Consumer Policy Research Centre

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

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ABOUT CONSUMER POLICY RESEARCH CENTRE (CPRC)

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

Introduction

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

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

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

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

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

Structure of this report

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

Why we should focus on older consumers

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

How we reached the point we are at today

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

Common experiences of older consumers across markets

An exploration of four major domains:

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

Emerging approaches for policymakers

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

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

Key lessons

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

Inaccessible marketplaces

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

Unfair products, services and market design

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

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

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

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

A lack of consideration for real world decision-making

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

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

Limited recognition of varying consumer engagement and motivation

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

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

Key approaches to effective policy and program design

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

Strong market stewardship in complex markets

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

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

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

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

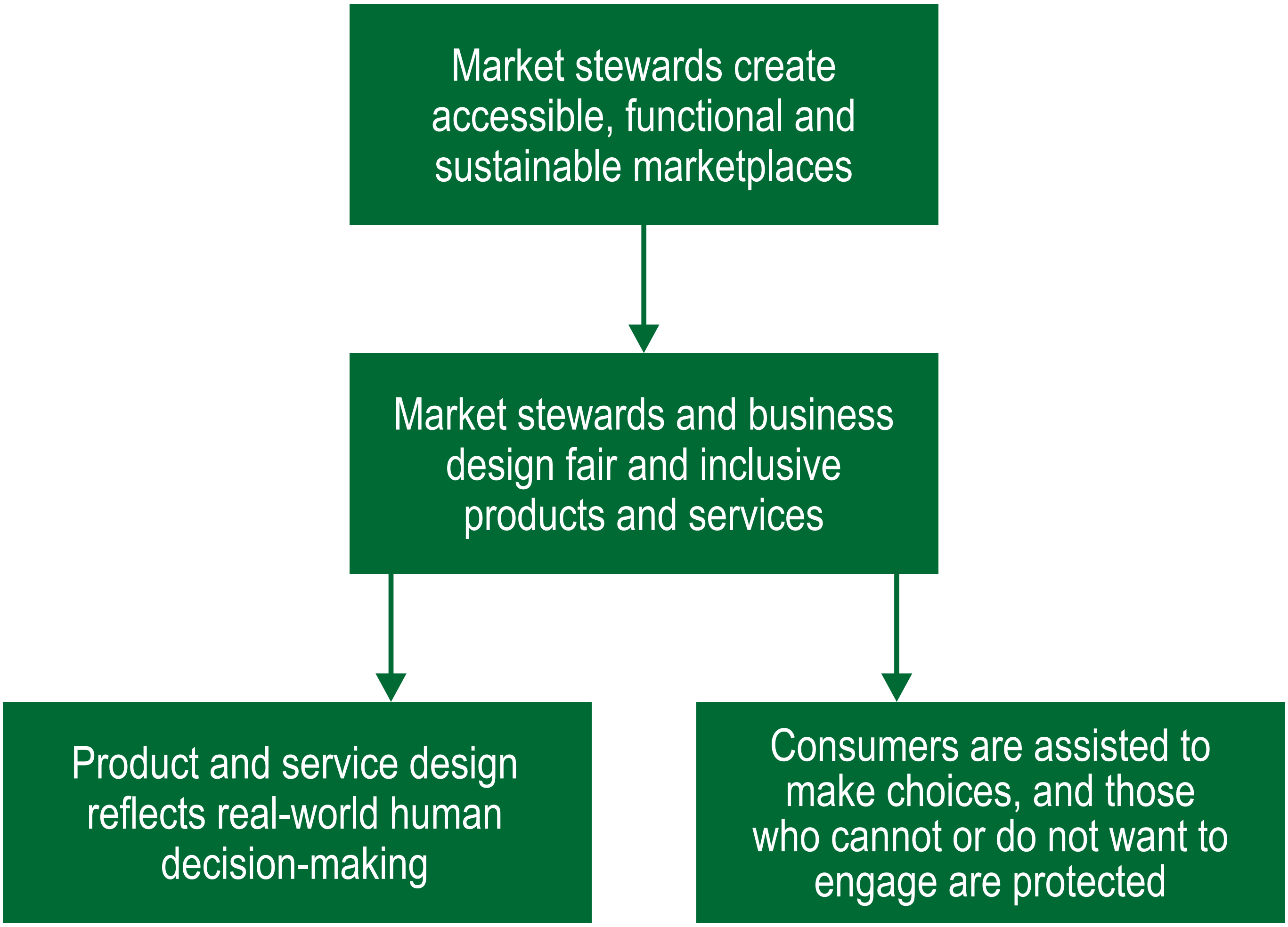


Figure 1: CPRC's ***Hierarchy of Stewardship Priorities***

Accessible marketplaces driven by market stewards

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

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

Inclusive design for fair products and services

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

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

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

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

Appropriate choice architecture, assisted choice and default options

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

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

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

Focusing on and measuring consumer wellbeing

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

Older people and markets: why focus on this group?

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

CPRC's work in this area

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

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

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

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

'Older consumers' are a nuanced group

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

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

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

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

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

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

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

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

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

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

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

How did we get here and where are we going?

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

Competition, choice and some caveats

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

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

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

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

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

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

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

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

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

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

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

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

Controversies and consumer harm

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

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

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

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

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

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

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

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

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

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

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

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

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

What do we mean by market stewardship?

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

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

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

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

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

Our research – common experiences of older consumers

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

We highlight four experiences resulting in poor consumer outcomes:

Inaccessible marketplaces

Unfair products, services and market design

A lack of consideration for real-world decision-making

Limited recognition of varying consumer engagement and motivation

Common experience 1: inaccessible marketplaces

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

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

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

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

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

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

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

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

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

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

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

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

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

Deficient marketplaces

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

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

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

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

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

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

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

Limitations with intermediaries

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Difficulty accessing online marketplaces

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

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

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

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

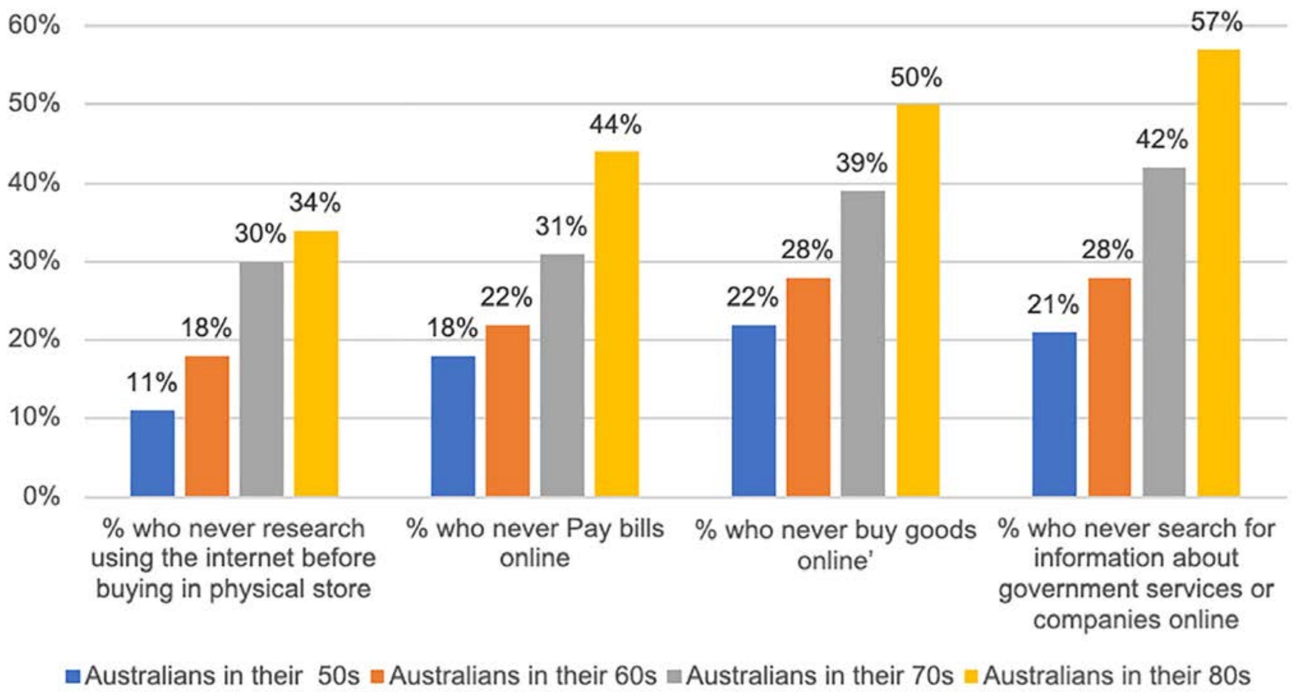


Figure 2: Online behaviour of older Australians (Source: Ipsos, "Understanding digital behaviour amongst adults aged 50 years and over", A report for Office of the eSafety Commissioner, 2018, 91-92)

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

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

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

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

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

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

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

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

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

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

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

Key lessons

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

Common experience 2: unfair products, services and market design

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

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

A lack of basic, comprehensible information

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Complexity in information disclosure

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

Lengthy disclosure and inherent complexity

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

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

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

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

Strategic complexity and obfuscation

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

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

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

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

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

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

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

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

Difficulties simplifying complexity and disclosing conflicts

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

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

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

Exploitation of low consumer engagement

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

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

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

The problem of loyalty taxes for older consumers

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

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

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

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

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

Key lessons

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

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

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

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

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

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

‘Bounded rationality’ and the burden of information overload

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Varying decision-making processes and styles

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

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

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

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

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

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

The effect of context and choice architecture on decision-making

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

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

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

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

Older people and decision-making

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

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

Decision-making styles of older Australians

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

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

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

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

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

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

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

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

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

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

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

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

Key lessons

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

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

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

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

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

The limitations of the consumer choice model

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

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

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

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

> "[we've] been here 9 years and still no promised centre, completely feeling trapped and annoyed, would lose too much money if we left"
>
> "Leaving would be detrimental to our finances as the deferred payment is so high so we are trapped here"
>
> "How financially difficult it is to leave if unhappy. There is no choice but to stay if not financially able to relocate"[175]

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

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

Distributional impacts

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

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

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

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

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

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

Reluctant consumer engagement

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

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

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

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

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

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

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

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

Other interviewees conceded they were somewhat reluctant to seek assistance:

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

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

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

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

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

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

Unconscious disengagement

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

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

Choosing not to choose

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

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

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

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

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

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

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

Key lessons

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

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

Emerging approaches: towards markets that work for people

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

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

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

The emergence of market stewardship

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

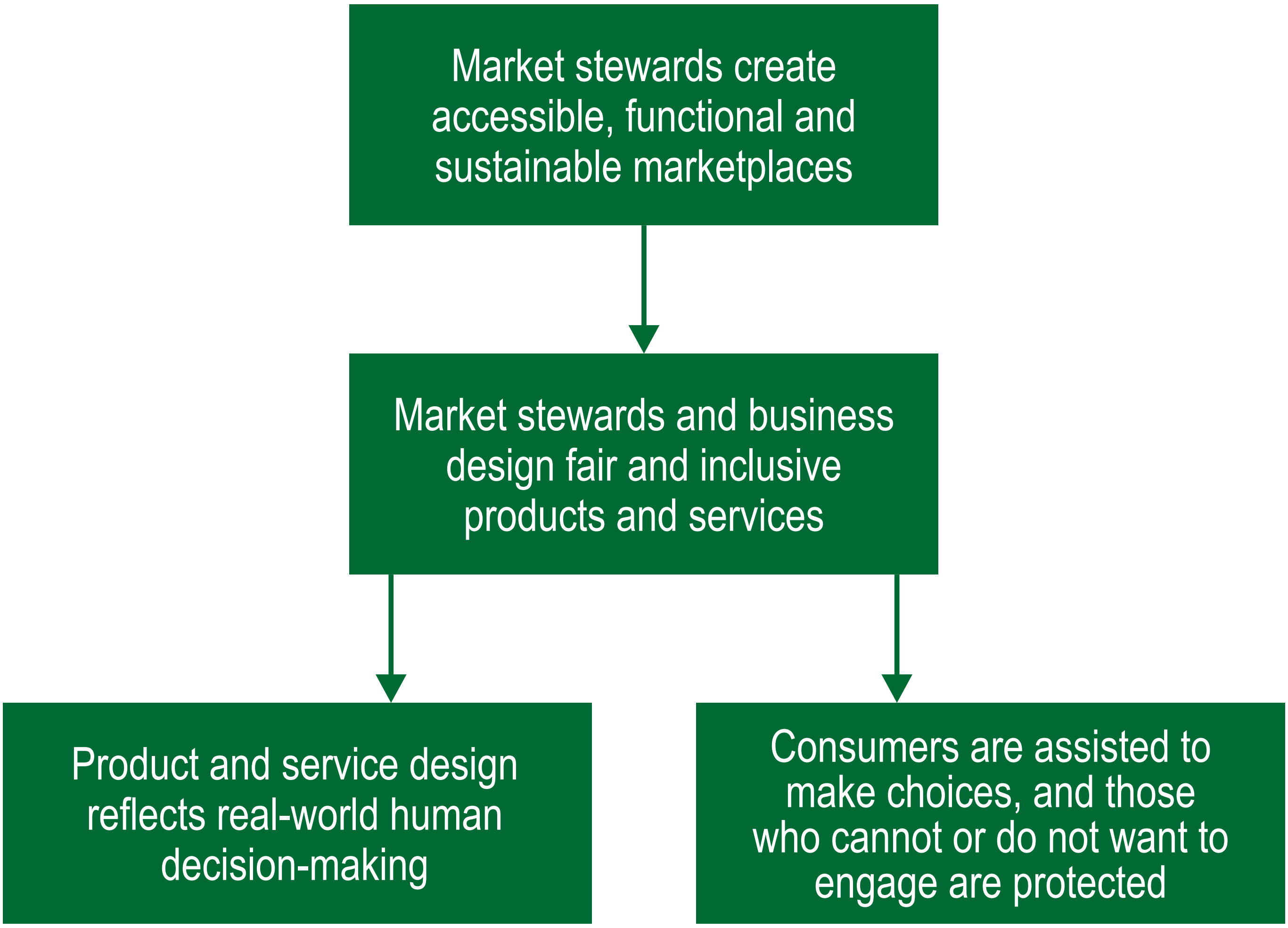
Market stewardship requires a shift in focus from competition policy and nurturing a supply side to a more considered view of how the demand-side, people, are likely to engage and make choices, and the interaction between the two sides of the market. A market stewardship function was advocated by the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

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

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

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

CPRC's ***Hierarchy of Stewardship Priorities*** is outlined below, which proposes four essential elements for good consumer outcomes.



Flowing through this hierarchy is the need for clearer market stewardship. At the top of the hierarchy is what we consider to be market stewards' primary function -- to address structural questions and ensure effective market infrastructure is in place to create an accessible marketplace.

The second priority is for market stewards to guard against unfair practices by businesses which may be deliberately exploitative, increase the costs of searching for a suitable product or service, complicate comparison, hinder choice or prevent switching altogether. Businesses have a complementary responsibility for fair and inclusive products and services.

Unlike traditional approaches to competition policy that require consumers to be the major drivers of better business practice, pricing and offerings, consumers are ascribed a more realistic place in this hierarchy, recognising the inherent power imbalance between the consumer and business, and the limits of our capacity to engage with markets. Stewards and businesses can design products and services with real-world human decision-making in mind. They can consider why people might not be able to actively engage with a market to develop approaches to mediate and assist choice while protecting people who cannot engage or 'choose not to choose'.

Each of the four elements is described in detail over the following pages.

Accessible marketplaces driven by market stewards

An inaccessible, dysfunctional or underdeveloped marketplace limits the ability of people both to engage in markets and make informed and effective choices – which is required to enable the 'virtuous cycle' of the market to work.[213]

To this end, market stewards must ensure consumers have:

1. **Genuine access to the marketplace** – particular groups may need support accessing marketplaces where they face barriers to access. This might include phone or face-to-face support for people without the ability to access online marketplaces. It might require supported decision-making for those with cognitive disabilities or limitations.
2. **Comprehensible information and minimal search costs** – information in marketplaces needs to facilitate informed decisions. Where information is difficult to access, complex or requires an additional intermediary to address information asymmetries, market stewards might need to consider regulations about these secondary markets or whether this capacity needs to be provided directly by government.
3. **Ability to easily compare service providers** – consumers need to be able to easily compare different service providers through the marketplace, especially if information is complex. Where this is difficult, consumers engage in shallow search processes, enabling businesses to eschew competitive scrutiny. Market stewards may need to test or audit whether comparison through commercial- or government-provided marketplaces is effective.
4. **Easy switching processes** – consumers need to be able to easily switch through the marketplace. Where there are additional steps, contractual obligations, paperwork to complete, fees to pay, or even perceptions of complexity people may not switch. Reducing these actual barriers (through regulation) and perceived barriers (through awareness) is therefore essential to an effective marketplace.
5. **Awareness of the marketplace** – when consumers are unaware that the marketplace exists, how they can use it to find information, compare this information and switch between providers, marketplaces are likely to be ineffective. Large scale awareness campaigns may be required to ensure people are aware of marketplaces.

213. Amelia Feltcher, *The Role of Demand Side remedies in driving effective competition, A review for Which?,* (Centre for Competition Policy; 2016), 13.

Addressing thin markets

Market stewardship is particularly important when inadequate market diversity or sufficiency result in thin markets. In rural and regional Australia with comparatively sparser demand, particularly for individualised services such as in-home care, 'thin markets' may result. This is a term used to describe a range of market deficiencies including low numbers of providers, immature markets and market failure.[214] The market capacity framework outlined by Carey and others helps identify different types of thin markets.[215] The framework sets out two dimensions—sufficiency and diversity—which help distinguish between market failure (A), thin markets (B and C), and effective markets (D), where there are sufficient suppliers and diverse offerings. This framework helpfully shows that thin markets are not only a product of too few providers; they can also emerge where there are multiple suppliers but they offer a homogenous product and will not tailor their services to consumers' needs.

		Market Diversity	
		Non-diverse	*Diverse*
Market Sufficiency	*Insufficient*	**Market failure (A)** *"There are no providers offering services for me."*	**One provider with strong tailoring to client needs (B)** *"There is just one provider, but they tailor their service to me."*
	Sufficient	**Multiple suppliers of standardised services that compete on price (C)** *"There are lots of providers but they all offer the same thing, they won't tailor to me."*	**Diversified supply (D)** "I can choose from a range of providers offering different approaches to the service I need."

Figure 3: The Market Capacity Framework (Source: Daniel Reeders, Gemma Carey, Eleanor Malbon, Helen Dickinson, David Gilchrist, Gordon Duff, Satish Chand, Anne Kavanagh, Damon Alexander, "Market Capacity Framework", (Centre for Social Impact: Sydney, 2019).

Absent a diversity of suppliers, consumers cannot 'discipline' the market by switching provider – and consequently there is no incentive for firms to improve quality, offer a broader range of services, or compete on price.[216] For services that are necessarily bespoke to the individual, such as in-home care, this absence of diversity in services may result in particular care needs going unmet. In this context, homogenous service offerings may limit consumer engagement – if choice is not meaningful it may not be compelling to engage.

214. Ernst & Young, *Thin Markets NDIS Thin Markets Project: Discussion Paper.* (Canberra: Department of Social Services, Commonwealth Government of Australia; 2019), https://engage.dss.gov.au/wp-content/uploads/2019/04/Thin-Markets-Project-Discussion-Paper-2019-04-05.pd
215. Daniel Reeders, Gemma Carey, Eleanor Malbon, Helen Dickinson, David Gilchrist, Gordon Duff, Satish Chand Anne Kavanagh, Damon Alexander, *Market Capacity Framework,* (Centre for Social Impact: Sydney, 2019).
216. Rhonda Smith and Alexandra Merrett. *Competition Policy and Human Services: Where Theory Meets Practice*, (ACOSS and CHOICE, Sydney: 2015).

In the case of in-home care, there is evidence that in rural and regional areas there may only be one or no provider of services in town. In this context, there may be a limited range of services available. Older people may need transport to access services in other towns, or may not have the option of an alternative provider. Our research into the in-home care choices of rural and regional Victorians found evidence of limited or no choice of provider. When asked if she had considered switching service providers, one interviewee explained: 'Well, I haven't got no option [laughs]… No option'.[217] Where markets fail to provide adequate market diversity or sufficiency, market stewards may need to consider whether the delivery model is appropriate.

The incentives of marketplaces need to align with consumers' own incentives – where marketplaces are facilitated or developed by commercial intermediaries, they may face incentives to skew the range of products and services on offer and the presentation of the marketplace. Where this occurs, market stewards need to intervene and regulate, and/or seek to develop independent non-profit marketplaces. These requirements are particularly important for marketplaces located online. ASIC has noted the presentation of options on websites can also affect consumer choice.[218] This requires market stewards to more closely regulate and monitor, even audit, the choice presentation and outcomes provided by marketplaces.

Market stewards can consider the following elements to ensure marketplaces deliver more meaningful choices and are effective:

1. Market stewards need to ensure there is adequate **provider diversity** to enable competitive contestability. Where there are only few or no competitors, providers may not face competitive pressures and have no incentives to improve quality or reduce cost.

2. Market stewards need to ensure there is adequate **product or service diversity** to enable meaningful choices. This is particularly pertinent where people require individualised or bespoke services.

217. Blackberry *et al., Empowering older people in accessing aged care services in a consumer market*, 21
218. ASIC and AFM, *Disclosure: Why it shouldn't be the default* (REP 632).

Inclusive design for fair products and services

An approach known as 'inclusive design' can help guide market stewardship and better business practice. Inclusive design involves adjusting norms of design and crafting products and services to meet the needs of 'edge users' rather than asking those at a disadvantage to find another way or do something special to access a service. It means flipping the perspective on how we design markets, products and services – instead of setting up a system that purportedly works for the majority of customers and designing special measures to assist people who may struggle to engage, we can design systems around the needs of edge users from the outset.

Perhaps somewhat counterintuitively, the design approach that works for the edge user makes interaction easier for all consumers. In this sense, inclusive design is a pro-competitive measure because it enables easier consumer engagement, assisting those people who would like to more actively engage but who are currently frustrated by poor design features that do not take their needs into account. A report by the Centre for Inclusive Design found inclusive design can enable businesses to reach up to four times the number of intended customers.[219]

Inclusive design requires an understanding of diversity across the population and the way in which design itself can disable people in their pursuit of essential services. This diversity includes cultural and linguistic differences, family and caring needs, financial security, disability, mental capabilities, geographic location, and the full spectrum of age-related needs.

Researchers from the University of Cambridge's Engineering Design Centre – one of the world's leading centres for inclusive technological design – note ageing populations bring significant opportunities for inclusive design. Ageing is one of the main drivers of ability variation. While previous generations were perhaps more accepting of difficulties with products and services in older age, the researchers suggest the Baby Boomer generation is less likely to tolerate these difficulties, especially as technology is increasingly involved in accessing essential services. Frustration with excessive complexity and poor design is likely to be directed at product and service providers, rather than considered an individual failing.[220]

Mental health-related inclusion is another emerging area relevant to older consumers. The UK Money and Mental Health Policy Institute has developed mental health accessibility standards that promote easier use of essential services for people experiencing mental health problems. Their research found more than half of people with mental health issues face serious difficulty using the phone to carry out essential administration, and 40% have severe 'admin anxiety', making it extremely difficult to engage with essential services providers.[221] Some banks in the UK and Australia are introducing 'dementia-friendly' services. Staff training to recognise and respond to dementia, supportive banking plans that include tools like withdrawal notifications and limits and alternative contacts. A dementia-friendly built environment in terms of layout, lighting, signage and quiet areas.[222] Some of these design features can benefit everyone; much like the Coles spectrum-friendly 'quiet hour' shopping experiences.[223] Good design for people with dementia can benefit anyone who appreciates fewer distractions, clearer communications, and less sensory and cognitive overload when they need to shop, bank or access another essential service.

219. PwC Australia, *The Benefit of Designing for Everyone*, (Centre for Inclusive Design, May 2019).
220. Sam Waller, Mike Bradley, Ian Hosking and P. John Clarkson, "Making the Case for Inclusive Design," *Applied Ergonomics* 46 (2015): 297, 300.
221. Merlyn Holkar, Katie Evans and Kate Langston, *Access Essentials: Giving People with Mental Health Problems Equal Access to Vital Services,* (Money and Mental Health Policy Institute, 2018), https://www.moneyandmentalhealth.org/setting-the-standards-minimum-standards-and-best-practice/.
222. See https://www.agedcareguide.com.au/talking-aged-care/australias-first-dementia-friendly-bank-announced.
223. PwC Australia, *The Benefit of Designing for Everyone.*

There is a growing focus on inclusion and an inclusive design approach among regulators and businesses in Australia and the UK. For example, inclusion is one of the four high-level visions for a well-functioning financial services market adopted by the UK Financial Conduct Authority. Inclusive design is one of the five principles adopted by the UK Competition and Markets Authority to develop remedies for vulnerable customers, and Ofgem's 2025 vulnerability strategy promotes inclusive innovation. In Australia, the new Banking Code of Practice also focuses on inclusion, aiming to provide banking services that are inclusive of all people including older customers and people with disability.[224]

Inclusive design has the potential to become an underlying principle of market stewardship, and standard practice in the creation of accessible marketplaces and the design of fair products and services by stewards and business.

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

Market stewards can shift the burden of deciphering overly complex information from consumers to businesses, to ensure that information about their products and services is reasonably comprehensible before coming to market.[225] This may require market stewards introducing requirements to test new and innovative products and services – perhaps through a regulatory sandbox – to ensure they meet a reasonable standard of comprehensibility.

Noting the prevalence of poor consumer decision-making in retail financial markets, Lunn and others propose testing consumer comprehension of some products 'before financial products come to the market'.[226] Policymakers and regulators will gain an understanding of likely consumer welfare implications, 'such that [they] could be more confident that innovative financial products offer genuine value to the consumer'.[227]

But requirements to simplify inherently or deliberately complex information, products or service structures may be problematic and of limited use. Ensuring that consumers are provided a short product disclosure statement written in comprehensible easy English may not address the underlying complexity of the contract that it summarises. This may require that market stewards address the underlying complexity of a product or service directly through regulation, shifting the burden of risk from individual consumers to businesses. For example, the introduction of an unfair trading prohibition in Australia could target the use of long and complex product disclosure statements by business to manipulate consumer decision-making and consent to problematic products and services. This might require market stewards to go further and conduct more thorough comprehension testing of product or service characteristics to determine whether inadvertent or strategic complexity remains problematic for consumer choices.

224. See Emma O'Neill, *Exploring Regulatory Approaches to Consumer Vulnerability: A Report for the Australian Energy Regulator,* (Consumer Policy Research Centre, February 2020).
225. Page, "Disclosure for real humans"
226. Pete Lunn, Féidhlim P. McGowan, and Noel Howard, "Do some financial product features negatively affect consumer decisions? A review of evidence6' *No. 78. Research Series*, (2018), 59-60.
227. Ibid.

Appropriate choice architecture, assisted choice and default options

In light of the behavioural evidence, market stewards need to give greater consideration to the choice architecture in which consumers make decisions. They must be cognisant of the context in which consumers are making decisions, the style of decision-making, the information they rely on and seek out. Market stewards – as choice architects – should give considered thought to the relative engagement of different consumer groups, considering how the choice architecture affect different groups.

Perhaps the most pertinent design aspect for market stewards to consider is the number of choices consumers should be faced with. Johnson and others suggest choice architects must trade off two key criteria. First, more options increase the probability of offering a preference match to the consumer. Second, more options place a greater cognitive burden on consumers because of the additional need to evaluate options.[228] But as noted in this report, there are particular markets where consumers seek out choice and variation – typically hedonistic goods and services – and others where they prefer smaller choice selections – typically utility products or services. Determining the number of choices might also depend on the ability of consumers to learn from their mistakes, and the size of the harm where individuals make poor choices.

Market stewards may need to more closely audit the framing presented to individuals through marketplaces – particularly where these marketplaces are online or provided through a commercial third-party broker or advisor. Framing of providers or product/service options, how attributes are placed, and which attributes are emphasised has a significant impact on the choices people make. Again, the burden of comprehension audits might be shifted to the marketplace provider themselves rather borne by the regulator in response to consumer complaints.

Assisted choice

For those particular groups who struggle to or cannot access the marketplace, market stewards need to ensure there are effective intermediaries or purchase advisors available to help users make decisions. For example, in the case of older Australians who have lower digital literacy and access, an independent intermediary to provide support accessing the marketplace may be required.

For those with cognitive disabilities or limitations, supported decision mechanisms and training for call centre staff may be required to facilitate effective choices.[229]

Commercial intermediaries do not necessarily have incentives aligned with the best interests of consumers – market stewards will need to consider what policies are required to ensure that these conflicts of interest are fully addressed. Where policies and regulation fail to (or cannot) address these issues, market stewards may need to develop their own mediated choice mechanisms.

Our research with in-home care recipients found 75% agreed with the need for independent advice about their home care package.[230] In considering the future structure of in-home care, the preferred option (41%) was enhanced support and guidance in making choices about their home care package.[231] Where marketplaces are online, this assistance when choosing and using independent advice is seen as particularly important by older Australians.

228. Johnson *et al.*, "Beyond Nudges".
229. Yvette Maker, Jeannie Marie Paterson, Bernadette McSherry, Lisa Brophy, Anna Arstein-Kerslake, Alex Callahan and Eugene Teo, *Thanks a Bundle: Improving Support and Access to Online Telecommunications Products for consumers with Cognitive Disabilities,* (Australian Communications Consumer Action Network, Sydney and Melbourne Social Equity Institute, University of Melbourne; 2018), https://socialequity.unimelb.edu.au/projects/support-for-consumer-transactions/thanks-a-bundle
230. Martin Hobbs, *Choosing Care,* 74.
231. Ibid.

Fairer default options

Market stewards also need to consider the varying levels of consumer motivation, or the degree to which they are willing to engage with particular markets. Importantly, where consumers are required to make active choices but often fail to do so, or even choose not to choose, market stewards need to consider the choices that are *implicit* in the choice architecture. In other words, if someone does not proactively choose, what “option” do they end up with? In effect, the status quo. Given the prevalence of status quo bias in consumer decision-making, the default choice needs to be carefully considered to ensure consumers are not made worse off through inaction. There are a range of default ‘choices’ that maket stewards can employ, including:

- simple defaults (choosing one default for all)
- random defaults (assigning a configuration at random from a selection)
- forced choice (withholding a product or service until the recipient makes an active choice)
- sensory defaults (changing the default according to inferences about the user, for example, web sites that change language dependent on country of origin of the visitor).[232]

Default choice design may include reversing opt-in or opt-out framing, or it may require the regulator to develop a new default product, price or service for people who do not engage in the market. Australia’s MySuper provisions, which offer a default superfund with low fees and simple features, help to minimise the harms caused by a failure to actively choose a super fund. In the retail energy market, the Victorian Default Offer provides individuals who fail to or cannot choose with a default tariff set by the regulator, which also acts as a reference point for all discounts.

Defaults are effective in part because they signal a recommended choice or endorsement of the choice architect to the consumer decision-maker.[233] The efficacy of a default therefore may depend on whom consumers perceive is the choice architect and their attitudes towards them – be it a firm, a policymaker or a regulator.[234] There may also be value in highlighting there is a default choice in the choice architecture, as research suggests that defaults are no less effective if individuals are made aware they exist. This may also help to mitigate perceptions of paternalism.[235] Importantly, the literature notes ‘design choices that may have come about inadvertently and may seem inconsequential can have substantial consequences for the size of the default effect’.[236] Consequently, choice architects should assess how consumers evaluate the choice architect’s intentions, how easy consumers felt it was to opt out, or to what extent consumers believed that the default reflected the status quo.[237]

Through making small adjustments to the choice architecture that do not change material incentives, including the adjustment of defaults, market stewards can effectively ‘nudge’ consumers towards better outcomes. In considering adjustments to the choice architecture, we suggest market stewards consider Cass Sunstein’s Bill of Rights for Good Nudges:

1. Nudges must be consistent with people’s values and interests
2. Nudges must be for legitimate ends
3. Nudges must not violate anyone’s individual rights
4. Nudges must be transparent
5. Nudges ought not to take things from people without their consent

232. Jon M. Jachimowicz, Shannon Duncan, Elke U. Weber, and Eric J. Johnson. “When and why defaults influence decisions: A meta-analysis of default effects.” *Behavioural Public Policy* 3, no. 2 (2019): 159-186.
233. Ibid.
234. Ibid.
235. George Loewenstein, Cindy Bryce, David Hagmann, and Sachin Rajpal. “Warning: You are about to be nudged.” *Behavioral Science & Policy* 1, no. 1 (2015): 35-42.
236. Jachimowicz *et al.*, “When and why defaults influence decision”, 176.
237. Ibid.

Focusing on and measuring consumer wellbeing in markets

Determining whether marketplaces are accessible and functional, whether businesses produce fair and safe products and whether changes to the choice architecture improve decision-making outcomes requires market stewards to take a larger role in evaluating consumer outcomes and wellbeing.

Ensuring marketplaces are accessible also requires market stewards take a more nuanced view to evaluating consumer outcomes. Historically, policymakers and regulators have tended to measure market effectiveness using predominantly supply-side metrics; including switching rates, market concentration, spread of prices and raw complaint numbers. Adopting a measurement framework that considers a richer range of metrics to measure consumer wellbeing in markets can enable regulators and policymakers to identify the effectiveness of a marketplace, as well as the impact of reforms and interventions over time.

The UK's Behavioural Insights Team also recommended policymakers and regulators adopt a more nuanced measurement framework that considered more demand-side oriented metrics. In the context of regulated markets they recommend the regulator measures:

- percentage and distribution of consumers not getting a 'bad deal', providing some insight into how significant the material harm is in a regulated market, given all consumers may be required to purchase the service
- consumer satisfaction
- actual consumer comprehension rather than self-reported comprehension (this requires the regulator to empirically test comprehension).[238]

CPRC's own COVID-19 survey provides another example of closer measurement of consumer wellbeing in markets, quantifying experiences and needs. In June 2020, CPRC published the results from the first month of our ongoing COVID-19 consumer survey. This survey provides key insights about affordability concerns, relative expenditure across a wide range of sectors, and the financial measures taken to manage income during the COVID-19 period. Importantly, our survey provides a means to measure the kinds of assistance sought by consumers and offered by providers, as well as the barriers individuals face in seeking support across different sectors – highlighting pain points in different sectors.

Consumer wellbeing is likely to become more of a focus for governments and regulators as we shift towards alternative measures of economic, social and market performance. These include 'wellbeing economy' initiatives led by Scotland, New Zealand and Iceland and alternative measures to GDP, which focus on whether economies are meeting fundamental human and ecological needs, fairly distributing resources, income and wealth, and enabling inclusion. One of the fundamentals of a wellbeing economy is the fair and just operation of markets.[239] By aligning with these theories and movements, measures of consumer outcomes and wellbeing can help market stewards determine and track whether consumer markets are actually working for the people they are meant to serve.

238. Elisabeth Costa, Katy King, Ravi Dutta, and Felicity Algate. *Applying behavioural insights to regulated markets,* (The Behavioural Insights team for Citizens Advice, 2016), 26.
239. Lisa Hough-Stewart, Katherine Trebeck, Claire Sommer and Stewart Wallis, *What is a Wellbeing Economy? Different Ways to Understand the Vision of an Economy that Serves People and Planet,* (Wellbeing Economy Alliance, 3 December 2019).

Upcoming research

Many of the issues explored in this report are linked to work CPRC is progressing over 2020-21, including, as noted above, our rolling survey examining the consumer impacts of COVID-19, with the first results published as part of a major report in June 2020, and further results to be published on a monthly basis until late 2020.

CPRC will also embark upon consultations for the development of a ‘Consumer Wellbeing Index’, seeking the views of policymakers, regulators, businesses and consumers themselves about the meaning and major dimensions of consumer wellbeing and how it can be measured on an ongoing basis. The Index will articulate a concept of consumer wellbeing and provide a foundation for identifying gaps in wellbeing and measuring the impact of market reforms over time.

Conclusion

The introduction of user choice as a central pillar to essential and human services in Australia has been intended to empower consumers to make decisions in their own interest, endowing individuals with the agency to express their autonomy. But it also places a significant burden of effort squarely on the shoulders of consumers. It requires they engage in sometimes deficient or inaccessible marketplaces they are not confident accessing or navigating. It requires they understand and compare unreasonably lengthy, sometimes even strategically complex product and service information developed deliberately to mislead and confuse. It requires people make perfectly rational choices, despite evidence on the contrary that we all regularly, even systematically, depart from this supposed rationality. It requires they actively choose, even when life gets in the way, when the costs of comparing and choosing loom large, when there is little or no genuinely innovative value offered between providers, or when people simply prefer not to be burdened with the choice. Evidence indicates a range of contexts where the result may be errors in decision-making or even reduced consumer welfare.

In this report, we outline an approach that requires policymakers take a stronger role in “steering” markets and to proactively evaluate outcomes to improve the welfare and wellbeing of consumers. Our Hierarchy of Stewardship Priorities for policymakers and regulators requires stewards to ensure marketplaces for essential services, human services and even complex products and services are accessible, functional and sustainable – supported by adequate market infrastructure. This requires stewards to steer businesses to design fair and inclusive products and services. It requires shifting the burden of risk and responsibility of comprehending overly complex disclosure – as well as products and services themselves – from individual consumers to firms, who are better placed to manage this. Finally, it requires stewards to give greater consideration to consumers’ ability to make choices, with defaults and assistance measures adopted to ensure those who do not engage for various behavioural reasons retain some protection. Where these priorities cannot be addressed, market stewards might evaluate whether the market delivery model is appropriate for all contexts. As markets increasingly shift online in the aftermath of COVID-19, these priorities will be increasingly important to ensure Australia’s economy recovers, delivering improved consumer welfare to all consumers.

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