging consumer choice, but also enhances the degree to which businesses effectively compete to provide higher quality service. The absence of this information may even drive higher quality providers from the market, despite evidence that consumers are willing to pay for higher customer service. Moreover, service quality may be all that separates a range of providers of largely substitutable products and services, particularly as the sharing economy continues to grow.

Significant opportunities exist for government agencies, dispute resolution bodies and regulators to work with consumer organisations to improve service quality information disclosure with the objective of enhancing consumer choice. This opportunity is only furthered by technological advancement, increasing data availability and digital transformation.

Appendix A: Examples of measures of non-price attributes

Consumer facing measures

There are a number of consumer facing measures of non-price attributes already in use in various industries across different jurisdictions. These measures are intended to address the fundamental information asymmetry around product quality and may provide a useful reference in developing measures for sectors without this customer information.

In the US, J.D. Power & Associates, a global marketing research company, have developed a number of ratings tables across a range of industries, including telecoms, energy, financial services, insurance, healthcare, travel companies, sports (“fan experience” by team) and some electronic goods.[118] The rankings primarily compare the non-price attributes of brands against a five-point start rating, though some ratings compare different brands on cost or price according to their 5-point scale, rather than comparing individual offers. For some industries, such as “wireless” (mobile telephone), customer care is limited to a comparison of “customer satisfaction”. Others, such as retail energy, include “Overall Satisfaction”, “Enrolment/renewal”, “Billing & payment” (how easy it is to understand a bill/charges and accuracy of billing), “Pricing” (price attributes including competitiveness and pricing options), “Communications” (a providers’ ability to inform and educate consumers), “Corporate Citizenship” (supporting the local community and their efforts to improve impact on the environment), and “Customer Service” (both by phone and online).[119] The rankings are split across different jurisdictions where applicable - retail energy has been deregulated in states like Texas while other states do not have ratings where provision remains under centralised government control for example. The ratings are based on ‘the opinions of a representative sample of consumers who have used or owned the service being rated and are therefore indicative of a typical buying or ownership experience’.[120]

In Texas, the Public Utility Commission of Texas (PUC) publishes a ranking of energy retailers based on 6 monthly complaint data per 1000 customers.[121] This metric, a 5-star rating has been incorporated into a government funded comparison site – “Power to Choose” – enabling consumers to filter by star rating as well as price of each offer. Notably, the Public Utility Commission Texas is legally prohibited from publicising the number of customers served by each retailer, and includes a disclaimer explaining that ‘significant changes in the complaint score may occur from month-to-month for smaller [retail electricity providers] based on only a few complaints’.[122] Also notable is that the complaint score is based on all informal complaints investigated ‘irrespective of whether or not the company was determined to be at fault or adequately resolved the customer’s complaint’.[123]

In New Zealand, the consumer affairs not-for-profit organisation Consumer NZ runs an independent energy retail comparator site on behalf of the government to facilitate consumer switching. As part of this service, Consumer NZ also conducts a customer satisfaction survey with consumers and has developed a ranking of the different retailers based on survey results. The survey includes a range of service quality metrics that include “incorrect billing”, “unhelpful customer service”, “long wait times to speak to a customer service rep”, “helping customers select a plan appropriate for usage”, “resolving problems in a timely manner” and “customer support (billing/general queries)”. In 2017, Consumer NZ developed a “Hall of Shame”, noting those retailers who performed particularly badly against the different performance measures.[124]

118. See JD Power – Rating and awards - http://www.jdpower.com/ratings-and-awards

119. See JD Power – Ratings and awards: Energy http://www.jdpower.com/ratings/industry/energy

120. Ibid.

121. Notably, Public Utility Commission Texas is legally prohibited from releasing the number of customers served by each retailer.

122. Public Utilities Commission Texas, *Retail Electric Provider Complaint Scorecard*, August 2017 available online: http://www.powertochoose.org/scorecard/Scorecard.pdf

123. Ibid.

124. Consumer NZ, *Energy Providers Survey* https://www.consumer.org.nz/articles/energy-providers#article-hall-of-shame

125. Ofcom, *Mobile Services: Comparing Service Quality* https://

In April 2017, Ofcom, the British telecommunications regulator, published its first annual service quality report. Based on data collected through regulatory obligations and consumer research commissioned by Ofcom, it compares the service quality of the UK's largest landline, broadband and mobile providers in 2016 – as defined as those with a 4 percent or more market share. The report follows from Ofcom's Digital Communications Review which indicated service quality in the telecoms industry warranted improvement. As part of this reform, Ofcom have also developed an interactive online tool for consumers to compare telco performance at a glance. This interactive tool includes "overall satisfaction", "provider complaints' – split between satisfaction with complaints handling and percentage of consumers with a complaint, "ease of contact" – including call waiting time and whether consumers hung up waiting for an answer, "complaints to Ofcom" and the time taken to install a service – split between rural and urban customers.[125] Notably, this interactive tool is not currently integrated into an online comparator to enable consumers to easily conduct a price-quality trade-off.

In Australia, consumer organisation CHOICE has developed a comparison table of the larger telecoms companies based on a customer satisfaction survey. The rating compares both "SIM-only mobile providers" and "SIM plus handset mobile providers" against nine different components: "Overall", "Network reliability", "Internet connectivity and coverage", "Network coverage", "Internet speed", "Value for money", "Call clarity", "Customer service" and "Bill clarity".[126] CHOICE have also developed a comparison of Internet Service Providers (ISP). The comparison table of ISPs includes eight components: "Overall" rating, "reliable connection", "Speed", "Value for money", "Technical Support", "Customer support", "Bill clarity" and "Ease of Setup".[127] In both comparison tools, CHOICE includes telco providers where their survey collected more than 30 respondents in their survey of 1994 respondents (mobile phone provider) and 1910 respondents with an internet connection. This means many of the smaller telecommunications companies have not been included are missing from these comparison tables. Comparisons developed by private comparators, such as whatphone.com, are limited to larger providers and the methodology for developing these ratings is unclear.[128]

Industry facing metrics and their impact

Internally facing industry metrics may also provide a useful tool as consumer facing measure, particularly if and where they can be validated by an independent third party. The following examples are more publicly available measures, many of which provide a reputational index across different industry sectors. It is also likely that some businesses have their own internal metrics to measure some aspects of consumer outcomes in order to drive competitive advantage. Further exploration of these measures may yield useful measures and datasets in developing customer facing service quality information.

One such measure is the UK Customer Satisfaction Index (UKCSI), a measure of customer satisfaction produced by the Institute of Customer Service across 13 different industry sectors for over 200 organisations across the UK. The 2017 report suggests there is 'compelling evidence of tangible links between customer satisfaction and business performance'.[129] The report found that four banks with a higher than sector average UKCSI in January 2016 collectively gain 66 percent of all current account gains in the Current Account Switching Service Dashboard program.[130]

Moreover, the 2018 UKCSI report finds that 'the key difference in satisfaction between the highest scoring organisation in each sector and the rest, are complaint handling, over the phone experiences, openness, trust and transparency.'[131] The CSI report also indicates clear consumer segmentation around willingness to pay for quality - across all sectors, 27.6 percent of consumers preferred premium service, with 14.2 percent indicating a strong preference for a "no frills" service and the remaining 58.2 percent favouring a balance of price and quality service.[132] Notably the preference for a premium service is

www.ofcom.org.uk/__data/assets/pdf_file/0023/100769/comparing-service-quality-mobile.pdf

126. CHOICE, *Mobile provider satisfaction survey,* 14 September 2017 https://www.choice.com.au/electronics-and-technology/phones/phone-plans/articles/mobile-provider-satisfaction-survey

127. CHOICE, I*nternet service provider satisfaction survey 2017*, July 6 2017. https://www.choice.com.au/electronics-and-technology/internet/connecting-to-the-internet/articles/internet-service-provider-satisfaction-survey-2017

128. Whatphone, *Best Mobile Phone Coverage in Australia* https://whatphone.com.au/guides/mobile-phone-coverage/

129. Institute of Customer Service, *UK Customer Satisfaction Index: The State of Customer Satisfaction in the UK January 2017*, 2017, 7.

130. Ibid.

131. Ibid.

132. Ibid., 37.

133. Ibid.

slightly lower in utilities (23.4 percent), telecommunications (25.6 percent) and banking (25.9 percent) compared with automotive (34.2 percent) or tourism (31.6 percent), though not significantly lower than the UK all-sector average (27.6).[133] Nonetheless, this indicates clear appetite for premium service among a sizable segment of the British population.

Financial & Consumer Rights Council (FCRC) has developed a series of reports ranking the service delivery of organisations in key/essential services: *Rank the Energy Retailer*, *Rank the Telco* and *Rank the Bank*.[134] These reports draw on the experience of FCRC's financial counsellors in their interaction with services providers, acting as a trusted third-party to obtain assistance on behalf of vulnerable and disadvantaged individuals. Due to the nature of their work, financial counsellors often engage with credit, hardship, or debt collection areas of these businesses, and witness first-hand how businesses treat those individuals encountering various difficulties in paying their bills. These reports rank the hardship policies and practices of these organisations, and are used as an effective tool for advocacy and potentially prompt businesses to improve their service delivery. Where businesses have seen improvement between reports, they too have used the results as a marketing tool.[135]

The European Commission has developed a Market Performance Indicator (MPI) which provides composite ranking of different EU markets, ranging from 0 to 100. The 5 components of this metric include “Comparability”, “Trust”, “Expectations”, “Choice” and “Overall detriment”, with two additional components – “complaints” and “switching” measured but considered separately.[136]

In the UK, the Financial Conduct Authority (FCA) concluded that consumers had poor information on the value for money represented by general add-on insurance products in the UK in its recent market study. The FCA published its pilot General Insurance value measures in 2017, enabling consumers to compare claims frequency, claims acceptance and average payout for a range of different insurance types.[137] The FCA anticipates that this data will be primarily used by consumer groups, the financial media, firms and by the FCA itself, and to a lesser extent, by consumers themselves.

There are a range of service quality measures that have been developed for businesses to evaluate the service quality of their own business as perceived by customers. In 1985, marketing academic A. Parsu Parasuraman *et al.*. developed SERVQUAL, a measure to evaluate the quality of various service industries through five key criteria: reliability, responsiveness, assurance, empathy, and tangibles, measured against 22 sub-components.[138] SERVQUAL relies on consumer survey data to quantify any discrepancy between consumer expectations and performance, this positive or negative “gap” then indicates consumer perceptions of service quality. In 1992, marketing academics J. Joseph Cronin. Jr. and Steve Taylor developed an alternative to SERVQUAL, called SERVPERF.[139] This measure sought to refine SERVQUAL by drawing on empirical findings around performance, however both measures remain in use and academics remain divided about which measure provides a more accurate and effective measure.[140]

In 2003, Bain & Company partner Frederick Reichheld developed Net Promoter Score, which has dominated service quality metrics in recent years due to its' simplicity and the ease with which data about consumer's views can be collated into a business performance measure. Net Promoter Score identifies the number of consumers who act as “advocates” on behalf of the company - actively promoting the product or service to their social circle, minus “detractors” - the number of consumers likely to complain about the service to their social circle.[141] While the measure has become near ubiquitous in the corporate sector, as a growth metric, marketing academics have voiced a range of concerns about the fundamental soundness of the measure, including concerns that detractors are more likely to be ex-customers or never-customers of the brand.[142]

134. Available online at http://www.fcrc.org.au/News_Publications/Reports.htm and https://www.financialcounsellingaustralia.org.au/Corporate/Publications/Reports

135. See for example Commonwealth Bank, *Commonwealth Bank welcomes release of Financial Counselling Australia Rank the Banks survey - Media release*, 9 March 2017, https://www.commbank.com.au/guidance/newsroom/2017-fca-rank-the-banks-survey-201803.html; and Origin Energy, *Origin commits 1.3 million to support vulnerable customers in south east-queensland - Media Release* https://www.originenergy.com.au/about/investors-media/media-centre/origin-commits-1-3-million-to-support-vulnerable-customers-in-south-east-queensland.html

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141. Frederick F. Reichheld, “One Number You Need to Grow”, *Harvard Business Review,* December 2003.

142. Stewart and Logan,*Performance Metrics Research*, 25–26; R East, K Hammond, and M Wright, “The relative incidence of positive and negative word of mouth”, *International Journal of Research in Marketing*, 24, 2 (2007): 175–184.

143. For an extensive review of corporate reputation see Walker, K.,

Stewart and Logan note the range of models in the literature that have been developed to measure reputation.[143] For example, Sabrina Helm’s 2005 paper, Designing a Formative Measure for Corporate Reputation, outlines a model for corporate reputation including ten indicators: “quality of products”; “commitment to protecting the environment”; “corporate success”, “treatment of employees”; “customer orientation”; “commitment to charitable and social issues”; “value for money of products”; “financial performance”; “qualification of management”; “credibility of advertising claims”.[144] AMR, a research consultancy firm, produces and publicises a corporate Reputation Index, drawing its insights from consumer survey data, with results weighted to ensure they represent appropriate gender and age groups. AMR reviews 60 large companies sourced from the IBIS World Top 2000 Company list, which ranks companies by revenue. The Reputation Index measures how Australians view each of the 60 companies according to; “Products and Services”, “Innovation”, “Workplace”, “Citizenship”, “Governance”, “Leadership” and “Performance”, as well as “overall reputation”.[145] Stewart and Logan recommended the ACMA conduct a reputation study of firms within the telecommunications sector. This seems a prudent and necessary step to establish a reputation baseline for firms to measure any effect of introducing a service quality measure.

Internal metrics developed by businesses to measure the performance of their customer service may also be useful for consumers when making decisions. Though this requires increased disclosure and transparency, businesses that adopt this transparency can improve their perceived trustworthiness and may obtain larger market share.

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