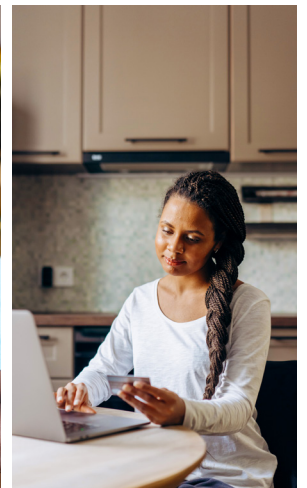


# The Digital Checkout





The Consumer Policy Research Centre (CPRC) is an independent, non-profit, consumer think-tank established by the Victorian Government in 2016.

CPRC aims to create fairer, safer and inclusive markets by undertaking research and working with leading regulators, policymakers, businesses, academics and community advocates.

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# Introduction

Australia and world economies are experiencing a Fourth Industrial Revolution driven by a fusion of electronics and information technologies that blurs the lines between the physical, digital, and biological spheres.<sup>1</sup> For consumers, this means our reliance on, and participation in, the **'digital economy'** continues to increase at a rapid pace.<sup>2</sup> Are protections and safeguards in the digital economy keeping pace for consumers to confidently reap the benefits of this evolving environment?

## COVID-19 and the rise of the **'Digital Checkout'**

For the purposes of this report, we refer to the term Digital Checkout as the process of a consumer engaging in a transaction (paid or otherwise) to access or procure a product or service online. COVID-19 – and associated social and health restrictions – has substantially changed the scale and scope of Australian consumers' interactions with the digital economy. Australians are using data-driven products and services more than ever before, be it for work, education, socialising, entertainment, or shopping. In particular, the shift away from bricks-and-mortar shopping toward online shopping has been particularly stark<sup>3</sup> – with total online retail industry turnover almost double pre-COVID levels throughout much of 2020 and has remained steadily high in 2021<sup>4</sup>. More than ever before, Australian consumers are “queuing up” to use the **'Digital Checkout'** – through which households can access and consume a wide range of products and services without visiting a physical store.

It's important to appreciate that household consumption is a significant component of our economic activity – constituting approximately 60% of Gross Domestic Product.<sup>5</sup> Therefore, the seismic shift in how households are consuming goods and services via the Digital Checkout will have some fundamental implications for the policy frameworks and systems that promote consumer wellbeing and competition in our market economy.

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1 "The First Industrial Revolution used water and steam power to mechanize production. The Second used electric power to create mass production. The Third used electronics and information technology to automate production. Now a Fourth Industrial Revolution is building on the Third, the digital revolution that has been occurring since the middle of the last century. It is characterized by a fusion of technologies that is blurring the lines between the physical, digital, and biological spheres." See: Klaus Schwab, "The Fourth Industrial Revolution: what it means, how to respond", (January 2016), <https://www.weforum.org/agenda/2016/01/the-fourth-industrial-revolution-what-it-means-and-how-to-respond/>

2 The Australian Government defines the digital economy as the economic and social activities that information and communication technologies deliver. Some examples of activities are banking, buying and selling goods, accessing education and entertainment using the internet and mobile devices. The Government notes that this space is developing rapidly and it's changing the way Australians live, work and do business. These changes both challenge Australia's industries and communities, and provide them with opportunities. See Australian Government Department of Industry, Science, Energy and Resources, "Participating in the Digital Economy", (Accessed December 2020), <https://www.industry.gov.au/policies-and-initiatives/participating-in-the-digital-economy>

3 Australian Bureau of Statistics, "Online sales, December 2020 - Supplementary COVID-19 analysis", (5 February 2021), <https://www.abs.gov.au/articles/online-sales-december-2020-supplementary-covid-19-analysis>

4 Australian Bureau of Statistics, "Online sales, June 2021 - Supplementary COVID-19 analysis", (4 August 2021), <https://www.abs.gov.au/articles/online-sales-june-2021-supplementary-covid-19-analysis>

5 OECD, "Household Spending (Indicator)", (accessed 26 September 2021) <https://data.oecd.org/hha/household-spending.htm> and OECD, "National Accounts At a Glance", (accessed 29 May 2020), <https://stats.oecd.org/viewhtml.aspx?datasetcode=NAAG&lang=en>

## What are the implications of COVID-19 for consumers?

On the **demand side** of the economy, COVID-19 health and social restrictions have triggered changes in terms of how we buy what we want and need. We've turned in droves to the Digital Checkout (such as through apps, websites and digital platforms) to satisfy our demand while it's been difficult to get to stores, or stores have been closed. It has and will continue to provide us with abundance of choice, convenience and the ability to actively participate in markets without any physical interaction, which in particular empowers those where accessing a physical store is impractical or impossible. For many consumers, these changes to habits and preferences during COVID-19 will be permanent.<sup>6</sup>

On the **supply side** of the economy, businesses have responded to consumers' greater use of digital technologies during COVID-19. Organisations are adjusting their business models by increasing their digital presence, using technology to uphold COVID-19 safety protocols and ensuring they have access to digital infrastructure that enables online sales and purchases.

**Australian Government policy** is fuelling these demand and supply side trends further. Government is accelerating the development and expansion of digital infrastructure – with the overall goal that we have a world-leading digital economy by 2030.<sup>7</sup>

## What does this mean for consumer policy?

This shift towards the Digital Checkout is testing how technology neutral and future-proof current Australian consumer protections really are. The challenge for consumer policy is ensuring that consumer protection frameworks can respond effectively to market failures and promote consumer interests. As rapidly as the Digital Checkout is evolving, so are policy considerations in this space. During the development of this report alone, in a matter of months, the Government has initiated consultation on the expansion of the Consumer Data Right initiative, cybersecurity incentives and regulations, privacy protections, digital platforms inquiry into online marketplaces and reforms to address unfair contract terms law.

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<sup>6</sup> Rod Sims, "Tackling market power in the COVID-19 era", (October 2020), <https://www.accc.gov.au/speech/tackling-market-power-in-the-covid-19-era>.

<sup>7</sup> Prime Minister of Australia, "Digital Business Plan to Drive Australia's Economic Recovery", (September 2020), <https://www.pm.gov.au/media/digital-business-plan-drive-australias-economic-recovery#:~:text=The%20Morrison%20Government%20is%20investing,of%20our%20economic%20recovery%20plan>.

This report will:

- map the shift from the analogue to the digital checkout through the pre-, during and post-purchase processes for consumers today
- explore key gaps that currently exist in Australia's consumer protections
- highlight the reforms needed to ensure that the Digital Checkout enhances consumer wellbeing and welfare, and drives sustainable economic growth into the future.

Across the next three chapters we set out evidence and ideas that will support the urgent development and implementation of vital consumer protection reforms:




- 1. How COVID-19 supercharged the Digital Checkout**
- 2. Analogue vs the Digital Checkout including the Digital Checkout's impact on consumers**
- 3. Modernising Australian consumer protections**

## Chapter 1:

# How COVID-19 supercharged the Digital Checkout

COVID-19 triggered both a surge of innovations in work, collaboration, distribution and service delivery, and a shift in many consumer behaviours, habits and expectations.<sup>8</sup> Australians have been spending more time online for work, education, socialising, entertainment and shopping as a result of the public health risks and restrictions. Unsurprisingly, with consumers spending more time online, it follows that many Australian businesses have seen consumer engagement increase within their digital channels.

**Figure 1:** Immediate rise in consumer and business growth online during COVID-19

Consumer shifts	
	eSafety Commissioner research <sup>9</sup> (June 2020) shows how people have been using the internet “a lot more” for staying up to date with news ( <b>30%</b> ), work ( <b>27%</b> ), watching videos ( <b>27%</b> ), and social media ( <b>25%</b> ). <b>10%</b> of respondents reported shopping online “a lot more.”
	Office of the Australian Information Commissioner (OAIC) research <sup>10</sup> (September 2020) shows that <b>47%</b> of Australians have downloaded an app or signed up to a new digital service due to COVID-19.
	Australian Communications and Media Authority (ACMA) research <sup>11</sup> (September 2020) found that in the first six months of 2020 more Australians had participated in a range of online activities compared to 2019, with the biggest jumps relating to watching videos ( <b>83%</b> 2019, <b>89%</b> 2020) and shopping ( <b>78%</b> 2019 to <b>83%</b> 2020) online.

<sup>8</sup> World Economic Forum, “Global Technology Governance Report 2021, Harnessing Fourth Industrial Revolution Technologies in a COVID-19 World”, (December 2020), 6, [http://www3.weforum.org/docs/WEF\\_Global\\_Technology\\_Governance\\_2020.pdf](http://www3.weforum.org/docs/WEF_Global_Technology_Governance_2020.pdf)




<sup>9</sup> eSafety Commissioner, “Covid-19: impact on Australian adults’ online activities and attitudes”, (June 2020), <https://www.esafety.gov.au/sites/default/files/2020-06/Covid-19-impact-on-Australian-adults-online-report.pdf>.

<sup>10</sup> OAIC, “2020 Australian Community Attitudes to Privacy Survey”, (September 2020), <https://www.oaic.gov.au/engage-with-us/research/australian-community-attitudes-to-privacy-survey-2020-landing-page/2020-australian-community-attitudes-to-privacy-survey>.

<sup>11</sup> ACMA, “Trends in online behaviour and technology usage – ACMA consumer survey 2020”, (September 2020), <https://www.acma.gov.au/sites/default/files/2020-09/Trends-in-online-behaviour0-and-technology-usage-ACMA-consumer-survey-2020.pdf>.



## Business shifts

	<p><b>73% increase in FY20<sup>12</sup></b> and a further <b>25% in FY21<sup>13</sup></b> in visitation to websites and apps for Woolworths</p> <p>Online sales in FY20 reaching over \$2 billion (an increase of 43.1%) and over \$3.5 billion in FY21 (an increase of 74.7%)</p>
	<p><b>60% growth in e-commerce sales for Wesfarmers in FY20<sup>14</sup></b></p> <p>Wesfarmer businesses generated e-commerce sales of over \$2 billion in FY20 and \$3.3 billion in FY21<sup>15</sup></p>
	<p><b>56% growth in online sales for JB Hi-Fi in FY20<sup>16</sup></b> followed by 93% growth in FY21<sup>17</sup></p> <p>Online sales \$404.0 million or 7.6% of total sales in FY20 (FY19: 5.5%) with a significant acceleration in the fourth quarter, growing 155.2%</p>

Australia Post, as a major parcel distributor, is often the nexus between Australian consumers and the businesses they purchase from. Its analysis of consumer behaviour during COVID-19 captures the sudden shift in consumer actions and behaviours. Australia Post stated that in April 2020 more than 200,000 new shoppers entered the online space.<sup>18</sup>

In its 2021 insights report, Australia Post noted Australians had spent over AUD \$50 billion on online goods (up 57% year-on-year).<sup>19</sup>

<sup>12</sup> Woolworths Group, "2020 Annual Report", (September 2020), 27, [https://www.woolworthsgroup.com.au/icms\\_docs/195785\\_2020-annual-report.pdf](https://www.woolworthsgroup.com.au/icms_docs/195785_2020-annual-report.pdf).

<sup>13</sup> Woolworths Group, "2020 Annual Report", (September 2021), 28, [https://www.woolworthsgroup.com.au/icms\\_docs/195984-annual-report-2021.pdf](https://www.woolworthsgroup.com.au/icms_docs/195984-annual-report-2021.pdf).

<sup>14</sup> Wesfarmers, "2020 Annual report", (September 2020), [https://www.wesfarmers.com.au/docs/default-source/asx-announcements/2020-annual-report.pdf?sfvrsn=67950abb\\_0](https://www.wesfarmers.com.au/docs/default-source/asx-announcements/2020-annual-report.pdf?sfvrsn=67950abb_0).

<sup>15</sup> Wesfarmers, "2021 Annual report" (September 2021), [https://sitemfinity.wesfarmers.com.au/docs/default-source/reports/2021---wesfarmers-annual-report.pdf?sfvrsn=9d9111bb\\_2](https://sitemfinity.wesfarmers.com.au/docs/default-source/reports/2021---wesfarmers-annual-report.pdf?sfvrsn=9d9111bb_2).

<sup>16</sup> JB Hi-Fi, "2020 Annual Report", (September 2020), <https://investors.jbhifi.com.au/wp-content/uploads/2020/09/FY20-Annual-Report-Printers-Version.pdf>.

<sup>17</sup> JB Hi-Fi, "2021 Annual report", (September 2021), <https://investors.jbhifi.com.au/wp-content/uploads/2021/09/Annual-Report-Final-Version.pdf>.

<sup>18</sup> Australia Post, "Inside Australian Online Shopping - 2020 eCommerce Industry Report", (June 2020), 10, [https://auspost.com.au/content/dam/auspost\\_corp/media/documents/2020-ecommerce-industry-report.pdf](https://auspost.com.au/content/dam/auspost_corp/media/documents/2020-ecommerce-industry-report.pdf).

<sup>19</sup> Australia Post, "Inside Australian Online Shopping - 2021 eCommerce Industry Report", (March 2021), 16, [https://auspostenterprise.com.au/content/dam/auspost\\_corp/media/documents/ecommerce-industry-report-2021.pdf](https://auspostenterprise.com.au/content/dam/auspost_corp/media/documents/ecommerce-industry-report-2021.pdf).

Six months into the first lockdown restrictions, consumer research completed for Australia Post by Deloitte<sup>20</sup> estimated that before the pandemic, just over half (53%) of all consumer purchases were made in person. During the pandemic, this went down to 42% – an 11% drop relative to pre-COVID levels. This shift was mostly due to consumers opting to shop online, with 5% more purchases during COVID-19 being completed via websites, and a further 4% through online marketplaces, such as eBay or Amazon. Safety concerns from the pandemic (39%) and a lack of access to shops (22%) were cited by consumers as the main reasons they turned to online shopping during COVID-19.

Australia Post has also observed that shoppers who wouldn't usually satisfy their demand by buying online – such as older people – have been quickly learning how to utilise the Digital Checkout during COVID-19. In addition many retailers are also learning how to use online mediums to strengthen their online presence.<sup>21</sup> These changes in demand-side and supply-side dynamics are evident in the Australian real-time consumer spending index tracker with an increase in the uptake of digital goods and subscription services once COVID-19 restrictions were introduced in late March 2020. Also, while department store retail sales experienced a sharp increase leading up to Christmas 2020, the further prolonged COVID-19 restrictions in New South Wales (NSW) and Victoria have plunged such sales further. Post restrictions easing, online sales still remain higher than levels prior to COVID-19 restrictions in early 2020. (Figure 2).

**Figure 2:** Australian real-time consumer spending (department stores vs digital goods and subscription services)<sup>22</sup>



Source: Australian real-time consumer spending index tracker as at 1 December 2021

20 Deloitte Access Economics, "Australia's eCommerce revolution: how it saved businesses in COVID-19 and future strategies to thrive," (Report commissioned by Australia Post – October 2020), 17, [https://auspost.com.au/content/dam/auspost\\_corp/media/documents/e-commerce-report-2020.pdf](https://auspost.com.au/content/dam/auspost_corp/media/documents/e-commerce-report-2020.pdf).

21 Australia Post, "Inside Australian Online Shopping - 2020 eCommerce Industry Report", (June 2020), 7, [https://auspost.com.au/content/dam/auspost\\_corp/media/documents/2020-e-commerce-industry-report.pdf](https://auspost.com.au/content/dam/auspost_corp/media/documents/2020-e-commerce-industry-report.pdf).

22 e61, "Australian real-time consumer spending", (4 November 2021), <https://www.e61.in/index-tracker>.

A 2020 report from AustCyber (the Australian Cyber Security Growth Network established under the *Australian Government's Growth Centre Initiative*) anticipated that COVID-19 would drive increased online access to essential groceries. Consumption of grocery shopping online is expected to remain permanently increased due to the new dynamic established during the COVID-19 (searches for online shopping increased by over 2,000% by the end of March 2020 according to google trends).<sup>23</sup> From a demographic perspective, significant changes in grocery shopping were expected among older Australians, the most susceptible group to the pandemic.

Roy Morgan survey research reveals the extent to which consumers have turned to online shopping during COVID-19 to purchase a range of goods and services, excluding food and groceries. Their survey results indicate that overall, 10.6 million Australians bought 29 million products online in an average four-week period during the 12 months to September 2020.<sup>24</sup>

The sharp increase in activity through the Digital Checkout has also stimulated economic activity during the COVID-19 lockdown and restrictions. National Australia Bank's Online Retail Sales Index analysis estimates that in the 12 months to June 2021, Australians spent \$48.6 billion on online retail – estimated to be 13.3% of the total retail trade estimate and about 34.9% higher than the 12 months to June 2020.<sup>25</sup> Engaging through online marketplaces continues to be a popular choice for consumers with the Australian real-time consumer spending tracker<sup>26</sup>, noting above normal spending on both eBay (310% over normal levels) and Amazon (122% over normal levels) by Sydney and Melbourne consumers during their respective 2021 lockdowns.<sup>27</sup>

This level of consumer engagement in accessing products and services online is likely to remain, with Australia Post research noting that, "...shoppers expect their online shopping frequency to remain 28% higher than before the pandemic".<sup>28</sup>

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**It is highly likely that the Digital Checkout will be an enduring feature of the Australian economy for many years to come,<sup>29</sup> with many businesses enhancing their eCommerce capacity and capability.**

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Australia Post's research into supply chains showed that 70% of its survey respondents reported investing in their eCommerce capabilities in the past two years.<sup>30</sup> The Digital Checkout is here to stay so it's imperative that the framework it operates in not only supports economic growth but is consumer-centric as consumers' active participation should underpin the success of any digital checkout.

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23 AustCyber, "Australia's Digital Trust Report 2020", (July 2020), 33, <https://www.austcyber.com/resource/digitaltrustreport2020>

24 Roy Morgan, "Click to buy: new figures show the move to online shopping", (23 November 2020), <http://www.roymorgan.com/findings/8578-online-shopping-september-2020-202011020550>

25 National Australia Bank, "NAB Online Retail Sales Index: June 2021", (3 August 2021), <https://business.nab.com.au/nab-online-retail-sales-index-june-2021-47896/>.

26 Australian real-time consumer spending tracker is available at: <https://www.e61.in/index-tracker>.

27 Matt Wade, "Lockdown boom for online giants as bricks and mortar stores lag", (13 October 2021), <https://www.theage.com.au/business/the-economy/lockdown-boom-for-online-giants-as-bricks-and-mortar-stores-lag-20211012-p58zen.html>.

28 Australia Post, "Inside Australian Online Shopping – 2021 eCommerce Industry Report", (March 2021), 16, [https://auspostenterprise.com.au/content/dam/auspost\\_corp/media/documents/e-commerce-industry-report-2021.pdf](https://auspostenterprise.com.au/content/dam/auspost_corp/media/documents/e-commerce-industry-report-2021.pdf).

29 Chair of the ACCC, Mr. Rod Sims, notes that he sees "a permanent shift to more online business and less bricks and mortar establishments" believing that how consumer buy things, and utilise many services, has, "changed permanently". See: Rod Sims, "Tackling market power in the COVID-19 era", (21 October 2020), <https://www.accc.gov.au/speech/tackling-market-power-in-the-covid-19-era>

30 Australia Post, "Sustainability, digitisation, and eCommerce top priorities for Supply Chain Leaders" (3 November 2021), <https://newsroom.auspost.com.au/article/sustainability--digitisation--and-e-commerce-top-priorities-for-supply-chain-leaders>.





## Chapter 2:

# Analogue vs the Digital Checkout

While COVID-19 may have supercharged consumers' uptake of the Digital Checkout, its use has been growing steadily over a number of years. Even back in 2018, online purchases were growing by 20% year-on-year.<sup>31</sup> However, the recent rapid increase in online shopping by Australian consumers – who have varying levels of familiarity and experience – has massive implications for policies and regulations that seek to address market failures and promote consumer wellbeing across the economy. This is because the information, touchpoints, suppliers, and experiences that feature in the Digital Checkout **before consumers make a purchase, how consumers make a purchase, and what occurs during consumption** are fundamentally different, compared to a bricks-and-mortar setting.<sup>32</sup>

Australian Government guidelines for Electronic Commerce published in 2006 were already alert to such differences, stating that the consumer experience differs to the traditional retail environment in, “...*the way in which information is made available to consumers, security of payments, privacy of personal information, and access to redress*”.<sup>33</sup> This observation from 15 years ago only hints at the significant differences between the digital and traditional analogue checkout.

While the need for consumers to find the right purchase at the right time for the right price may remain unchanged, the journey of how consumers achieve this has evolved immensely. Looking at the three key stages of a checkout journey: pre-purchase; during purchase; and post purchase, this chapter aims to provide a general comparative analysis of the two checkouts – a purely analogue checkout that last existed in the 90's and the digital checkout that exists today. The chapter then also explores the benefits and risks of the Digital Checkout while also highlighting insights from CPRC's own research on how consumers are experiencing some key aspects of the Digital Checkout within each phase, including consumer expectations of fairness, safety and privacy when shopping online. Quotes featured in this chapter are from the qualitative research conducted by CPRC between June and August 2021 (the qualitative research).<sup>34</sup>

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31 Australia Post, “Inside Australian Online Shopping – A preview of the 2019 eCommerce industry report” (February 2019), [https://auspost.com.au/content/dam/auspost\\_corp/media/documents/2019-ecommerce-industry-report-preview.pdf](https://auspost.com.au/content/dam/auspost_corp/media/documents/2019-ecommerce-industry-report-preview.pdf)

32 James Plunkett, “Markets don't work like they used to — and people are starting to notice”, *Citizens Advice*, (February 2018), <https://wearecitizensadvice.org.uk/markets-dont-work-like-they-used-to-and-people-are-starting-to-notice-af00ed38014d>

33 Australian Government, “The Australian Guidelines for Electronic Commerce”, (March 2006), 1, [https://treasury.gov.au/sites/default/files/2019-03/australian\\_guidelines\\_for\\_electronic\\_commerce.pdf](https://treasury.gov.au/sites/default/files/2019-03/australian_guidelines_for_electronic_commerce.pdf)

34 CPRC, Consumer wellbeing unpublished research



# Pre-purchase

Search and marketing



# The consumer journey



During the 1990s



Today

## THE ANALOGUE CHECKOUT

I need to make a purchase that works for me



**Static information & word of mouth to inform purchasing decision**

I'll go to whom I know and trust

### What it means for consumers

- Limited choice
- Less information
- Simplicity in decision-making
- Implicit trust of limited network

I

### MARKETING PRACTICES

- Contextual analogue marketing
- Some broad targeted advertising (eg: special interest magazines)

BUY 2 GET ONE FREE  
10% OFF



I want to get the best price

### PRICES OFFERED

- Transparent pricing models - only 2nd degree (lower prices through bulk buying) and 3rd degree (discounts to specific demographics eg: senior discount) offered



I N

### What it means for consumers

- Search cost are higher – time consuming if you want to search beyond your immediate network and to visit store-by-store
- Time consumed in visiting or calling different stores or catalogue mail orders
- Clarity in what prices everyone is being offered
- Make do with what's available



## THE DIGITAL CHECKOUT

I need to make a purchase that works for me



**Worldwide access via search engines, comparison websites, social media**

I'll see what's out there

### What it means for consumers

- Abundance of choice
- Wider access may lead to FOMO and elongated search stage – is there something better?
- Information overload
- Personal data can influence what a consumer sees

D E I

### MARKETING PRACTICES

- Highly personalised
- Listings are highly customised to user data

### What it means for consumers

- Services such as online comparison sites and platforms can (potentially) enable quick comparison of products or services reducing some search costs for consumers



### PRICES OFFERED

- Highly dynamic
- Possibility of personalised pricing

D E I

I want to know other's experiences

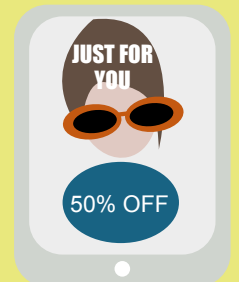
**Access to analysis, opinion and experiences of millions of others – far beyond our social networks**

I want to get the best price

D N

### What it means for consumers

- Access to user experiences beyond the immediate network
- Difficult to differentiate between genuine, sponsored or fake reviews
- 1st degree pricing possible opacity in pricing and offers
- Difficult to know the full cost of some products across their lifecycle where ongoing subscription may be involved



D Data collection/sharing point

E Efficiency and convenience

N Nudges or dark patterns

I Information point

C Real-time connection with consumer

## Benefits and risks to consumers during pre-purchase in the Digital Checkout

### *When it works in the consumer interest*

- Based on their data, consumers can be actively offered products and services more relevant to their circumstances (e.g. see ads on clothing items similar to past searches or purchases).
- Consumers have easier access to information when searching for and comparing products and services (e.g. independent third-party reviews, consumer reviews, comparator websites). This type of online information enables consumers to access not just more detailed information on price, but also new and different aspects of product or service quality.
- Information about quality, especially in online reviews, can help consumers be confident in choosing products or services that are beyond the knowledge/experience of their immediate social network.<sup>35</sup>
- Consumers can access free services that automate the process of searching and comparing offers (e.g. price comparison websites). Comparator websites can offer a “clearing house” while also widening the scope of comparisons that otherwise may not be feasible for consumers to conduct on their own.

### *When it works against the consumer interest*

- An abundant access to information on product, service, quality, pricing can be overwhelming for consumers, especially to discern the accuracy and transparency of the information being provided. The quality of the information consumers receive via online reviews varies and should not be taken as gospel.<sup>36</sup> Consumers also need to be wary of comparison services that preference companies based on commissions, and situations where search results are tainted by self-preferencing.<sup>37</sup>
- Firms can fail to provide meaningful choices relating to privacy.<sup>38</sup> It is onerous for consumers to overcome significant information asymmetries regarding how their data is collected, used and shared – and then “shop around” to find firms that better meet their privacy preferences.<sup>39</sup> In many cases, consumers may not have meaningful alternatives, indeed the majority of Australians accept terms they are not comfortable with because it's the only way to access the service.<sup>40</sup>

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35 Ben Martin Hobbs, “Online Reviews - A guide not a gospel”, (December 2019), <https://cprc.org.au/publications/online-reviews-a-guide-not-a-gospel/>.

36 Ben Martin Hobbs, “Online Reviews - A guide not a gospel”, (December 2019), <https://cprc.org.au/publications/online-reviews-a-guide-not-a-gospel/>.

37 Competition and Markets Authority, “Algorithms: How they can reduce competition and harm consumers”, (19 January 2021), <https://www.gov.uk/government/publications/algorithms-how-they-can-reduce-competition-and-harm-consumers/algorithms-how-they-can-reduce-competition-and-harm-consumers>

38 Connie Lin, “WhatsApp users will be required to share data with Facebook in a new policy twist”, *Fast Company*, (6 January 2021), <https://www.fastcompany.com/90591623/whatsapp-users-will-be-required-to-share-data-with-facebook-in-a-new-policy-twist>

39 Katharine Kemp, “Concealed data practices and competition law: Why privacy matters”, (2020), *European Competition Journal*, 634-637, <https://doi.org/10.1080/17441056.2020.1839228>

40 CPRC, “2020 Data and Technology Consumer Survey”, (December 2020), <https://cprc.org.au/publications/cprc-2020-data-and-technology-consumer-survey/>.

### *Example of Digital checkout harms – what it looks like in the real world*

In Australia, a 2020 investigation by Choice found that the online dating app Tinder charged different prices to consumers for their premium service Tinder Plus. Using 60 mystery shoppers, Choice found that people over the age of 30 were offered prices that were more than double the prices of those aged under 30. It also found price variations within those age groups; however, Choice was unable to identify a pattern that could explain these price variations. Choice was also unable to ascertain how Tinder set prices.<sup>41</sup>

## Consumer experience and expectations

While consumers value the convenience and access to more products, the online environment can feel overwhelming, especially with the level of information and marketing they experience. The proliferation of choice, while ostensibly a positive for consumers, has led to an increase in frustration and confusion. Choice becomes meaningless and even detrimental if it is not structured clearly or easily for consumers to navigate and act in accordance with their preferences.

*“Yeah, it does take a bit of work. I feel like every time I go to buy something, I need to go and look at every website, and look at every brand.”*

*Male, Regional Victoria, Under 50*

For a typical consumer, how goods and services are marketed to them – and the search results they see online – is influenced by the data firms hold about them, and the inferences they then make in an effort to make sales and turn a profit. CPRC’s *2020 Data and Technology Consumers survey*<sup>42</sup> shows that Australian consumers hold strong views about how their personal information is used to affect and influence their online shopping experience:

- The majority (76%) of consumers find the common practice of companies using their personal information to make predictions about them to be unfair.
- Most (94%) expect that companies should be open about how they use personal data to assess eligibility or exclude consumers from products/services.

<sup>41</sup> Choice, “Tinder’s secret pricing practices”, (August 2020), <https://www.choice.com.au/about-us/media-releases/2020/august/tinders-secret-pricing-practices>.

<sup>42</sup> CPRC, “2020 Data and Technology Consumer Survey”, (December 2020), <https://cprc.org.au/publications/cprc-2020-data-and-technology-consumer-survey/>.

Consumers feel a sense of unfairness in the context of personal information being used in ways that could exclude them from products and services, with 80% of consumers considering it was unfair for their personal information to impact what products they are eligible for.

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Consumer sentiments were also acute regarding:

- the use of personal information without their knowledge, to assess their eligibility or exclude them from loans or insurance (90% of consumers find this unacceptable)
  - data about their payment behaviour being used to assess their eligibility or exclude them from essential products and services (83% of consumers find this unacceptable).
- 

Consumer concern about personalisation when shopping online extends beyond the information and offers they see. The consumer data and tech survey results revealed deep concerns about prices being personalised based on information companies hold about a consumer. The survey revealed that 9 out of 10 consumers considered that it was unacceptable for companies to charge different prices based on past purchasing, online browsing history, or payment behaviour (88% in 2018, 90% in 2020).<sup>43</sup>

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<sup>43</sup> CPRC, "2020 Data and Technology Consumer Survey", (December 2020), <https://cprc.org.au/publications/cprc-2020-data-and-technology-consumer-survey/>.



# During purchase

Decide and spend



# The consumer journey



During the 1990s



Today

## THE ANALOGUE CHECKOUT

## THE DIGITAL CHECKOUT

Time to decide on the purchase

Time to decide on the purchase



Purchase decisions made in store or via the phone

### POINT OF SALE EXPERIENCE

More friction (ie. more steps involved) between seeing the advertising, the prices, and deciding on the purchase

Most purchases (paid or free) will involve signing up to terms and conditions

### What it means for consumers

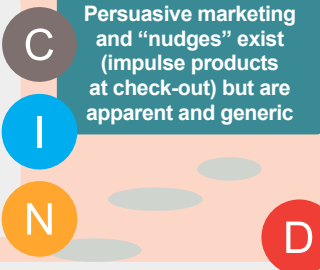
Ability to see/experience product before purchase and test aspects of quality (e.g. obligation free samples such as sample cosmetic products)

### What it means for consumers

Purchasing available 24/7/365

Inability to see or trial some purchases

Access to a variety of free services but often in exchange for data collection and sharing



### POINT OF SALE EXPERIENCE

Transactions completed at a touch of a button - very low friction

Subtle "nudges" and "dark patterns" lower purchasing friction further

Opaque, lengthy T&Cs and lack of genuine notification of how data is shared and used by firms and their third parties

Even free products and services come at a cost via access and sharing of personal data

Yes, I want to purchase it

Yes, I want to purchase it

### What it means for consumers

Little to no information collected during point of purchase – low privacy implications

Some information may be collected via nascent loyalty schemes

### What it means for consumers

Personal information may highly inform search or offers presented in future

Onus is on consumers to navigate out of paying post a free trial even if there was ever any intention to purchase



### What it means for consumers

Ability to receive the goods prior to finalising all payments on purchase

Additional fees if BNPL installments can't be met

Payment via credit card with points or via linking a registered loyalty program may inform product order next time a consumer undertakes a product search

### PAYMENT OPTIONS

Range of payment options including Buy Now Pay Later (BNPL) schemes to receive goods prior to payment

Free trials often lock in an ongoing future payment upfront reducing the transaction friction further



Loyalty programs were in their infancy with limited data collection and analytics

### PAYMENT OPTIONS

Cash and cheque popular modes of purchase with EFTPOS transactions becoming common

### What it means for consumers

Rare to access products/service prior to full payment

Product/service is often provided as a one-off

Joining a loyalty program during payment may lead to semi-customised discounts in future (e.g. coupon for a product purchased previously to encourage repeat purchase)



## Benefits and risks during purchase in the Digital Checkout

### When it works in the consumer interest

- The digitalisation of the purchase process can reduce friction in purchases - lowering transactions costs<sup>44</sup> by making it quicker and more convenient for consumers to securely complete transactions (e.g. direct debit transactions as opposed to manual payments).
- Consumers can automate purchasing decisions based on their preferences – with online intermediaries able to execute transactions on consumers' behalf (e.g. switching services that automatically move consumers to another essential service provider's<sup>45</sup> deal that would better meet their preferences).
- Consumers can use “free” online products and services that meet their needs (e.g. free news, information, entertainment, communication services).

### When it works against the consumer interest

- The reduced friction to complete purchases in a digital environment is exacerbated by other business practices that exploit consumer biases to reduce friction further, in potentially unfair, risky ways (such as screen-scraping<sup>46</sup>, behavioural nudges within choice architecture and dark patterns<sup>47</sup> that exploit consumer behavioural biases at the consumers' expense). Friction is further reduced with the vertical integration of firms aiming to provide an end-to-end experience, offering not only the products and services but also the payment methods to procure them – enabling holistic amalgamation of data across a consumer's checkout journey, rather than line of sight at a specific touchpoint.
- Consumer decisions to use (and consumer reliance on) big tech platforms strengthen the market power of dominant firms. This primarily occurs by strengthening network effects<sup>48</sup>, and is enabled by other factors such as competition laws allowing acquisitions, unfair business-to-business (B2B) trading practices<sup>49</sup> and (potentially) algorithmic collusion.<sup>50</sup>
- Greater prevalence of flexible payment options (such as Buy Now Pay Later (BNPL) and online loans) could contribute to unsustainable consumer debt. These financing options enable consumption before a good is paid for, without the safeguards seen in traditional finance markets (e.g. credit cards, personal loans) that are in place to prevent consumer harm from debt.<sup>51</sup>



Screen-scraping is an automated process to capture a user's input to a screen on a web-browser.

44 Frank Nagle, Robert Seamans & Steven Tadelis, “Transaction Cost Economics in the Digital Economy: A Research Agenda”, *Harvard Business Review* (2020), 4, [https://www.hbs.edu/faculty/Publication%20Files/21-009\\_93af5aea-aa7e-4985-8d7a-7cb-65cb51c7a.pdf](https://www.hbs.edu/faculty/Publication%20Files/21-009_93af5aea-aa7e-4985-8d7a-7cb-65cb51c7a.pdf)

45 Flipper, “How does energy switching work”, (Accessed January 2021), [https://flipper.community/how-it-works?qclid=CjwK-CAiAu8SABhAxEiwAsodSZIKGwrwMflYh0rwTjT-qsykZYDRhRG2j78HkXYbXEoP7ke7gDyXCNxoC7zkQAvD\\_BwE](https://flipper.community/how-it-works?qclid=CjwK-CAiAu8SABhAxEiwAsodSZIKGwrwMflYh0rwTjT-qsykZYDRhRG2j78HkXYbXEoP7ke7gDyXCNxoC7zkQAvD_BwE)

46 James Evers, “Consumer warning of ‘profiling for profit’ by fintechs”, *Australian Financial Review*, (15 January 2020), <https://www.afr.com/companies/financial-services/consumer-groups-hit-back-at-fintechs-over-open-banking-20200115-p53rk3>

Screen-scraping is an automated process to capture a user's input to a screen on a web-browser.

47 Competition and Markets Authority, “Algorithms: How they can reduce competition and harm consumers”, (19 January 2021), <https://www.gov.uk/government/publications/algorithms-how-they-can-reduce-competition-and-harm-consumers/algorithms-how-they-can-reduce-competition-and-harm-consumers>

48 ACCC, “Digital Platforms Inquiry – Final Report”, (July 2019), 66-68, <https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report>.

49 ACCC, “Perishable Agricultural Goods Inquiry”, (November 2020), <https://www.accc.gov.au/system/files/Perishable%20Agricultural%20Goods%20Inquiry%20-%20Final%20Report%20-%20December%202020.pdf>

50 Competition and Markets Authority, “Algorithms: How they can reduce competition and harm consumers”, (19 January 2021), Section 2.62, <https://www.gov.uk/government/publications/algorithms-how-they-can-reduce-competition-and-harm-consumers/algorithms-how-they-can-reduce-competition-and-harm-consumers>

51 Nassim Khadem & Stephanie Chalmers, “One in five consumers using buy now, pay later miss payments, but ASIC stops short of imposing new regulation on the sector”, *ABC News*, (15 November 2020), <https://www.abc.net.au/news/2020-11-16/asic-releases-report-into-buy-now-pay-later-sector-consumer-harm/12877126>.

- Consumers may have access to free products or services, but it will often be at the expense of allowing firms to collect and monetise their personal data.

#### *Example of Digital Checkout harms – what it looks like in the real world*

It's estimated that shoppers in the United Kingdom were charged GBP 39 million in Buy Now Pay Later late fees in a 12-month period.<sup>52</sup>

Investigations in the United States into digital markets identified instances where the dominant platform gave preferential treatment to its own products or services or business partners over others. The investigation also noted that, "... because the dominant platform was, in most instances, the only viable path to market, its discriminatory treatment had the effect of picking winners and losers in the marketplace."<sup>53</sup>

## Consumer experience and expectations

In the Digital Checkout, regardless of the product or service, or whether it's paid or free, often acceptance of some form of terms and conditions at this transactional phase is inevitable to enable access. It is important to recognise that a lot of the consumption of products and services online does not involve the spending of any money, but rather is based on consumers gaining access to digital products and services, often by giving up their attention and their data. Transparent and meaningful information about how companies are using consumers' data are frequently absent from terms and conditions and privacy policies, which consumers accept when using digital products or services. Dark patterns such as bundling consent further reduce friction, creating an environment where seamless acceptance of opaque terms and conditions is the only option to access the product or service.

*"I feel like I've sold my soul - like someone has all my data." Female, Under 50*

Results from CPRC's 2020 consumer data and tech survey results<sup>54</sup> indicate that there are several concerning aspects from a consumer rights perspective:

- Evidence suggests consumers are not being supported to engage effectively with privacy information, with 91% of consumers not reading all terms and conditions that apply to them in a year.
- Of consumers who had read the terms and conditions, 69% reported accepting terms even though they weren't comfortable with them – the main reason for doing so was it was the only way to access the product or service (75%).

<sup>52</sup> Espiner, T, "Buy Now Pay Later: 'I'm stressed over debt' – BBC News, (September 2021), <https://www.bbc.com/news/business-58423924>.

<sup>53</sup> US House of Representatives, "Investigation of Competition in Digital Markets - Majority Staff Report and Recommendations", *Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary*, (October 2020), [https://judiciary.house.gov/uploadedfiles/competition\\_in\\_digital\\_markets.pdf](https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf)

<sup>54</sup> CPRC, "2020 Data and Technology Consumer Survey", (December 2020), <https://cprc.org.au/publications/cprc-2020-data-and-technology-consumer-survey/>.

- More than 60% of Australian consumers were uncomfortable with companies sharing their personal information with third parties for purposes other than delivering products and services they had signed up for.
- Most (83%) feel it is unfair to collect information about consumers from other companies.
- Over 8 out of 10 consumers were uncomfortable with the unnecessary sharing of information regarding their phone contacts, photos, messages, unique ID numbers for mobile phone/device, health information or home address.
- Most Australian consumers (88%) do not have a clear understanding of how their personal information is being collected and shared. Only one-third (33%) of consumers agree it is enough to be notified about data collection through privacy policies and terms and conditions.

Another element of this transactional phase is the variety of payment options that further enable a frictionless setting for accessing products and services faster than ever before. While payment options such as BNPL are often easier to access than credit cards, they also add to consumer debt. Being insufficiently regulated, many companies are not performing even basic affordability checks.<sup>55</sup> CPRC's COVID-19 and Consumers research into debt revealed that the proportion of consumers relying on credit and BNPL services increased in 2020, with consumers living with a disability (26% in May 2020 but 36% in October 2020) and renters (24% in May 2020 but 36% in October 2020) relying on these payment options more in comparison to other demographics.<sup>56</sup> A report by the Australian Securities and Investments Commission in 2020 found that 1 in 5 consumers had missed BNPL payments.<sup>57</sup>

<sup>55</sup> Weizhen Tan, "The 'buy now, pay later' trend could be the next hidden source of consumer debt, analysts warn", CNBC, (10 August 2021), <https://www.cnbc.com/2021/08/10/buy-now-pay-later-installment-plans-may-cause-consumer-credit-card-debt-to-rise.html>.

<sup>56</sup> ASIC, "REP 672 Buy now pay later: An industry update", (November 2020), <https://cprc.org.au/app/uploads/2020/11/CPRC-COVID-19-and-Consumers-research-6-month-debt-trend-data-1.pdf>.

<sup>57</sup> ASIC, "REP 672 Buy now pay later: An industry update", (November 2020), <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-672-buy-now-pay-later-an-industry-update/>



# Post purchase

Receive and consume



# The consumer journey



During the 1990s



Today

## THE ANALOGUE CHECKOUT

I have my purchase



Delivery of items to home not the status quo – usually reserved for one-off purchases or subscriptions like newspapers and milk

Something went wrong with my purchase

### DISPUTE RESOLUTION

Consumers can go directly to the place of purchase to complain and resolve dispute



### What it means for consumers

Direct face-to-face relationship between business and consumer



### EXITING CONTRACT / RELATIONSHIP

Consumers less bound to providers

I no longer want to purchase from this business



### What it means for consumers

Product / service is often one-off – not linked with ongoing purchases

Little to no friction when leaving a provider

Limited set of providers may make changing providers difficult



## THE DIGITAL CHECKOUT

I have my purchase



Physical products delivered directly to the customer

Instant delivery (if purchase is digital, especially a digital subscription)



### DISPUTE RESOLUTION

Lack of clear dispute resolution mechanisms, especially on online marketplaces or international purchases

Something went wrong with my purchase

### What it means for consumers

Third party sellers often remote – lack of clarity on dispute resolution



I no longer want to purchase from this business

Email and “chat bots” often used when seeking to resolve an issue



### EXITING CONTRACT / RELATIONSHIP

Consumers may feel “locked-in” to providers

“Sludge” tactics can make it harder to leave than join



### What it means for consumers

High friction when leaving – consumers may feel trapped

Product usability may rely on ongoing subscription service (free / paid)

Return to process of search and find if a product / service is still needed from another provider (increases search costs)

Further friction in leaving when payment is linked via direct debit



## Benefits and risks post purchase in the Digital Checkout

### When it works in the consumer interest

- Consumers can receive goods and services without any physical interaction. This can increase consumer participation, and wellbeing and welfare, in many contexts (e.g. consumers living with disability, shift workers, consumers seeking goods and services during crises like COVID-19).
- If desired, consumers can choose to consume integrated and interconnected goods and services – helping to increase convenience (e.g. smart phone and interconnected devices like a television or heating, can be made compatible).
- Multisided platforms including peer-to-peer platforms increase consumers' ability to sell or giveaway goods that consumers no longer need – helping to limit waste and create consumer value.
- Multi-channel communications can improve access for consumers when designed inclusively.

### When it works against the consumer interest

- Data collected when consumers are using the Digital Checkout can be shared or sold to unknown third parties – potentially leading to externalities that harm consumers. Externalities include privacy violations<sup>58</sup> risks of fraud and scams<sup>59</sup>, profiling and discrimination.<sup>60</sup> Devices that collect and share data are developing much faster than regulations to manage the risks of these externalities.
- Dispute resolution when using the Digital Checkout is not a matter of taking an item back to a store or ringing them up. Instead, it can be difficult to get a resolution from a digital platform.<sup>61</sup> Consumers appear to be unclear about where to escalate complaints, and resolving a dispute with a provider may be impossible especially if they are based overseas.
- Deliberate sludge practices such as embedded hidden costs and forced continuity post a free trial reduce consumer autonomy by making it difficult to exit services.<sup>62</sup> Firms can also use opaque machine learning and data analytics reduce customer attrition (or 'churn'), by pinpointing what characteristics or behaviours of their customers are "predictive of exit or switching".<sup>63</sup>



Sludges (also known as negative nudges) are prompts and processes that impede consumers from doing what they want to do.

58 ACCC, "Digital Platform Services Inquiry Interim report", (September 2020), D31, <https://www.accc.gov.au/system/files/ACCC%20Digital%20Platforms%20Service%20Inquiry%20-%20September%202020%20interim%20report.pdf>

59 CPRC, "Unfair Trading Practices in Digital Market: Evidence and Regulatory Gaps", (March 2021), <https://cprc.org.au/publications/unfair-trading-practices-in-digital-market-evidence-and-regulatory-gaps/>.

60 Australian Human Rights Commission, Gradient Institute, Consumer Policy Research Centre, CHOICE and CSIRO's

Data61, "Using artificial intelligence to make decisions: Addressing the problem of algorithmic bias", (November 2020), <https://cprc.org.au/2020/11/23/new-tools-for-fairer-ai/>.

61 The ACCC remains of the view that effective dispute resolution mechanisms to address complaints and disputes to digital platforms are needed, and the establishment of an independent ombudsman is important to address these harms. ACCC, "Digital Platforms Inquiry – Final Report", (June 2019), Chapter 8, <https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf>.

62 Stuart Taylor, "Shein ranked most manipulative fast fashion brand in our dark patterns study", Rouge Media, (20 October 2021), <https://www.rouge-media.com/blog/shein-ranked-most-manipulative-fast-fashion-brand-in-our-dark-patterns-study/>.

63 Competition and Markets Authority, "Algorithms: How they can reduce competition and harm consumers", (19 January 2021), <https://www.gov.uk/government/publications/algorithms-how-they-can-reduce-competition-and-harm-consumers/algorithms-how-they-can-reduce-competition-and-harm-consumers>

### *An example of Digital checkout harms – what it looks like in the real world*

A study of 1,000 consumers in 2021 by the Norwegian Consumer Council found when unsubscribing from Amazon services, consumers faced various hurdles, difficult navigation menus, skewed wording, obscure choices and dark patterns and sludges, making the experience difficult and frustrating to complete.<sup>64</sup> These unfair practices inhibit consumer agency when engaging with digital services and platforms.

## Consumer experience and expectations

### *Issues with service and redress*

CPRC research indicates the difficulties consumers face in accessing adequate remedies when shopping online, and the disparity in redress as compared to shopping in-store.

*“If it’s something that I’m worried might break or be delicate or fiddly or need follow-up service, I’ll also then lean towards somewhere that I can walk in and go and point at it and go do that, fix that.”* Male, Regional Victoria, Under 50

*“...I very rarely buy an electrical item online, that gets delivered to me. Because I’m always worried about being able to take it back... Because the one time I bought a phone online years ago, it bit me on the backside and I had that much trouble trying to get it replaced and fixed, and I went, I’m never ever doing that again.”* Male, Regional Victoria, Under 50

CPRC’s *Consumers and COVID-19 survey* data (conducted over 2020) revealed that problems reported in relation to online marketplaces and Australian company retail websites were both greater than those reported in traditional retail stores (Table 1). In August 2020, of consumers who reported problems, close to half (43%) reported these with an online marketplace as opposed to traditional retail stores (23%). Consumers reported experiencing issues such as:

- product was unsafe, faulty or poor quality
- product / service had misleading costs
- incorrect or misleading information provided about product / service
- unclear or unfair terms and conditions
- difficulty contacting company to change / cancel service
- not receiving what was originally ordered
- poor customer service
- being a victim of scam or fraud.

<sup>64</sup> Norwegian Consumer Council, “You Can Log Out, But You Can Never Leave: How Amazon manipulates consumers to keep them subscribed to Amazon Prime”, (14 January 2021), <https://www.forbrukerradet.no/news-in-english/amazon-manipulates-customers-to-stay-subscribed/>

**Table 1:** Australian consumers reporting problems with different types of retailers

	Jun	Aug	Oct	Dec
<b>% consumers reporting a problem with any retailer</b>	<b>20%</b>	<b>26%</b>	<b>28%</b>	<b>28%</b>
<b>% consumer reporting problems - retailer breakdown*</b>				
Traditional retail store	24%	23%	26%	28%
Business selling products / services over the phone	6%	16%	15%	11%
Online marketplace (e.g. Amazon, eBay)	28%	43%	36%	33%
Online classifieds/exchange platform (e.g. Gumtree, Facebook)	7%	18%	22%	15%
Online Australian company retail website	29%	31%	30%	26%
Online international company retail website	23%	16%	21%	18%
Other	15%	15%	13%	11%

\*Note – %'s do not add to 100%. Respondents could report multiple problems with different types of retailers

Question: Over the past two months, have you experienced any of the following problems when purchasing discretionary products or services from a retailer? (Product was unsafe, faulty or poor quality; Product / service had misleading costs; Incorrect or misleading information provided about product / service; Unclear or unfair terms and conditions; Difficulty contacting company to change / cancel service; Not what I had originally ordered; Poor customer service; Was a victim of a scam or fraud) With what type of business / provider did this problem occur?

Sample sizes: June total N = 1,430 / with problems N = 290 ; August total N = 2,154 / with problems N = 551, October total N = 2,274 / with problems N = 642 December total N = 1,130 / with problems N = 309

## Experiencing scams and fraud

Of particular concern is the proportion of consumers reporting they experienced scams and fraud during 2020. Across all months, scam and fraud problems were most commonly reported in relation to online marketplaces (e.g. Amazon, eBay), online classifieds/exchange platform (e.g. Gumtree, Facebook) and online international company websites (Table 2). Scams and fraudulent activities are easier to perpetrate the more personal information about a consumer is available as a result of their online engagement. This significant negative externality is not yet being directly addressed within the context of privacy and cybersecurity protections.

**Table 2:** Australian consumers reporting being a victim of a scams or fraud

	Jun	Aug	Oct	Dec
<b>% consumers reporting scam or fraud</b>	<b>2%</b>	<b>3%</b>	<b>5%</b>	<b>4%</b>
<b>% consumers reporting scam or fraud - retailer breakdown*</b>				
Traditional retail store	4%	13%	9%	7%
Business selling products / services over the phone	6%	15%	17%	20%
Online marketplace (e.g. Amazon, eBay)	25%	29%	25%	29%
Online classifieds/exchange platform (e.g. Gumtree, Facebook)	14%	34%	27%	34%
Online Australian company retail website	8%	11%	18%	21%
Online international company retail website	23%	14%	15%	24%
Other	37%	36%	18%	15%

\*Note – %'s do not add to 100%. Respondents could report multiple problems with different types of retailers

Question: Over the past two months, have you experienced any of the following problems when purchasing discretionary products or services from a retailer? (Was a victim of scam or fraud) With what type of business / provider did this problem occur?

Sample sizes: June total N = 1,430 / victim of scam or fraud N = 32 ; August total N = 2,154 / victim of scam or fraud N = 72, October total N = 2,274 / victim of scam or fraud N = 93. December total N 1,130 / victim of scam or fraud N = 41



## Key takeaways from consumer research

Negative sentiments and consumer concern regarding many of the data handling practices that stimulate retail activity through the Digital Checkout should be cause for concern for policymakers, regulators and industry. It confirms the ACCC's conclusion that several market failures currently impact consumer experiences across digital markets, including many practices which consumers consider to be unfair.

The dissatisfaction that consumers currently express in relation to their experience of the Digital Checkout is markedly different to that of traditional bricks and mortar settings, yet consumption continues to grow. This illustrates a significant policy challenge for consumer and competition regulators to address the disparity. Take the example of a fruit shop, whereby the quality of the produce is consistently below expectations. In this scenario, consumers will vote with their feet and shop elsewhere if expectations are not met. The fact that this is not currently occurring in digital markets (e.g. consumers accepting unfair terms and conditions because it is the only way to access a particular service) helps demonstrate the potency of the market failures – namely the exploitation of information asymmetries, bargaining power imbalances and behavioural biases – identified by the ACCC.

Very few (if any) markets are perfect. However, given the Digital Checkout is such a crucial element of the Australian economy – and fundamental to post-COVID economic recovery – allowing glaring market failures and inefficiencies to continue without mitigation is not a viable course of action. This would result in the misalignment between what consumers consider acceptable, and their lived experience or outcomes. If business practices continue to generate considerable consumer harm, such as through unfair and exclusionary practices, safety risks and invasions of privacy, the economy and society loses out. Trust and confidence in digital products and services, and the markets they are traded in will be eroded. Reforms to consumer protections are needed without delay to ensure the long-term interests of consumers are safeguarded, and for digital innovation to flourish sustainably.







## Chapter 3:

# Modernising Australian Consumer Protections

## The consumer policy challenge

As set out in the preceding chapters, the Fourth Industrial Revolution – and the way the Digital Checkout is transforming key aspects of the consumer experience – is occurring at a rapid rate. This has been greatly accelerated by COVID-19 and is challenging more traditional norms of markets – both in terms of what consumers expect and what firms provide within markets, as well as the economic and consumer policy frameworks used to govern markets.

The key challenge for governments, businesses and civil society is determining how the data-driven technology innovations that enable and sustain the Digital Checkout can be harnessed to maximise the substantial benefits it provides, while also proportionately mitigating significant risks of detriment. It is clear that the Digital Checkout market dynamics are not able to adequately constrain risks and equitably spread the benefits of the Fourth Industrial Revolution. Government and regulatory actions are needed to manage risks and steer the development of digital markets in a direction that benefits consumers and society.

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Specifically, action is needed to:

- address existing gaps in Australia’s consumer protection framework
- ensure broader laws impacting the data-handling ecosystem are robust
- set-up protection frameworks to be more flexible and responsive for addressing risks that emerge in future.

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Australia is not alone in grappling with the challenge of addressing gaps in protection frameworks and adjusting regulations and policy to rapidly changing technologies. Policymakers and regulators across the globe are seeking to better facilitate the fair, safe and responsible use of data to improve people’s lives, while also addressing risks of consumer detriment that cannot be mitigated by market forces alone. In Australia, this task is especially pressing given that various government agencies and departments are seeking to accelerate the digitalisation of the economy to stimulate growth. Allowing gaps in protections to persist at a time when Australians are turning to the Digital Checkout at unprecedented levels places consumers at increased and unacceptable risks of detriment, as well as potentially undermining confidence in and adoption of new technologies over the longer term.

## Policy and regulation frameworks for today and tomorrow

Australia is a nation with, in many respects, strong consumer protections frameworks and institutions that have served consumers well. Given the significant changes to the economy being driven by the Fourth Industrial Revolution and COVID-19 (refer to Chapter 1), there are areas where protections need to be strengthened and governance needs to be adapted so they can continue to serve consumers well into the future.

**CPRC stresses that the following reforms need to be progressed without delay:**

- **Prohibit unfair practices and contract terms**
- **Establish a general safety provision**
- **Reform the Privacy Act**
- **Redefine the meaning of supply in the Australian Consumer Law**
- **Establish effective dispute resolution**

Significant reviews of the Australian Consumer Law (ACL), and the range of protections that apply to digital markets specifically (including retail consumption via the Digital Checkout) have brought into sharp focus the need for updating consumer protections so they better meet modern standards of fairness, safety and privacy. Policymakers and regulators are actively exploring reforms that will help this to occur.<sup>65</sup>

## Establishing a fair playing field

### *Consumer experiences and expectations vs today's reality*

When entering the Digital Checkout, consumers can lose a sense of agency over their choices and experiences. Whether it's having a say on how their data is collected or shared, or how they're bound by providers, the current frameworks offer little in terms of a fair space for consumers to confidently navigate the digital environment.

The 2019 ACCC Digital Platforms Inquiry final report identified a number of examples of unfair conduct – driven in part by the significant increase in data collection, analysis and targeting that defines the consumer experience in the digital economy.<sup>66</sup> The ACCC therefore concluded that unfair contract terms (UCTs) and unfair trading practices are not effectively deterred, and recommended they be prohibited under the ACL.

<sup>65</sup> Australian Government, "Regulating in the digital age Government Response and Implementation Roadmap for the Digital Platforms Inquiry" (December 2019), <https://treasury.gov.au/sites/default/files/2019-12/Government-Response-p2019-41708.pdf> and Consumer Affairs Australia and New Zealand, "Australian Consumer Law Review – Final Report", (March 2017), 111, [https://consumerlaw.gov.au/sites/consumer/files/2017/04/ACL\\_Review\\_Final\\_Report.pdf](https://consumerlaw.gov.au/sites/consumer/files/2017/04/ACL_Review_Final_Report.pdf)

<sup>66</sup> ACCC, "Digital Platforms Inquiry – Final Report", (June 2019), 497-498

CPRC's research and policy briefing regarding unfair trading practices in digital markets<sup>67</sup> – produced in collaboration with Dr Katharine Kemp from UNSW – explains how existing consumer protections in Australia fall short in being able to effectively deter unfair trading practices, with protections overseas able to address and sanction these practices to a greater extent.

In November 2020 the Consumer Affairs Forum ministers announced action to make UCTs unlawful<sup>68</sup>, while also agreeing that issues regarding unfair trading practices warrant further consideration via a regulatory impact assessment.<sup>69</sup> In August 2021 the Treasury released the much-awaited exposure draft proposing strengthened unfair contract terms which would remove much of the onus from consumers and small businesses to the businesses that engage in setting unfair contract terms.<sup>70</sup> While progress is being made, it is slow and not at pace with acceleration and consumer uptake of the Digital Checkout.

### ***What needs to happen: Prohibiting unfair practices and contract terms***

Just as reforms to help businesses digitise are being accelerated quickly – so too should reforms that help to ensure consumers are treated fairly when using the Digital Checkout.

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Reforms therefore need to prohibit **unfair trading practices** that have the effect of:

- concealing data practices via privacy policies and terms and conditions
- undermining consumer autonomy via opaque targeting practices and interface design strategies
- increasing risks of consumer vulnerabilities being exploited through poor data-handling practices.

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These unfair trading practices entrench firms' ability to exploit information asymmetries, bargaining power imbalances and consumer behavioural biases when using the Digital Checkout.

**Unfair contract terms** can strengthen the market power<sup>71</sup> that firms hold in terms of data collection, sharing and use. This stymies competition – increasing costs for small business and eventually end-prices for consumers.

With the Digital Checkout becoming a staple of consumers' lives it is imperative that Government progress reforms to the ACL and the *Australian Securities and Investments Commission Act 2001* that prohibit firms using unfair trading practices and contract terms.

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67 CPRC, "Unfair Trading Practices in Digital Market: Evidence and Regulatory Gaps", (March 2021), <https://cprc.org.au/publications/unfair-trading-practices-in-digital-market-evidence-and-regulatory-gaps/>.

68 Australian Treasury, "Enhancements to Unfair Contract Term Protections – Regulation impact statement for decision", (September 2020), <https://treasury.gov.au/sites/default/files/2020-11/p2020-125938-ris.pdf>

69 Legislative and Governance Forum on Consumer Affairs, "Joint Communique – Meeting of Ministers For Consumer Affairs", (November 2020), 3, <https://consumerlaw.gov.au/sites/consumer/files/inline-files/CAFCommunique-20201106.pdf>

70 CPRC, "Submission to Treasury: Strengthening protections against unfair contract terms", (September 2020), <https://cprc.org.au/publications/submission-to-treasury-strengthening-protections-against-unfair-contract-terms/>.

71 Katharine Kemp, "Concealed data practices and competition law: Why privacy matters", (2020), *European Competition Journal*, 634-637, <https://doi.org/10.1080/17441056.2020.1839228>



Such prohibitions will address clear market and regulatory failures, thereby better incentivising firms to compete on the merits. This will reward firms for embedding consumer-centric practices and foster longer-term consumer trust and confidence in the Digital Checkout.

## **Embedding safety**

### ***Consumer experiences and expectations vs today's reality***

Consumers expect products to be safe on both physical and online shelves. They shouldn't feel the need to become product experts, or risk their own safety or that of their loved ones due to prolific availability of unsafe products in the market. Determining between safe and unsafe products at the point of Digital Checkout today is close to impossible. What drives this uncertainty is that it's not actually illegal for traders to sell unsafe goods to Australian consumers.<sup>72</sup>

Product safety protections in Australia are primarily reactive, with standards and regulations to protect consumers against dangerous goods coming into place once it has been established there's consumer harm. The ACL review completed in 2017 proposed a General Safety Provision reform that would establish a more proactive safety regime in Australia, more aligned with protections in other international jurisdictions.

A more proactive safety regime will present meaningful benefits to consumers by preventing serious harms. The ACCC estimates that the monetary and human harm from unsafe products is significant, likely costing more than \$5 billion per year and causing two deaths and 145 injuries per day (such as through electrocution, burns from flammable clothing, choking on toys etc.).<sup>73</sup>

Self-regulatory approaches such as the Australian Product Safety Pledge<sup>74</sup> aim to mitigate product safety issues online by setting commitments for signatories (various major online marketplaces) that go beyond what is legally required of them. However, given that these initiatives are opted into voluntarily, this still leaves much of the digital market unaccountable for its product safety practices.

### ***What needs to happen: Establishing a General Safety Provision***

Under Australian consumer protection laws the responsibility for monitoring safety of products currently rests with consumers and regulators, rather than the trader. This is counter to the public's presumption that government is extensively involved in vetting the safety of products.<sup>75</sup> The responsibility for safety does not currently sit with those best placed to manage it – those selling products to consumers.

It is important that incentives for ensuring product safety are more closely aligned with those trading or, facilitating the trade of products to consumers. This becomes even more critical as the complexity of different digital products and services entering the marketplace increases markedly, including artificial intelligence.

<sup>72</sup> ACCC, "Announcement of Product Safety Priorities", (14 March 2019), <https://www.accc.gov.au/speech/announcement-of-product-safety-priorities>

<sup>73</sup> ACCC, "Unsafe goods should be illegal to sell", (March 2019), <https://www.productsafety.gov.au/news/unsafe-goods-should-be-illegal-to-sell>.

<sup>74</sup> ACCC, "Product Safety Pledge", (November 2020), <https://www.productsafety.gov.au/product-safety-laws/compliance-surveillance/australian-product-safety-pledge>.

<sup>75</sup> Australian Treasury, "Consultation Regulation Impact Statement Improving the effectiveness of the Consumer Product Safety System", (October 2019), 27, <https://consult.treasury.gov.au/market-and-competition-policy-division-internal/main-consultation/>.

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Placing more responsibility on traders, via a General Safety Provision, is needed to:

- provide strong, binding incentives for traders to prevent unsafe goods entering the market
  - provide commercial advantage to traders that are already exercising due diligence and ensuring products are safe
  - improve the ability for regulation to take proactive action in relation to unsafe products.
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Other alternative interventions which may also strengthen and enhance safety protections for consumers include improving compliance and enforcement measures under consumer guarantees and more generally strengthening Australia's current product safety framework. However, the current framework takes more of a product-based rather than principle-based approach to ensuring safety of products sold to Australian consumers, which may not be fit-for-purpose to address the emerging complexity of digital products and services.

## **Giving consumers meaningful choice, control and transparency**

### ***Consumer experiences and expectations vs today's reality***

A key element of the consumer journey when consuming products and services via the Digital Checkout is the collection of personal information. However, Australian consumers today are navigating this digital world in the 21<sup>st</sup> century with privacy protections that were established in the 1980s, pre the Digital Checkout. With 94% uncomfortable with how their personal information is collected and shared online, and equally the same percentage expecting government to protect them against the collection and sharing of their personal information,<sup>76</sup> the time for better measures that are transparent, fair and inclusive is now.

Today, personal information can be collected by firms and digital platforms consumers engage with, as well as firms that consumers have no direct relationship with (such as data brokers). This data can be used to produce inferences about a consumer and predict how they will behave in many respects, including how likely they may be to engage with the Digital Checkout. While the motives to monetise information to sell more ads, and therefore more products and services online via in-depth profiling, may not prima facie be apparent to consumers, it is important to appreciate that today:

- use of personal information to make predictions about a consumer underpins much of the advertising activity<sup>77</sup> that drives commerce toward the Digital Checkout
  - the personal information used can be of a highly sensitive nature<sup>78</sup> and if not used with care, can violate a consumer's privacy
  - personal data can be used to influence what we consume, when we consume it and at what price – thereby having a profound impact on consumers' lives.
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<sup>76</sup> CPRC, "2020 Data and Technology Consumer Survey", (December 2020),

<https://cprc.org.au/app/uploads/2020/11/CPRC-2020-Data-and-Technology-Consumer-Survey.pdf>

<sup>77</sup> ACCC, "Digital Advertising Services Inquiry – Interim Report", (December 2020), 5, <https://www.accc.gov.au/publications/digital-advertising-services-inquiry-final-report>.

<sup>78</sup> Information Commissioner's Office, "Update report into AdTech and real time bidding", (20 June 2019), <https://ico.org.uk/media/about-the-ico/documents/2615156/adtech-real-time-bidding-report-201906-dl191220.pdf>

Consumer concerns about fairness, privacy and safety when engaging in the Digital Checkout translate into high expectations regarding the responsibilities of government to protect consumer information and wellbeing online.<sup>79</sup> When asked about the levels of responsibility government should have on key consumer protection issues:

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- 94% of consumers expected government to protect them against the collection and sharing of their personal information (67% high responsibility, 27% moderate responsibility)
  - 93% of consumers expected government to improve their understanding of how personal information may be collected and shared (67% high responsibility, 26% moderate responsibility)
  - 94% of consumers expected government to protect them from having their information being used in a way that makes them worse off (79% high responsibility, 15% moderate responsibility).
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While survey respondents also felt companies handling their data, have responsibility regarding protections, it is clear that consumers view the risks that can arise in the Digital Checkout as being within the remit of government to manage.

A key finding from the ACCC Digital Platforms Inquiry final report in 2019<sup>80</sup> was that the Privacy Act needs reform so that consumers are adequately informed, empowered and protected, as to how their data is being collected, shared and used. It notes that this will increase trust in the digital economy and spur competition between businesses on the basis of privacy.

### ***What needs to happen: Reforming the Privacy Act***

The Australian Government must progress actioning the ACCC's recommendation to review the Privacy Act.<sup>81</sup> CPRC's response<sup>82</sup> to the Government's issues paper in 2020 highlights various concerns that the Privacy Act reforms must address to ensure consumer interests are protected and promoted:

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- Drastically updating the scope of the Act so that it covers consumer data collection across all aspects of the digital economy, including when consumers engage with the Digital Checkout.
  - Making the notice and choice model of privacy regulation more effective at promoting transparency, comprehension, choice and control, whilst being able to make informed choices about how their personal data is used given the increasing reliance on online products and services and complexity of data practices.
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<sup>79</sup> See part 3 of: CPRC, "2020 Data and Technology Consumer Survey", (December 2020),

<https://cprc.org.au/app/uploads/2020/11/CPRC-2020-Data-and-Technology-Consumer-Survey.pdf>

<sup>80</sup> ACCC, "Digital Platforms Inquiry – Final Report", (June 2019), Chapter 7, <https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report>.

<sup>81</sup> Australian Government Attorney-General's Department, "Review of the Privacy Act 1988 – Discussion Paper", (Accessed November 2021), <https://consultations.ag.gov.au/rights-and-protections/privacy-act-review-discussion-paper>.

<sup>82</sup> CPRC, "Submission to Privacy Act Review Issues Paper", (December 2020), <https://cprc.org.au/app/uploads/2020/12/CPRC-Submission-Privacy-Act-Review-Issues-Paper.pdf>.

Introducing robust privacy safeguards supported by a well-resourced and skilled regulator will be essential to incentivise data-handling behaviour in the consumer interest. This may include:

- having firm fairness and reasonableness standards for collection/use/disclosure of data
- constraining business models that rely on the excessive extraction of personal information
- prohibiting practices that create considerable consumer harm against community expectations
- ensuring appropriate rights for consumers when information is processed by AI technologies.

While the release of the Government's Discussion Paper along with the proposed Bill for an Online Protection Code released in October 2021<sup>83</sup> are steps in the right direction, thoughtful implementation that places consumers at the centre of privacy protections will be key to success.

## Creating an accountable supply chain

### *Consumer experiences and expectations vs today's reality*

As noted earlier in the report, accessing adequate redress and remedies is a much more complex process for consumers to navigate via online marketplaces than it is if those same goods or services were purchased in a physical setting. One of the key barriers for consumers is the lack of clarity of how the ACL applies to these actors. Currently, the term supply in the *Competition and Consumer Act 2010*, is narrowly defined as, "...in relation to goods—supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase".

In its submission to the ACCC's Digital Platforms Services Inquiry on online retail marketplaces<sup>84</sup>, CPRC noted that these marketplaces often consider themselves as only a "facilitator of the supply" but not the actual supplier and at times may not even have in possession the goods sold via its platforms. This creates scenarios where consumers are often left with the burden to resolve issues with the third-party seller on their own. This is particularly the case when the seller is based overseas, so enforcing the ACL is not only difficult, but likely impossible.

### *What needs to happen: Reconsider how we define supply*

While some digital marketplaces, such as eBay<sup>85</sup> and Amazon<sup>86</sup> provide money back guarantee schemes within a specific period of time, more can be done in this space to ensure consistent protections are accessible for consumers no matter which checkout they use. The protections should be on par with those that apply to analogue settings/

83 Attorney-General for Australia and Minister for Industrial Relations, "Landmark privacy reforms to better protect Australians online", (25 October 2021), <https://www.attorneygeneral.gov.au/media/media-releases/landmark-privacy-reforms-better-protect-australians-online-25-october-2021>.

84 CPRC, "Submission to ACCC: Digital Platform Services Inquiry – Online Marketplaces" (August 2021), <https://cprc.org.au/publications/submission-to-accg-digital-platform-services-inquiry-online-marketplaces/>.

85 See eBay Money Back Guarantee policy: <https://www.ebay.com.au/help/policies/ebay-money-back-guarantee-policy/ebay-money-back-guarantee-policy?id=4210>,

86 See Amazon A-to-z Guarantee: <https://www.amazon.com/gp/help/customer/display.html?nodeId=GQ37ZCNECJKTIFYQV>.

checkout. Widening the definition of supply within the ACL or including specific obligations within the law that hold intermediaries such as online marketplaces accountable can help deliver better consumer outcomes and increase their confidence in shopping online.

## Ensuring redress

### *Consumer experiences and expectations vs today's reality*

In other facets of being a consumer, whether it's energy or telecommunications, when consumers are unable to resolve issues directly with a firm, they have access to independent support for redress through an ombudsman. However, in the case of redress with a Digital Checkout experience, this support is often out of reach. Consumers are frequently left to navigate any form of recourse themselves or simply give-up. Several participants in CPRC's qualitative research conducted between June and August 2021, specifically noted not pursuing redress options for products or services purchased online as they felt the likelihood of being compensated was low. In absence of support, consumers are left powerless, with products and services that are either faulty or no longer fit for purpose.

### *What needs to happen: Establish effective dispute resolution*

Across its submissions on various data and digital reforms, CPRC has continued to recommend the need for effective dispute resolution pathways to enable consumers to seek redress for when things go wrong in the online space, including via the Digital Checkout. As consumers increase their engagement online, effective, accessible, and well-resourced external dispute resolution services must be delivered that meet Benchmarks for Industry-based Customer Dispute Resolution<sup>87</sup> to ensure consumers can effectively resolve any disagreements that will arise.

The ACCC has also recommended the establishment of an ombudsman scheme for digital platforms, noting that it could be undertaken by the Telecommunication Industry Ombudsman (TIO). However, while that may be one way to providing ombudsman support to consumers, issues in the digital environment, extend beyond those experienced via a digital platform. There may be merit in considering a Digital Ombudsman that can provide support on all facets of a digital experience, ranging from services linked with the Digital Checkout to specific digital products and services, not limited to those provided via a digital platform.<sup>88</sup> Given the significant volumes of consumers raising problems with online purchases, a scoping study should be conducted as a matter of priority to identify the various online disputes that consumers are raising, and the options for establishing more effective external dispute resolution pathways. Any proposed solution should be flexible enough to respond to not only the issues of today, but the many more complex matters that are likely to arise as digital markets develop and evolve further.

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<sup>87</sup> See Treasury's Benchmarks for Industry-based Customer Dispute Resolution: <https://treasury.gov.au/publication/benchmarks-for-industry-based-customer-dispute-resolution>.

<sup>88</sup> In the 2019 ACCC Digital Platforms Inquiry Final Report, digital platforms are defined as online search engines, social media, and digital content aggregators.



## Driving effective competition

In addition to addressing the aforementioned gaps in consumer protection and privacy laws, further strengthening Australia's competition laws can also positively shape the experience of consumers when using the Digital Checkout or accessing the support they need. Globally, evidence is emerging of online marketplaces leveraging their market power to provide their own or affiliated products and services preferential treatment or using data of third-party sellers on its marketplace as reference for its own range of products. In March 2021, Competition Commission of India (CCI) investigation found that in India 35 of Amazon's 400,000 sellers in 2019 accounted for approximately two-thirds of Amazon.in sales.<sup>89</sup> And in October 2021, it was further reported how Amazon.in systematically referenced products and replicated them for its own private label.<sup>90</sup>

Regulators and policymakers across the world, including in the EU<sup>91</sup>, USA<sup>92</sup>, UK<sup>93</sup> and Australia<sup>94</sup> are all exploring how competition regimes need to be updated to promote competition across the digital economy. Key issues under consideration include, but are not limited to:

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- updating merger and acquisition frameworks by taking into account the factors that contribute to digital platforms (and potentially other business models in future) becoming dominant in the market (such as the acquisition of existing or potential competitors, the economies of scope gained from additional data sets and growing network effects)
  - restricting the ability of platforms to treat the products and services they offer more favourably than other similar products offered by third parties, such as by introducing specific rules banning self-preferencing, or forcing platforms to separate functions
  - introducing bespoke competition regimes for digital platforms that have strategic market status within the economy.
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Competition can enhance consumer welfare by lowering prices, increasing choice and stimulating innovation. Effective competition in data driven markets can also ensure consumers are getting good deals including the price, quality, safety and privacy standards of products and services available through the Digital Checkout.

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89 Aditya Kalra, "India antitrust body says Reuters story corroborates evidence in probe of Amazon", (March 2021), Reuters, <https://www.reuters.com/article/us-amazon-com-india/india-antitrust-body-says-reuters-story-corroborates-evidence-in-probe-of-amazon-idUSKBN2BB1UF>.

90 Aditya Kalra and Steve Stecklow, "Amazon copied products and rigged search results to promote its own brands, documents show", (October 2021), Reuters, <https://www.reuters.com/investigates/special-report/amazon-india-rigging/>.

91 European Commission, "The Digital Markets Act: ensuring fair and open digital markets", (December 2020), [https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets\\_en#new-rules-in-a-nutshell](https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en#new-rules-in-a-nutshell)

92 US House of Representatives, "Investigation of Competition in Digital Markets - Majority Staff Report and Recommendations", *Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary*, (October 2020), [https://judiciary.house.gov/uploadedfiles/competition\\_in\\_digital\\_markets.pdf](https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf)

93 UK Government, "Response to the CMA's market study into online platforms and digital advertising", (November 2020), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/939008/government-response-to-cma-study.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/939008/government-response-to-cma-study.pdf)

94 ACCC, "Digital Platforms Inquiry – Final Report", (June 2019), Recommendations 1 and 2, <https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report>.

# Conclusion

In the past two years the way Australians consume products and services in the economy has changed substantially. We are using the Digital Checkout more than ever to meet our food, clothing, socialising, entertainment and information needs, just to name a few. This has brought Australians substantial benefits in the way of convenience, choice and access at a rate that is unparalleled to online experiences before. This trend of increased Digital Checkout use is likely to be permanent.

This report has set out how current the consumer protection framework needs to adapt to better promote consumer wellbeing and welfare, as we progress further into the Fourth Industrial Revolution. Much of the current conduct at the Digital Checkout is characterised by exploitation of information asymmetries, bargaining power imbalances and consumer behavioural biases. For Australia to be a world-leading digital economy by 2030, our policy framework must enable fair, safe, inclusive and sustainable digital innovation in the public interest. Excellence in digital governance can provide Australia with a competitive advantage. It is important that we “lean forward” on policy regarding digital markets and emerging technology, to give us the best chance of becoming a more globally competitive and productive digital economy.<sup>95</sup>

As outlined in Consumers International’s guidelines to consumer protection, consumer policy needs to keep up with the fast rate of change in digital markets so fundamental consumer principles are upheld.<sup>96</sup> Robust consumer protections that keep pace with change will not only help enhance consumer trust and confidence in the Digital Checkout – they will also ensure businesses benefit from a stable and enduring regulatory framework that rewards competition and innovation on its merits, and penalises conduct that harms consumers and competition.

Consistent with the objective of ACL<sup>97</sup>, improving consumer wellbeing through **consumer empowerment and protection, effective competition and by enabling the confident participation of consumers in markets** – should be the overriding aims of reforms that protect consumers using the Digital Checkout. Evidence on how Australian consumers experience and perceive the Digital Checkout – and their views on what would enhance trust and confidence – should help to shape reforms to consumer protection frameworks.

We have set out the key challenges facing consumers at the current Digital Checkout and the profound implications for consumer protections that were designed for an analogue era. We need ambitious and urgent reforms for consumers to reap the significant benefits of the digital age. We welcome ongoing engagement with colleagues across government, regulation, industry, the community sector and academia about ideas, and hope this research stimulates discussion and actions that improve the wellbeing and welfare of consumers using today’s Digital Checkout.

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<sup>95</sup> World Economic Forum, “Agile Governance: Reimagining Policy-making in the Fourth Industrial revolution”, *White Paper*, (January 2018), 7, [http://www3.weforum.org/docs/WEF\\_Agile\\_Governance\\_Reimagining\\_Policy-making\\_4IR\\_report.pdf](http://www3.weforum.org/docs/WEF_Agile_Governance_Reimagining_Policy-making_4IR_report.pdf)

<sup>96</sup> Consumers International, “Consumer Protection: Why it matters to you – A Practical Guide to the United Nations Guidelines for Consumer Protection”, (2016), 11 & 17, <https://www.consumersinternational.org/media/2049/un-consumer-protection-guide-lines-english.pdf>

<sup>97</sup> Consumer Affairs Australia and New Zealand, “Australian Consumer Law Review – Final Report”, (March 2017), 111, [https://consumerlaw.gov.au/sites/consumer/files/2017/04/ACL\\_Review\\_Final\\_Report.pdf](https://consumerlaw.gov.au/sites/consumer/files/2017/04/ACL_Review_Final_Report.pdf)







