

Consumer
Policy Research
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Five preconditions of effective consumer engagement – a conceptual framework

Product information, consumer choice and market engagement

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Introduction: A loss of focus on consumer outcomes

Since the mid-1970s, government policies in Australia have generally sought to increase the level of competition in Australian markets. This has been achieved, in particular, by reducing import protections, strengthening laws against restrictive trade practices, controlling mergers and removing anti-competitive regulation.

National Competition Policy of the 1990s further strengthened the emphasis on competition by re-structuring government-owned monopoly industries. The corporatisation, privatisation and deregulation of markets in Australia saw wide-reaching and lasting changes to the structure, operation and delivery of our most basic services. For example, state energy providers were broken up to separate the natural monopoly poles and wires businesses from the more competitive generation and retail businesses, and in most cases privatised.

Pro-competitive regulations were introduced to accompany structural changes to former government monopolies. Independent regulators were established to regulate the prices of the natural monopoly elements of these businesses and consumer safeguards were introduced to protect vulnerable and disadvantaged consumers. Independent complaint handling schemes were established and, more recently, general consumer laws have been strengthened with the introduction of the Australian Consumer Law.

Over this period, there was a cultural shift in relation to the assessment of consumer outcomes in competitive markets towards compliance. This focus on compliance was perhaps a natural and necessary first step by governments to ensure the newly deregulated markets did not result in firms causing significant harm to the community. The prevailing presumption seems to have been that if firms met their regulatory obligations, then consumers would be protected and largely receive a fair customer experience.

The important role of policymakers within deregulated markets in evolving complementary policy and support programs to maximise the benefits of consumer engagement has often attracted less attention. Questions of equity, distribution of benefits and costs across the customer base, access to adequate basic income, and information provision and engagement strategies are all policy issues that go to the heart of how a market operates and are often social policy in nature. Yet, increasingly we see regulators grappling with these issues, often without clear policy directives, across portfolios over which they have little control of or influence.

While the introduction of competition has clearly delivered significant efficiency gains to supply-side operations, the promised consumer benefits of lower prices, more choice and improved service have not always materialised. In recent years, we have seen an erosion of consumer trust across the banking, insurance, energy and telecommunications sectors, with consumers frustrated with perceived lack of service, price increases, and additional fees and charges with no apparent additional benefit. Widespread confusion when comparing products along with a lack of access to, or awareness of, support services is common occurrence.

These poor consumer experiences are linked to perceptions of trust in the operation of competitive markets and business. Consumer Action's Power Transformed report notes

At times, it has seemed that everyone and no-one across industry, policymakers and regulators has ultimate responsibility for managing these core issues to ensure consumer markets are operating effectively. Often, issues slip between the gaps with consumers paying the price.

that effective consumer participation requires consumer 'trust that the market will deliver the outcomes [consumers] expect in terms of service, quality and price'.¹

The Edelman Trust Index observes a continued erosion of trust in institutions around the world.² In the 2017 Index, only 36 percent of Australian respondents indicated they trust insurance companies while 48 percent expressed trust in the banks, below the global average of 53 percent.³ In 2018, trust in overall financial services fell a further one percent to 48 percent, while trust in the energy sector fell from 50 percent in 2017 to 39 percent.⁴ At times, it has seemed that everyone and no one across industry, policymakers and regulators has ultimate responsibility for managing these core issues to ensure consumer markets are operating effectively. Often, issues slip between the gaps with consumers paying the price.

Growing distrust and poor consumer experiences have very real consequences for these sectors, including increased regulatory intervention and public scrutiny. The recent announcement of a Royal Commission into Australian financial services provides a clear example – according to a Guardian Essential poll, 62 percent of the Australian public supports the Royal Commission.⁵

In Australia, and internationally, consumers are beginning to question who markets are working for – the communities whom they were established to serve, or the suppliers which operate within them? Clearly, there is need for balance. It is in the interest of the Australian community that we have sustainable businesses and a sustainable economy. However, we also need to ensure there is a fair and balanced focus on both the supply and demand sides of our markets to ensure consumers can make informed choices to receive adequate and appropriate services at a fair and reasonable price.

In this paper CPRC argues that a key way to build consumer confidence and trust in markets is to better empower consumers to drive competition between suppliers toward better outcomes. Consumers need to have the capacity to make informed decisions about the available products and to switch between providers when better deals are available to them. Suppliers in turn, need to be more responsive to the demands of consumers.

We identify and explore five key preconditions that underpin effective demand-side participation in markets.

- 1. Barriers to access for consumers with reduced capacity or vulnerability are removed:** Fair access to markets requires outreach interventions and direct assistance mechanisms which address barriers for vulnerable consumers experiencing reduced capacity.
- 2. Key product information is disclosed in a relevant, clear and comprehensible manner:** Consumers can easily assess information about different products or services, potentially through comparison tools, to enable simple and accurate comparisons.
- 3. Comparison tools are accurate, simple and effective:** Consumers can easily act on key information to switch providers with minimal financial or thinking costs which can create barriers to switching to a product that better suits their needs.
- 4. Switching costs (financial and non-financial) are low:** Consumers can easily act on this information, with minimal switching costs or thinking costs that create barriers for consumers to switch from their current provider or product to an alternative that better suits their preferences.
- 5. Consumers are aware of how to access, assess, and act on information:** Consumers need to be made aware of how they can access support and key information, compare offers and switch providers. If consumers are unaware of any of these former preconditions, they may disengage regardless of the quality of interventions to address these elements.

1. Consumer Action Law Centre, *Power Transformed: Unlocking Effective Competition and Trust in the Transforming Energy Market*, July 2016, 5.

2. Edelman Intelligence, 2017 *Edelman Trust Barometer*, 2017.

3. Sally Rose, 'Edelman research exposes financial services' trust deficit', *Investment Magazine*, 9 June 2017.

4. Edelman Trust Barometer 2018 – Australia.

5. Katherine Murphy, 'Most Australians want banking royal commission – Guardian Essential poll', *The Guardian*, 28 November, 2017. <https://www.theguardian.com/australia-news/2017/nov/27/most-australians-want-banking-royal-commission-guardian-essential-poll>

In Australia, and internationally, consumers are beginning to question who markets are working for – the communities whom they were established to serve, or the suppliers which operate within them? Clearly, there is need for balance.

Where policymakers determine that products and services are to be delivered through competitive markets, they will deliver the best outcomes when working with regulators, industry and the community sector to ensure these five preconditions are met. This will entail a range of demand-side interventions to ensure that consumers can effectively participate in markets.

The paper examines each precondition in turn, along with examples of policy interventions across a range of different industries and jurisdictions. It is our hope that greater consideration of this conceptual framework, alongside the implementation of targeted remedies and interventions within the Australian policy environment, will deliver better outcomes for consumers across all markets.

Five preconditions of effective consumer engagement

Summary and Recommendations

The recommendations that follow apply to a range of competitive markets where consumers need to engage with information, platforms or providers to choose and acquire a product that suits their needs. It is within this context that we explore the concept of consumer engagement and the reforms that better support consumers in acquiring products suitable for their needs.

Summary

Demand-side engagement – what problem are we trying to solve?

Perfect competition assumes *perfect information* and *perfect rationality* if consumers are to make choices to suit their preferences. By contrast, behavioural economics shows that the consumer's cognitive capacity can be limited, and that consumers are prone to biases when faced with uncertainty or complexity.

While the provision of information is *necessary*, it is *not sufficient* to improve consumer decision-making. A greater focus on comprehension as well as the outcomes from consumer engagement in product and service markets are likely to improve decision-making..

Disengagement, complexity and lack of switching are not sufficiently defined challenges *in their own right* to provide adequate guidance on effective intervention. Consideration of the specific barriers or behaviours that are inherent within these challenges would yield greater benefits from intervention.

Recommendation 1: When assessing the decision-making and choice process undertaken by consumers, regulators and policymakers would benefit from shifting from information disclosure requirements to consumer comprehension testing, alongside deeper analysis of the decision-making process itself.

Summary

Five preconditions of effective consumer engagement – a conceptual framework

Reforms to support more effective consumer decision-making would benefit from a multi-faceted and interdisciplinary approach. Consumers need to be able not only to access and comprehend key product information, but also to assess and act on this information.

For consumer decision-making and engagement to be effective, we support a focus from policymakers, regulators and businesses on the five key preconditions set out in Figure A on the next page:

- › Barriers to access for consumers with reduced capacity or vulnerability are removed;
- › Key product information is disclosed in a relevant, clear and comprehensible manner;
- › Comparison tools are accurate, simple and effective;
- › Switching costs (financial and non-financial) are low; and
- › Consumers are aware of how to engage, access and act on information.

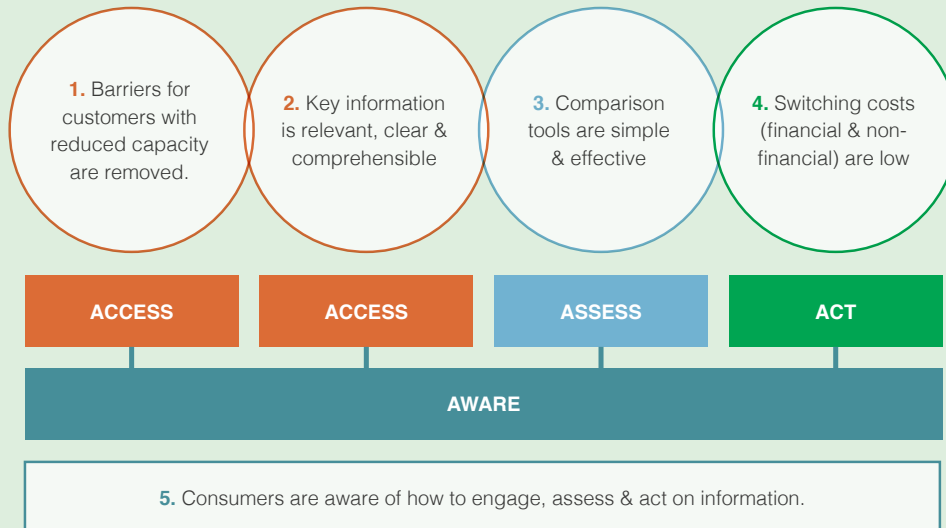


Figure A: Five preconditions to improving consumer engagement

Recommendation 2: Policymakers, regulators and businesses would benefit from taking an integrated and focussed approach to demand-side interventions, deliberately targeting reform within the five identified preconditions, namely: Barriers to access for consumers with reduced capacity are removed; Key product information is disclosed in a relevant, clear and comprehensible manner; Comparison tools are accurate, simple and effective; Switching costs are low; and Consumers are aware of how to access, assess and act on information.

Summary

Policy, regulatory & practice interventions to improve outcomes of consumer engagement

Improving consumer outcomes in markets often requires changing consumer behaviour.

Where consumers encounter complexity in markets, they may revert to biases and rely on *heuristics* rather than engage in more burdensome rational decision-making processes. Some evidence suggests consumers do not necessarily value spending more time to make more rational decisions, even where this has a financial benefit.

Before intervening in markets, policymakers and regulators should first identify the specific problem being experienced by consumers and the outcomes desired from the intervention. Caution should be taken where interventions may impede a consumer's ability to choose or secure a product or service which meets their needs and preferences.

Recommendation 3: Rigorous customer journey mapping research can be undertaken to assist regulators and policymakers better understand how, when and why consumers engage throughout the the product acquisition and decision-making process and where they encounter difficulties.

Summary

Precondition 1: Barriers to access for consumers with reduced capacity or vulnerability are removed

Consumers may encounter barriers in accessing, assessing and acting on relevant information to inform product and service choice. These barriers often relate to vulnerabilities which may include, but are not limited to: financial hardship, mental health issues, language barriers for culturally and linguistically diverse (CALD) communities, or temporary trauma associated with an accident or illness.

Remedies to support and improve engagement for vulnerable consumers encountering barriers should be effectively targeted to the specific types of vulnerability being experienced by the customer segment, such as education and outreach in migrant communities, or developing specific products suited to consumers in financial hardship.

Often, remedies will require collaboration across the private, public and community sectors to deliver support programs. These remedies are generally social policy focused by nature and will require complementary government policies to operate effectively alongside regulatory frameworks.

Recommendation 4: Interventions and remedies for vulnerable customers should consider the specific types of vulnerabilities and barriers being experienced. Tailored outreach and intervention strategies should be developed for these specific consumers segments.

Recommendation 5: Integrated outreach and intervention strategies will be most effective when they leverage the strengths of different sectors and of organisations effective in reaching vulnerable consumers can deliver significant benefits (for example, companies have detailed information on customers who may have fallen behind in payments; or community organisations have trusted, grassroots connections with vulnerable members of the community). Co-design processes to develop effective support programs can yield significant benefits across industry, government and the community sector.

Summary

Precondition 2: Key product information is disclosed in a relevant, clear and comprehensible manner

Historically, policymakers and regulators have focussed on increasing the amount and types of information disclosure to address *information asymmetries*. However, evidence shows that simply providing consumers with more information – regardless of its quality, placement or relevance – can result in negative outcomes by overwhelming decision-making, and giving rise to behavioural biases and the use of *heuristics*.

Necessary conditions for good information provision are transparency, comprehensibility and comparability.

Consumers need good information about the things that are most relevant to them – such as price, service quality and terms of sale – to make informed and effective decisions. The way product information is presented can affect consumer decisions. Information needs to be communicated clearly, such as requiring the use of Easy English. Sometimes complex language may even be required by regulation itself. Focusing on removing the

use of industry-specific jargon where it acts as a barrier for comprehension can improve information provision and comprehension.

Recommendation 6: Policymakers and regulators should consider how the quality of disclosed information can be improved to increase comprehension. This may include: standardising the definition of key pieces of information; supporting the development of quality and services measures for public-facing information; or simplifying language and removing industry jargon wherever possible such that consumer information is provided in Easy English; and as translated materials, or alongside easily accessed translation services.

Recommendation 7: Policymakers and regulators making reforms to product information disclosure requirements would benefit from placing greater focus on consumer comprehension testing in order to identify the most effective ways to present information. Comprehension testing will more effectively identify whether changes to disclosed information result in increased consumer understanding of the product information in question. Consumer research and testing during this phase will greatly assist the development of these disclosure requirements.

Summary

Precondition 3: Comparison tools are accurate, simple and effective

Consumers need to be able to easily and accurately compare different products and services using good information about price, service quality and terms of sale. Complex information can be simplified for comparison through a range of tools such as regulated information summaries or online comparator services.

Comparator websites and digital comparator tools can play a valuable role for consumers when comparing different service offerings. Regulators and policymakers should consider the purpose and intent of these tools when reviewing their functionality and efficacy. Again, journey mapping how consumers use these tools in practice can help identify where the comparison process breaks down.

To simplify and improve the accuracy of comparison services, consumers need better access to, and portability of, their data. To maximise the benefits of the development of tailored services, consumers need a greater ability to access and enable transfer of their data to comparator or new service providers.

However, any provision of data to third-party comparators, portals and online “concierge” services will require rigorous privacy and consent provisions to build consumer trust, and to ensure that consumers are extracting the benefits from these data transfer arrangements.

Recommendation 8: Ongoing reviews of the use and user experience of government-run comparator services should be conducted to continually improve their usability, relevance and accuracy.

Recommendation 9: Reforms aimed at improving the comparison of products and services should take a platform-neutral approach. Changes should be reflective of all the key platforms and tools that customers may use to make product comparisons, rather than taking a siloed approach (for example, across government or commercial comparator websites, or price fact sheets).

Recommendation 10: Facilitating easy access to, and transfer of, consumer data can enable more accurate and relevant comparisons of products and services. Reforms aimed at opening up access to consumer data should also carefully consider adequate protections and consent requirements to ensure consumer trust and benefit is prioritised.

Summary

Precondition 4: Switching costs (financial and non-financial) are low

Switching costs – both financial and non-financial – can prevent consumers from acquiring products which suit their needs and preferences. *Perceived* search and switching costs can be sizable. Where consumers encounter uncertainty about the magnitude of switching costs, consumers may revert to *inertia* rather than risk being worse off.

Low trust in markets or providers can reduce consumer engagement and lower the incidence of switching products or providers. Simplifying and removing costs from the switching process can help to improve consumer outcomes. Investigating the journey map of how consumers engage with switching tools (such as comparison websites) or trial new tools (such as automated switch services or 'chat-bots') can be one way to reduce 'leakage' and friction in the decision-making process.

Recommendation 11: A focus from policymakers and regulators on the customer journey map of the switching process, along with a reduction of identified financial and non-financial costs (such as time), can help more consumers acquire products that suit their needs.

Summary

Precondition 5: Consumers are aware of how to access, assess and act on information

Consumers need to be aware of the different opportunities they have to engage a market and acquire a product that suits their needs, such as where to seek assistance, where to find relevant and good product information, how to compare products and services, and how to switch providers. Where consumers are unaware of any one of these components, they may encounter barriers to acquiring a product that suits their needs, resulting in *inertia* and poor consumer outcomes.

Recommendation 12: Reforms to improve consumer outcomes from engagement and decision-making should also have a sustained focus on raising consumer awareness of the various platforms and tools available. This may involve *nudging* consumers at key decision points to engage with the information, tools, or existing public awareness campaigns.

Summary

Trialling and implementing interventions

Randomised Controlled Trials (RCTs) are often considered the gold standard in the hierarchy of evidence to identify what intervention is most effective in changing behaviour. However, alternate experimental methodologies may be required where double-blind or lengthy studies are excessively expensive or logistically difficult to conduct.

Greater sharing of the results of behavioural trials and policy interventions will ultimately build the knowledge base for all sectors, providing greater transparency around the effectiveness of various intervention strategies.

Recommendation 13: Policymakers and regulators should trial interventions and reforms with consumers wherever possible, while being cognisant of the materiality of impact, the swiftness of intervention required, and the capacity to measure impact pre- and post-regulatory change.

Recommendation 14: Trials and testing should be co-designed and facilitated by a range of organisations, including businesses and community organisations.

Recommendation 15: Outcomes of consumer trials and regulatory intervention – positive, negative, or even statistically insignificant – should be published by policymakers, regulators and industry to develop a stronger evidence base that better informs all parties about the effectiveness of various consumer intervention strategies.



Demand-side engagement – what problem are we trying to solve?

6. George A. Akerlof, 'The Market for "Lemons": Quality Uncertainty and the Market Mechanism', *Quarterly Journal of Economics* 84, no. 3 (August 1970): 488–500.

A market is perhaps best defined by the interactions between the demand from consumers and supply from providers. For the purpose of this paper, we define '*consumer engagement*' as consumers' interactions with the required information, platforms, or organisations to choose and acquire a product or service.

The following key assumptions underpin perfect competition in neoclassical microeconomics and rational choice theory:

1. there is a sufficiently large number of buyers and sellers, such that no one can affect price;
2. there are no barriers to exit or entry;
3. the product is highly substitutable, or homogeneous;
4. buyers and sellers have access to *perfect information* about alternatives to make informed decisions; and
5. consumers have *perfect rationality* – meaning consumer preferences (price, colour, quality, etc.) are stable over time and consumers can rank every possible pair of choices in a set of alternatives and make decisions about product choice which meet those preferences.

The first two assumptions relate to the extent to which sufficient numbers of firms efficiently compete in a market with zero barriers to entry. Market power and concentration issues are largely the remit of competition regulators. In Australia, the primary responsibility for the assessment of effectiveness of competition sits with the Australian Competition and Consumer Commission (ACCC). Evaluating the competitiveness and efficacy of the supply-side of markets is beyond the scope of this paper.

The extent to which consumers in competitive markets can make effective choices about products and services in line with their preferences is most heavily impacted by two assumptions: *perfect information* and *perfect rationality*.

The impact of imperfect information – or *information asymmetry* – on consumer outcomes has been extensively analysed following its first demonstration in 1970 by George Akerlof in his seminal paper *The Market for "Lemons"*.⁶ In a context where suppliers have significantly more information than consumers, this *information asymmetry* ultimately results in a reduction of *consumer surplus* – a suboptimal social outcome.

Over the past few decades the assumption underlying most policy and regulatory interventions was that if *information asymmetry* was reduced, this would be sufficient to improve consumer outcomes in decision-making. Ensure consumers have enough information and, in turn, they will make rational choices. The rapid expansion and application of behavioural economics since the 1980s has demonstrated that information alone, while a necessary precondition, is not automatically sufficient to improve decision-making.

The rapid expansion and application of behavioural economics since the 1980s has demonstrated that information alone, while a necessary precondition, is not automatically sufficient to improve decision-making.

Professor Amelia Fletcher notes that the shift for policymakers and regulators is to broaden the analysis of interventions beyond information provision to address consumer engagement. This broadened focus on engagement necessitates greater consideration of other disciplines. Marketing, behaviour change, social policy, psychology, consumer experience, behavioural economics and community outreach experts can offer invaluable insights when developing policy solutions aiming to change behaviour and improve engagement.⁷

Government intervention is no longer the sole domain of competition lawyers or regulatory economists. Rather, a broad church of disciplines can offer diversity of thought and experience to solving consumer behaviour-change and engagement problems.

Bringing more flexible and diverse skill-sets to the policy and regulatory landscape is necessary not only to drive changes in culture and outcomes, but also because the specific issues being grappled with in different industries, geographies and demographics often require different solutions. There isn't necessarily a single set of hard and fast implementable requirements that will solve engagement challenges across the consumer base.

With regards to the notion of perfect rationality, behavioural economics literature highlights how consumers' cognitive capacity can be severely limited and prone to many cognitive biases. Consumers are particularly prone to biases when faced with uncertainty or complexity, which may result in consumers making poor choices or even no choice at all, known as *inertia*.⁸ Herbert Simon's theory of *bounded rationality* holds that individuals are not able to assimilate and digest all the information required to make a perfectly rational decision, and revert to *satisficing* or making a decision that is "good enough".⁹

Consumers encountering vulnerabilities or disadvantage – such as poverty – face additional barriers to effectively engaging in markets, which can result in adverse consequences for those consumers who can least afford it.

As outlined by Professor Anandi Mani *et al*, 'the human cognitive system has limited capacity. Preoccupations with pressing budgetary concerns leave fewer cognitive resources available to guide choice and action'.¹⁰ Taking an integrated approach to consider both the information provision and engagement challenges for consumers within competitive markets is necessary to improve consumer decision-making and experience and, ultimately, consumer welfare.

As illustrated in Figure 1, consumers can only navigate competitive forces if they are both engaged and informed, and thereby able to make effective decisions about products and services that offer them the best value for money.¹¹ And conversely, 'profit-seeking competitive firms seeking to win engaged and well-informed customers, should act to drive up value for money'.¹²

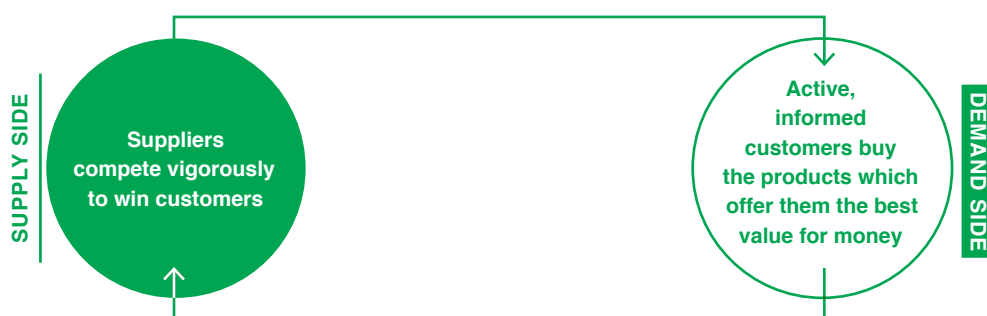


Figure B: Amelia Feltcher, *The Role of Demand Side remedies in driving effective competition, A review for Which?*, (Centre for Competition Policy; 2016), 13.

7. Amelia Fletcher, 'The Role of Demand-Side Remedies in Driving Effective Competition: A Review for Which?' (Centre for Competition Policy, 7 November 2016)

8. Amos Tversky and Daniel Kahneman, 'Judgment under Uncertainty: Heuristics and Biases', *Science* 185, no. 4157 (27 September 1974): 1124–31.

9. Herbert Simon, *Models of bounded rationality*, (Cambridge, MA, MIT Press: 1982

10. Anandi Mani et al., 'Poverty Impedes Cognitive Function', *Science* 341, no. 6149 (30 August 2013): 976.

11. Amelia Fletcher, 'The Role of Demand-Side Remedies in Driving Effective Competition: A Review for Which?' (Centre for Competition Policy, 7 November 2016), 13.

12. *Ibid*.

Consumers encountering vulnerabilities or disadvantage – such as poverty – face additional barriers to effectively engaging in markets, which can result in adverse consequences for those consumers who can least afford it.

In Focus

Being careful about what we mean when we say...

13. See concerns raised in recent government reviews: John Thwaites, Terry Mulder, and Patricia Faulkner, 'Independent Review into the Electricity and Gas Retail Markets in Victoria' (Melbourne: Victorian Government, August 2017); Australian Competition and Consumer Commission, 'Retail Electricity Pricing Inquiry: Preliminary Report', 22 September 2017.

People are disengaged! It's complex! People don't switch!

Numerous concerns raised in the Australian context relate to consumer decision-making and poor experiences with engaging markets.¹³ However, a deeper exploration of the underlying issue being considered is needed for regulatory or policy intervention. Being specific about the behaviour or experience that we are trying to change is important not only to achieve the desired outcome, but also to avoid additional unintended negative consequences for consumers.

Disengagement:

A common concern raised is that customers are disengaged from the market because it is too time-consuming, complex or confusing to compare offers. However, there is a distinct group of consumers who may be disengaged due to reduced capacity – for example, learning disabilities, mental health issues, experiencing trauma of an accident or domestic violence – creating temporary or permanent barriers to engagement. Alternately, other customers may be disengaged from the market because the current service delivery is meeting their needs, or because the issue is simply unimportant to them.

'Disengagement' can mean:

1. Barriers to engagement exist for people who have temporary or permanent reductions in capacity;
2. Opting out of the choice process due to perceived or real search, compare and switch costs overwhelming the perceived or real benefits; and
3. Opting out of the choice process due to being aware of the benefits but deciding to take no action due to current offer meeting preferences.

Complexity:

Information to enable choice is presented in such a way, both in terms of content and the delivery channels, such that consumers cannot comprehend the information. As such, they make errors in product choice, or choose not to engage (which in itself *may be an error* if it means *inertia* on a product which does not suit preference).

'Complexity' can mean:

1. Language and jargon used is too complex for comprehension (this can often be due to regulation, or, at other times, due to the discretionary choice of language by firms);
2. Product features (such as conditionality) are too numerous and/or not easily understood or compared; and
3. Product information is presented in a way which is difficult to comprehend and compare.

Customers don't switch:

Increasingly, the lack of switching is raised as an indication that product markets are not operating effectively.

'Lack of switching' can mean:

1. Customers are satisfied that the current product choice meets their preferences;
2. Perceived/real search and comparison costs outweigh the perceived/real benefits of switching;
3. Perceived risks of switching to unknown provider (*loss aversion*) outweigh perceived benefits;
4. Lack of awareness of switching processes or platforms;
5. Switching processes are difficult, time consuming or otherwise prohibitive; and
6. Switching costs are prohibitive (for example, exit fees).

Summary and recommendations

Demand-side engagement – what problem are we trying to solve?

Perfect competition assumes *perfect information* and *perfect rationality* if consumers are to make choices to suit their preferences. By contrast, behavioural economics shows that the consumer's cognitive capacity can be limited, and that consumers are prone to biases when faced with uncertainty or complexity.

While the provision of information is *necessary*, it is *not sufficient* to improve consumer decision-making. A greater focus on comprehension as well as the outcomes from consumer engagement in product and service markets are likely to improve decision-making..

Disengagement, complexity and lack of switching are not sufficiently defined challenges *in their own right* to provide adequate guidance on effective intervention. Consideration of the specific barriers or behaviours that are inherent within these challenges would yield greater benefits from intervention.

Recommendation 1: When assessing the decision-making and choice process undertaken by consumers, regulators and policymakers would benefit from shifting from information disclosure requirements to consumer comprehension testing, alongside deeper analysis of the decision-making process itself.



Five preconditions of effective consumer engagement – a conceptual framework

To secure effective outcomes in competitive markets, consumers fundamentally depend on being able to access the key information; assess that information effectively; and then act on that information. These three elements are set out in the “Access, Assess, Act” framework developed by the UK Office of Fair Trading (OFT) for evaluating consumer decision-making.¹⁴ All three elements are core to delivering positive outcomes of demand-side engagement in markets.

Similarly, in a recent report prepared for WHICH?, *The role of demand side remedies in driving effective competition*, the authors undertook a comprehensive analysis of demand-side remedies to improve consumer engagement in markets.¹⁵ This report cited three primary underlying barriers to effective demand-side engagement in markets:

1. **Asymmetric information** – consumers do not have access to clear, comprehensible information to enable them to assess different products and services, and identify which best suits their preferences;
2. **Information acquisition (search) and switching costs** – the real or perceived costs associated with the time it takes to search for relevant information or switch providers, or associated financial costs (for example, an exit or switching fee) act as a barrier to searching for and acting on information;
3. **Thinking costs** – careful, rational decision-making can be tiring and time-consuming. Even when relevant information is presented, consumers may find this information confusing or difficult to comprehend, reverting to behavioural biases and relying *heuristics* rather than making rational decisions.

Both reports take a predominantly behavioural economics approach to competition and market engagement, making several recommendations about the potential remedies for improving demand-side engagement. However, before looking at possible interventions, we first explore in detail the key preconditions required for effective demand-side engagement.

CPRC's conceptual framework builds on the three elements of *Access, Assess, Act* framework developed by the UK OFT, and broadens it to a conceptual framework of five core preconditions of effective consumer engagement in competitive markets.

While prior frameworks have dealt comprehensively with the decision-making process, they do not sufficiently address two other important factors of engagement, namely: removing barriers to access for customers experiencing reduced capacity; and consumers' awareness of how to engage, assess and act on information.

14. Office of Fair Trading, 'What does Behavioural Economics Mean for Competition Policy?', OFT1224, (2010), http://webarchive.nationalarchives.gov.uk/20140402182927/http://www.of.gov.uk/shared_of/economic_research/of1224.pdf

15. Fletcher, 'Role of Demand-Side Remedies'.

While prior frameworks have dealt comprehensively with the decision-making process, they do not sufficiently address two other important factors of engagement, namely: removing barriers to access for customers experiencing reduced capacity; and consumers' awareness of how to engage, assess and act on information.

The CPRC conceptual framework – *Five Preconditions of Effective Consumer Engagement* is illustrated below in Figure A.

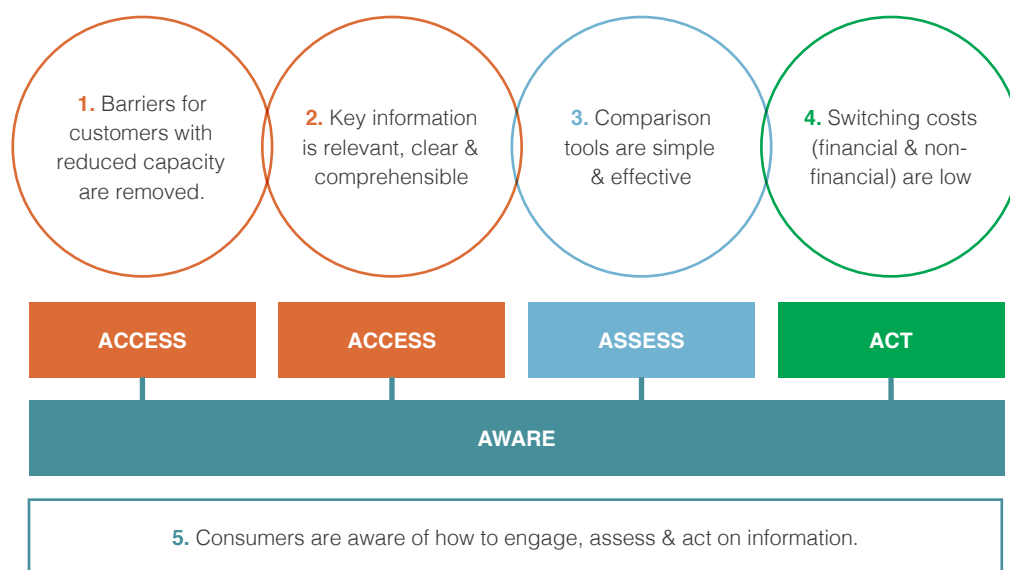


Figure A: Five preconditions to improving consumer engagement

The first element of the consumer decision-making process identified by the UK OFT is 'Access', which means that consumers are able to access information about various products or services in the market.¹⁶ For consumers to match available information to their preferences, it is critical that they have easy access to information about the product features which they deem important, so they can decide between alternatives. The critical information about product features should be clear, comprehensible and easily accessible.

Building on this element, we extend 'Access' to consider not only the availability of the information, but the *capacity* of consumers to access, assess and act on this information.

Consumer and welfare groups continue to raise concerns about poor outcomes for those consumers with a temporary or permanently reduced capacity to engage in markets – especially in markets for essential services.¹⁷ This reduced capacity could be due to a range of factors including, but not limited to: mental health issues; belonging to culturally and linguistically diverse (CALD) backgrounds; experiencing trauma or crisis; or being digitally excluded (that is, without internet access).

Generally, vulnerable and disadvantaged customers are deemed to be protected through mechanisms such as regulated hardship programs (post the product choice) or the development of 'basic' products made available to eligible customers, such as MySuper.¹⁸ However, interventions are often introduced in a piecemeal fashion and lack a consistent approach to ensure vulnerable consumers can effectively access essential service markets. For example, new protections might include provisions for financial and other hardships but may not adequately address the product choice and decision-making process that vulnerable consumers may employ when engaging with markets.

If markets are to be genuinely inclusive, then a safety net is required for vulnerable customers with reduced capacity to acquire the products that suit their needs. At the very least, the inability to access, assess or act on information about products due to vulnerability and reduced capacity should not result in significant detriment.

This might entail a service where an advocate or agent can act on behalf of the consumer, or a walk-in service where printed materials are made available to help consumers navigate particular markets – especially those who may be digitally excluded.

16. OFT, 'What does Behavioural Economics Mean for Competition Policy?', 10

17. See for example, Consumer Action, *ACCC inquiry into retail electricity supply and pricing Issues Paper*, 3 July 2017, 3.

18. The Treasury, *Stronger Super*. https://strongersuper.treasury.gov.au/content/Content.aspx?doc=publications/information_pack/mysuper.htm

If markets are to be genuinely inclusive, then a safety net is required for vulnerable customers with reduced capacity to acquire the products that suit their needs. At the very least, the inability to access, assess or act on information about products due to vulnerability and reduced capacity should not result in significant detriment.

Therefore, we put forward that 'Access', as it relates to *engagement*, can be further broadened into two core preconditions:

1. Barriers to access for consumers with reduced capacity are removed; *and*
2. Key product information is disclosed in a relevant, clear and comprehensible manner.

This separation of concepts related to engagement is important, as it allows for greater clarity as to policy interventions which are aimed at increasing capacity or protecting vulnerable consumers, or remedies which are focussed on the comprehension of product information. In our view, these are two distinct but related concepts.

The second fundamental element put forward by the UK OFT, 'Assess', highlights the importance of ensuring that consumers can assess the information disclosed about products in a well-reasoned way.¹⁹

The ability for consumers to compare products, their features, and the extent to which they meet preferences is essential to enable consumers to make choices that suit their needs. This assessment process predominantly relates to comparison tools or platforms that enable comprehension and assessment of the various options available.

The third and final element in the UK OFT's model of the consumer decision-making process is 'Act', which refers to the consumer's ability to act on the available information to purchase the good or service that best suits their preferences.²⁰

Inertia – where consumers revert to the status quo and do not make a decision – is frequently identified in consumer markets as being due to overly complex, time-consuming, or costly switching processes. These costs can be financial (for example, exit fees) or non-financial (for example, excessive time taken to proceed through the switching process, or significant exertion of cognitive load due to complex processes).²¹

In further building on the UK OFT's framework, CPRC has expanded our conceptual framework to include a fifth precondition for improving consumer engagement in competitive markets 'Aware', which underpins all four prior preconditions

If consumers are not aware of where or how to access information about different offers, where to find and use comparison tools to assess different offers, and how they can act on the information available by switching, the best disclosure and comparison tools in the world will not necessarily result in improved consumer outcomes.

Awareness can be considered from two standpoints – as general knowledge, or as situational knowledge – depending on when information about how to engage will be most relevant (for example, prompts on a bill for how to compare offers to seek alternatives). Thus, awareness largely comes down to effective outreach, communication and engagement strategies; or intervention at key points and *nudges* at key moments when consumers are more likely to be interested in comparing or switching offers.

Table 1 outlines the conceptual framework as it relates to the consumer experience and examples of the steps that can be taken by policymakers and regulators to improve consumer engagement within each of the five preconditions. Chapter 3 expands on these concepts with examples of interventions from research and experiences overseas.

19. OFT, 'What does Behavioural Economics Mean for Competition Policy?', 11-12.

20. Ibid., 13-14.

21. David Gray, Steven D'Alessandro, and Leanne Carter, 'The Influence of Inertia on Brand Switching Behaviour', in *Looking Forward, Looking Back: Drawing on the Past to Shape the Future of Marketing*, Developments in Marketing Science: Proceedings of the Academy of Marketing Science (Springer, Cham, 2016), 779-87.

The ability for consumers to compare products, their features, and the extent to which they meet preferences is essential to enable consumers to make choices that suit their needs.

CPRC preconditions for effective engagement	Example of the consumer experience when the objective is being met	Examples of steps that can be taken to move towards stated engagement objective
ACCESS Barriers for consumers with reduced capacity are removed	When I am experiencing reduced capacity to engage / compare and switch providers, there is still a way for me to receive a fair product.	<ul style="list-style-type: none"> › Vulnerable groups unable to engage due to reduced capacity are identified, with tailored intervention strategies developed (CALD, mental health, domestic violence). › Vulnerable groups experiencing market exclusion are identified with appropriate interventions/ protections identified (digital / technology barriers).
ACCESS Key product information is relevant, clear and comprehensible	I am able to easily acquire the key information about the product to determine if the product suits my needs.	<ul style="list-style-type: none"> › Removal of jargon and complex terminology. › 'Key information' established based on research of consumer needs and preferences. › Consistent rules of product information disclosure applied across suppliers and tools.
ASSESS Comparison tools are simple and effective	I am able to easily compare product information and make an assessment of which one/s best suits my needs.	<ul style="list-style-type: none"> › Comparison tools present the key information required for consumers to make a comparison. › Information required from consumers is not overly complex / time-consuming to acquire or input. › Consumer data to inform comparison can be easily obtained and transferred to comparison tools. › Comparison tools are simple to access, comprehend and navigate.
ACT Switching costs (financial & non-financial) are low	I am able to switch to the product of my choice simply, without experiencing excessive financial, time or cognitive load costs.	<ul style="list-style-type: none"> › Cost barriers to switching are reduced or removed (exit & establishment fees, time and cognitive load costs). › Innovation in switching services is enabled and encouraged when there's clear consumer benefit.
AWARE Consumers are aware of how to access, assess and act on information	I am aware of where to go to compare products or switch providers.	<ul style="list-style-type: none"> › Sufficient awareness is raised to ensure that consumers are aware of how to engage the market and switch if appropriate (e.g. advertising / promotion of comparator sites, notification on bills). › Interventions / prompts / nudges designed to trigger engagement at key points and moments.

Table 1: Improving consumer outcomes in demand-side engagement – an application of the principles

If consumers are not aware of where to find or how to access information about different offers, where to find and use comparison tools to assess different offers, and how they can act on the information available by switching, the best disclosure and comparison tools in the world will not necessarily result in improved consumer outcomes.

Summary and recommendations

Five preconditions of effective consumer engagement – a conceptual framework

Reforms to support more effective consumer decision-making would benefit from a multi-faceted and interdisciplinary approach. Consumers need to be able not only to access and comprehend key product information, but also to assess and act on this information.

For consumer decision-making and engagement to be effective, we support a focus from policymakers, regulators and businesses on the five key preconditions set out in Figure A:

- › Barriers to access for consumers with reduced capacity or vulnerability are removed;
- › Key product information is disclosed in a relevant, clear and comprehensible manner;
- › Comparison tools are accurate, simple and effective;
- › Switching costs (financial and non-financial) are low; and
- › Consumers are aware of how to access, assess and act on information.

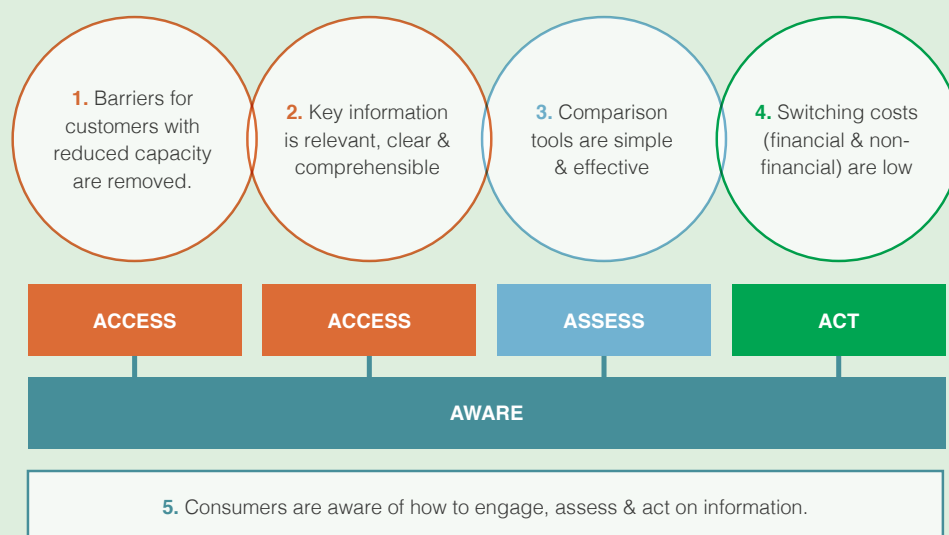


Figure A: Five preconditions to improving consumer engagement

Recommendation 2: Policymakers, regulators and businesses should take an integrated and focussed approach to demand-side interventions, deliberately targeting reform within the five identified preconditions, namely: Barriers to access for consumers with reduced capacity are removed; Key product information is disclosed in a relevant, clear and comprehensible manner; Comparison tools are accurate, simple and effective; Switching costs are low; and Consumers are aware of how to access, assess and act on information.



Policy, regulatory & practice interventions to improve outcomes of consumer engagement

At their core, the majority of policy and regulatory interventions aimed at improving consumer engagement and decision-making in markets relate to behaviour change. Interventions may seek to reduce the time required and cognitive costs involved when making comparisons; reduce errors in decision-making; build capacity or knowledge; or restrict choice (for example, banning features or products) with the objective of minimising harm.

The use of behavioural interventions has grown considerably around the world over the past few decades, yielding some incredibly positive results.²²

The field of behavioural economics has been growing in international recognition in recent years, with Richard Thaler even winning the 2017 Nobel prize for economics for his work on limited rationality. While a welcome development, this trend has sometimes meant that the neighbouring disciplines of consumer psychology and marketing science have been somewhat overlooked by policymakers establishing 'nudge units', despite their ongoing importance to understanding and driving behaviour change campaigns and interventions.

The theory of decision-making put forward by Professor of Psychology and Nobel Laureate Daniel Kahneman holds that individuals make decisions through two kinds of mental processes. The first, 'system 1' thinking refers to cognitive processes that are fast, intuitive, and largely unconscious.²³ By contrast, 'system 2' thinking is slower, deliberate, conscious and more rational, involving an analytical approach to problems in which a range of options might be considered.²⁴ While system 2 thinking is notionally preferable when consumers make decisions in complex markets, it requires more effort and is time-consuming, imposing higher 'thinking costs' on individuals.²⁵

In keeping with the notion of *bounded rationality*, individuals have limited time and energy to thoughtfully consider all choices presented to them throughout the day. The consequence may be that consumers revert to system 1 thinking for difficult or unpleasant tasks, with behavioural biases affecting decisions and a reliance on *heuristics* (or mental shortcuts) leading to poor outcomes. Where consumers revert to system 1 thinking, and there exists material consumer detriment, regulators and policymakers should consider interventions informed by behavioural insights, as appropriate.

Various methodologies have been developed by behaviour change practitioners to clearly define and understand the specific problem being experienced, identify and prioritise the behaviours, and test and trial interventions. These methodologies all vary slightly, but take a similar approach:

- › The Behavioural Insights Toolkit from IRS considers individual, environmental and social design factors, outlining a four-step process, namely: Exploratory Research, Diagnose Behaviours, Design & Implement, and Test & Evaluate;²⁶

22. For example, an opt-out for organ donation resulted 99 percent of the Austrian population becoming donors, compared with 12 percent in neighbouring Germany which retained opt-in – see Richard Thaler and Cass Sunstein, *Nudge: Improving Decisions about Health, Wealth, and Happiness* (New Haven & London: Yale University Press, 2008), 179.

23. Daniel Kahneman, *Thinking, Fast and Slow*, (Macmillan, 2011).

24. *bid.*

25. Amelia Fletcher, 'Role of Demand-Side Remedies'.

26. IRS, *Behavioural Insights Toolkit*, (2017). <https://www.irs.gov/pub/irs-soi/17rpisbehavioralinsights.pdf>

The field of behavioural economics has been growing in international recognition in recent years, with Richard Thaler even winning the 2017 Nobel prize for economics for his work on limited rationality. While a welcome development, this trend has sometimes meant that the neighbouring disciplines of consumer psychology and marketing science have been somewhat overlooked by policymakers establishing 'nudge units', despite their ongoing importance to understanding and driving behaviour change campaigns and interventions.

- › The Method from BehaviourWorks Australia similarly takes a three-stage approach from problem focus (exploration), to behaviour focus (deep dive), through to impact focus (application);²⁷
- › The EAST principles from the UK Behavioural Insights Team – Easy, Attractive, Social & Timely are applied using the steps of: define the outcomes, understand the context, build your intervention, and test, learn adapt.²⁸

Ensuring that the consumer decision-making journey itself is well mapped and understood will enable policymakers and regulators to better focus on developing interventions which target the relevant weakness or deficiency in the current decision-making process.

In 2016 report prepared by Citizens Advice, researchers highlighted the importance of also considering the time and satisfaction associated with the decision-making journey. The researchers found that consumers spend less time making decisions in regulated essential service markets (11 percent) than in other markets, such as infrequent consumer purchases including holidays, technology or private transport (18 percent).²⁹

Citizens Advice compared the experience of consumers who followed a ‘good’ decision-making process (as co-designed by researchers with focus group participants), and a ‘natural’ decision-making process (unprompted).³⁰ Participants adhering to a ‘good’ decision-making process in consumer markets took longer to make decisions than consumers employing a ‘natural’ decision-making process.³¹ Survey data found consumers spent an average of 76 minutes per week making decisions in consumer markets when following an unprompted decision-making process.³² By comparison, when adhering to a ‘good’ decision-making process, consumers took an average of 107 minutes per week.³³

Moreover, when consumers were prompted to follow a ‘good’ decision-making process in a regulated market – such as prompting with financial incentives to read through terms and conditions, they reported lower levels of satisfaction that the process resulted in the ‘very best decision for your budget needs’.³⁴ These findings suggest that the consumer journey was too difficult, and the level of complexity unwarranted, given the nature of the service. Consequently, Citizens Advice recommended: ‘Regulators should explore ways to incorporate the quality and speed of [the] consumer journey into their assessment of whether a market is working well or not’.³⁵

Journey mapping should consider how consumers access information, make comparisons, and complete the switching process, to identify when and where consumers encounter difficulties and disengage. As outlined at the beginning of this chapter, this relates to the first phase of behaviour change research – the exploratory phase, where the environmental and social context, as well as the problems, are defined. If the current experience is not well understood, testing a range of interventions – perhaps in combination – may be required to identify a solution that adequately addresses the underlying concern. Where problems are well understood, trialling targeted interventions may have lower implementation costs.

It is also important to recognise that consumers are not a uniform group – they have different motivating factors and attitudes towards market engagement. Both Ofgem and QUT have conducted consumer research around perceptions and attitudes of different consumers to better understand the motivators and barriers to engagement. Ofgem’s research produced six different segments, with none larger than 20 percent of the population, with varying levels of engagement in the energy market.³⁷ Notably, these groups cut across socio-economic factors, though there is some association between certain demographics and segments.

The QUT segmentation analysis identified a set of household personas to help understand and explain the way that different households organise, make decisions, set

27. BehaviourWorks Australia, The Method, (2017). <https://www.monash.edu/sustainable-development/capabilities/behaviourworks-australia/the-behaviourworks-method>

28. The Behavioural Insights Team UK, *Four Simple Ways to Apply Behavioural Insights*, (2014). <http://www.behaviouralinsights.co.uk/publications/east-four-simple-ways-to-apply-behavioural-insights/>

29. Temi Ogunye, ‘Against the Clock: Why More Time Isn’t the Answer for Consumers’ (Citizens Advice Bureau, 25 November 2016), 24.

30. Ibid., 11.

31. Ibid.

32. Ibid., 15.

33. Ibid., 9.

34. Ibid., 26.

35. Ibid., 3

36. Ibid., 3.

37. GfK UK Social Research, *Consumer Engagement in the Energy Market 2017 – A report on a survey of energy consumers*, (Ofgem, 2017)

Regulators should explore ways to incorporate the quality and speed of [the] consumer journey into their assessment of whether a market is working well or not.

goals and find information.³⁸ QUT adopted animal monikers for their five personas and two anti-personas, which were used to identify household attitudes and preferences for using technology to manage challenges, and attitudes and preferences to gathering information. This kind of consumer segment analysis demonstrates the pitfalls of one-size-fits-all solutions, and the need for policymakers and regulators to consider interventions and responses that address different attitudes and motivating factors to reach different consumer segments.

Lastly, it is also worth noting that some researchers have also called for caution when considering interventions in the name of behavioural economics. Professor of Behavioral Finance and Economics Colin Camerer *et al.* have explored the concept of 'paternalistic' regulation and intervention, as it relates to behavioural economics, and decision-making errors, calling for more a careful, cautious and disciplined approach.³⁹ They highlight that paternalistic regulatory intervention may be effective and warranted where errors in consumers' decision-making result in people behaving in contrary to their own best interests.⁴⁰ However, paternalistic regulation and intervention may be costly where it prevents people from behaving in their own best interests. This is similar to the concept of 'agency' commonly referenced in social science and policy fields. Camerer *et al.* propose the concept of *asymmetric paternalism* – a criterion to essentially assess the costs and benefits of an intervention.⁴¹ They argue a policy is *asymmetrically paternalistic* if the intervention creates large benefits for those who make errors in their decision-making, while imposing little to no harm on those who are acting rationally.⁴² This is an important balance for policymakers and regulators to consider. The discussion of how and when to intervene will evolve as more trials and policies are tested with consumers.

This chapter explores a non-exhaustive list of interventions that have been developed in Australia and internationally relating to each of the five preconditions of effective consumer engagement outlined in Chapter 2.

Precondition 1:

Barriers for customers with reduced capacity are removed

Objective: Consumers experiencing reduced capacity to engage, compare and switch providers can obtain a fair product that meets their needs.

In genuinely inclusive markets all customers can obtain a product or service at a fair price. Consumers who experience exclusion, or purchase a product or service unsuitable to their needs often do so because there are barriers to: accessing comprehensible product or service information; assessing different product or service offerings; or acting on this information and switch provider.

Reasons why consumers might have reduced capacity can vary greatly; examples include:

- › Belonging to culturally and linguistically diverse (CALD) backgrounds;
- › Temporary trauma or crisis associated with domestic violence, health or an accident;
- › Digital exclusion – that is, without access to the internet or digital devices;
- › Permanent mental health or learning disability;
- › Significant financial distress or a poor credit history.⁴⁴

These are often complex situations and the expertise on how to best engage consumers experiencing these situations lies well outside standard business, regulatory and, sometimes, even government-policy processes and programs.

These issues relate to questions of equity, social policy, and distribution of costs and benefits across the customer base and the community. Markets themselves were

38. Rebekah Russell-Bennett et al., 'Taking Advantage of Electricity Pricing Signals in the Digital Age: Householders Have Their Say. A Summary Report' (Brisbane: Queensland University of Technology, 2017).

39. Colin Camerer et al., 'Regulation for Conservatives: Behavioral Economics and the Case for "Asymmetric Paternalism"', SSRN Scholarly Paper. (Rochester, NY: Social Science Research Network, 1 April 2003).

40. 41. Ibid.

41. Ibid

42. Ibid.

43. Ibid..

44. Consumer Affairs Victoria, Discussion Paper – *What do we mean by 'vulnerable' and 'disadvantaged' consumers?*, (Melbourne, 2004), 2-5

A policy is asymmetrically paternalistic if the intervention creates large benefits for those who make errors in their decision-making, while imposing little to no harm on those who are acting rationally.

never designed to deal with these issues. The effective development and operation of complementary social-policy supports and safety nets remains the responsibility of the policymakers and governments who deregulated or established the markets at the outset.

Regulators can only develop interventions where clear policy objectives are set by governments as to the intended social outcomes and protections for consumers within the operation of the market.

A policy void has often emerged across many deregulated markets, with responsibility for what are fundamentally social policy issues being transferred to the regulatory and business sectors, resulting in a piecemeal and ineffectual approach to intervention. Significant concerns about ongoing gaps in the policy framework are often raised by academics and think-tanks, businesses, and community advocacy organisations.⁴⁵

Businesses and community organisations often work directly together on initiatives aimed to improve outcomes for vulnerable customers (see Table 2). Such partnerships should be supported and recognised – this is often where the greatest innovation and shared understanding of the challenges occurs. However, for sustained change, policymakers, government support agencies, businesses and the community sector will make the greatest impact where they work together, acknowledging the various strengths that each can bring to improve access to markets. This requires policymakers to take a stronger role in setting clear policy guidance on the intended outcomes for consumers experiencing barriers to access. More support should be provided for effective outreach and intervention programs to vulnerable communities and, where appropriate and after testing, for designing appropriate market interventions.

In preparing for the 2016 State of the Union Address, White House Chief Digital Officer Jason Goldman highlighted the importance of working to ‘meet people where they are at’. This means communicating with people through the channel and tools, and using language, that maximise opportunity for engagement and connection.⁴⁶ A human-centric approach to policy development and intervention should acknowledge this notion. Business, policy and community sector interventions are most effective when they work together to design and deliver support, communication and outreach strategies, around key consumer touch points.

Identifying the differentiated strengths across the sectors can help to develop integrated models of delivery, for example:

- › Community workers, financial counsellors, psychologists, social workers, doctors and nurses are often at the frontline and the most trusted sources of information when it comes to delivering support to these vulnerable groups of people.
- › Businesses have detailed data and information as to the profile of the consumer base – they can see who is falling behind in payments, where they live, what their credit ratings are, and how big their bills are.
- › Governments have control of income support, concessions programs, and social programs such as mental health and domestic violence support programs.

By better integrating the relevant components to target interventions, barriers can be reduced for these consumers. A number of examples of interventions addressing barriers encountered by customers with reduced capacity that have either been completed, are underway, or have been recommended can be found below in Table 2.

Targeted outreach strategies for different groups of excluded customers are often the most appropriate way to support engagement. Broad-based communications strategies will, by definition, make little to no difference if these consumers are unable to comprehend or process the information presented due to significantly reduced cognitive capacity resulting from, for example, traumatic experiences or a language barrier.

45. For example, in the energy sector see: Tony Wood and David Blowers, *How to restore confidence in the National Electricity Market*, (Grattan Institute: May 2017), 19; on energy concessions see May Mauseth Johnston, *The Relative Value of Energy Concessions: Part 1 of the Vinnies' Concessions Project*, (St Vincent de Paul Society, 2013); and May Mauseth Johnston, *The Relative Value of Energy Concessions 2009–2012: Part 2 of the Vinnies' Concessions Project*, (St Vincent de Paul Society, 2013); see also, Energy Consumers Australia, *Fore-sighting Forum – Plenary 2 The Affordability Challenge*, 28 February 2018. <http://energyconsumersaustralia.com.au/projects/foresighting-forum/>

46. Jason Goldman, 'Meeting People Where They Are', *Medium*, 10 January 2016. <https://medium.com/@Goldman44/meeting-people-where-they-are-9e396744bc43>

White House Chief Digital Officer Jason Goldman highlighted the importance of working to ‘meet people where they are at’. This means communicating with people through the channel and tools, and using language, that maximise opportunity for engagement and connection. A human-centric approach to policy and community sector interventions should acknowledge this notion.

Intervention objective	Examples of initiatives completed, underway or recommended
Raising awareness of how to access, assess and act on product information in disadvantaged communities	<ul style="list-style-type: none"> › QCOSS <i>Switched-on Communities</i> program - \$500,000 grant program for community organisations to improve information access to Aboriginal & Torres Strait Islander people, seniors, people with financial hardship, disability, CALD communities and on issues including: <ul style="list-style-type: none"> – electricity usage – electricity pricing and contract conditions – how to compare offers to find a better electricity deal – how to access assistance and consumer protections.⁴⁷ › CUAC (now CPRC) <i>Energyinfohub</i> – Co-ordination and production of materials to empower community agencies and increase awareness of how to engage with the energy market and save on bills through outreach.⁴⁸ › The Wesley Mission financial literacy program called <i>In Charge of My Money</i> targeted at vulnerable communities where there were complex problems including addictions, mental and physical health issues, homelessness, unemployment, and domestic violence.⁴⁹
Support for people who have decision-making impairments related to cognitive or psychosocial (mental health-related) disabilities	<ul style="list-style-type: none"> › The Melbourne Social Equity Institute (University of Melbourne) in conjunction with industry partners Telstra, Yarra Valley Water, AGL Energy, Origin Energy, Momentum Energy, Energy Australia, South East Water and City West Water is currently undertaking a research project to improve access to suitable, affordable products & services. This is a key project of the Thriving Communities Partnership.⁵⁰
Vulnerable and disadvantaged individuals can access reduced or no-fee services or assistance mechanisms	<ul style="list-style-type: none"> › Good Shepherd Microfinance deliver No Interest Loan Scheme (NILS) through 'circular community credit' for those with a Health Care Card.⁵¹ › Telstra provides free unmetered data access to 'Ask Izzy' – a website with information about shelter or food assistance – for individuals who are homeless or at risk of homelessness.⁵²
Ensuring customers experiencing hardship are on simple, low-cost products	<ul style="list-style-type: none"> › Guaranteed non-conditional discounts introduced by AGL for concession and hardship customers.⁵³
Ensuring consumers at risk of exclusion due to poor credit history receive a fair product	<ul style="list-style-type: none"> › St Vincent de Paul Society advocates for a regulatory intervention to require all energy retailers to have an energy offer available to all consumers, regardless of credit history or financial position (obligation to offer). Under current rules, companies can credit screen and reject customers, except where they are a Financially Responsible Market Participant (FRMP).
Supporting engagement for digitally excluded consumers	<ul style="list-style-type: none"> › Digital Inclusion Index developed by Telstra, RMIT, Centre for Social Impact and Roy Morgan Research.⁵⁴ › Commitment to no paper billing fees for vulnerable consumers by EnergyAustralia.⁵⁵
Integrated support network for customers impacted by domestic violence	<ul style="list-style-type: none"> › WEstJustice Restoring Financial Safety Project to seek fast-tracked access to hardship and debt relief support for customers experiencing domestic violence across the banking, energy, water and telecommunications sectors.⁵⁶

Table 2: Intervention examples for removing barriers to access for vulnerable consumers

Tailored interventions for vulnerable groups are varied, depending on which barriers need to be addressed. One model trialled by WEstjustice includes a single entry-point referral for consumers experiencing domestic violence to access available business-sector support. In this trial, women presenting with domestic violence issues at refuges and shelters received a fast-track from workers to receive the appropriate assistance from other participating service providers, such as utilities or financial service businesses. The benefits of this approach are to reduce the need for repeated communication about a traumatic experience and to maximise access for consumers to available support.

47. Queensland Council of Social Service, *Switched-on Communities program*, 2015. <https://www.qcross.org.au/switched-communities-grants>

48. CPRC, *Energyinfohub*, 2017. <http://energyinfohub.org.au/>

49. Lee Zanoni et al. *Evaluating the Wesley Mission In charge of my money financial literacy program for vulnerable populations*. (Sydney: Wesley Mission, 2016)

50. Thriving Communities Partnership, *Supported decision-making*, 2017. <https://www.thriving.org.au/our-projects/decision-making-impairments>

51. Good Shepherd Microfinance <http://nils.com.au/>

52. Jamie-Leigh Mason, 'Telstra joins fight to help homeless by giving free unmetered access to help service Ask Izzy' *The Cairns Post*, 21 November 2016

53. Rosanna Vazey, *AGL announces A Fairer Way package for vulnerable customers*, AGLBlog, 17 March 2017.

54. Julian Thomas et al., 'Measuring Australia's Digital Divide: The Australian Digital Inclusion Index 2017' (Melbourne: RMIT University, for Telstra, 2017).

55. EnergyAustralia, *EnergyAustralia retains fee-free account management options*, 30 August 2016. <https://www.energyaustralia.com.au/about-us/media/news/energyaustralia-retains-fee-free-account-management-options>

56. WEstJustice, *Restoring Financial Safety - Financial Safety Checklist, July 2016*. http://www.westjustice.org.au/cms_uploads/docs/2016-10-10-final-westjustice--restoring-financial-safety--checklist-for-support-workers--final.pdf

Other tailored intervention approaches include businesses and governments working with community cultural leaders to build trust with and engage individuals belonging to culturally and linguistically diverse (CALD) backgrounds. Similarly, direct outreach through Emergency Relief workers or frontline community service providers may also provide a way to reach vulnerable and disengaged consumers.

Where education, training and modelling interventions may not have delivered improved consumer outcomes, default product options may be considered for consumers with significantly reduced capacity or who face significant barriers to engagement.⁵⁷ For example, MySuper, the regulated default superannuation fund provides this protection for disengaged consumers. Default options, however, should be considered carefully as they can also have implications for consumer autonomy and changing consumer preferences. As noted by Research Associate David Deller *et al*, default options ‘may violate consumer autonomy by serving the marketer’s / policymaker’s interest rather than the consumer’s’.⁵⁸ One approach to address this issue of consumer autonomy is to ensure any default mechanism provides a clear option to opt-out, and that vulnerable consumers are assisted when making this decision, wherever possible.

The UK Competition and Markets Authority has taken a different approach, recommending a Disengaged Consumer Database be developed by Ofgem, the UK’s energy regulator. This database includes all customers who have been on the more expensive ‘standard variable’ tariff – a supplier’s basic energy offer – for three years or more. Ofgem explains that these customers will get ‘personalised energy offers straight to your door or perhaps digitally through an online service, so you [the customer] won’t have to search for them. You can then choose to switch to a cheaper tariff than your current one, if you want to’.⁵⁹ Ofgem has committed to trialling different interventions before rolling them out. In an extended appendix to their paper, *Collective Switching and Possible Uses of a disengaged consumer database*, academics from the Centre for Competition Policy have used this database to produce a list of “blue-sky thinking” interventions aimed at re-engaging disengaged consumers, including suppliers engaging in reverse auctions for blocks of customers, providing access to price comparison websites, providing access to a trusted non-for-profit or charity to engage consumers directly, or even renaming the standard variable tariff as ‘expensive tariff’ to prompt consumer responses.⁶⁰

Lastly, outreach and intervention strategies also need to be developed for those who might be digitally excluded or illiterate. The 2017 Australian Digital Inclusion Index findings – which measures access, affordability and digital ability – demonstrates the clear digital divide between different demographic groups. For example, inner city Victorians score highly for internet access (89.4), basic skills (63.1) and activities (45.4.1).⁶¹ By comparison, northern Victorians score poorly across those same measures of access (77.4), basic skills (43.7) and activities (30.8).⁶² There is also a clear discrepancy between Victorians aged 25-34 who score highly for overall digital ability score (60.4) compared with those aged 65+ (30.3).⁶³ While these trends are broadly replicated country wide, the Index also notes a growing minority of Australians, one in five, only accesses the internet through their mobile phone or via an internet dongle, and recorded lower scores across the board.⁶⁴

Less evident in the indices is the proportion of Australians without home internet access. The latest ABS data notes that 13.6 percent of Victorians (more than 300,000 households) did not have access to the internet at home in 2014-15.⁶⁵ Though Australia’s overall digital inclusion score has increased from 52.7 in 2014 to 56.5 in 2017, there remains a significant ‘digital divide’ which has implications for consumer participation in online markets.⁶⁶

Digital illiteracy is also a concern for consumers effectively navigating online comparison tools. A recent Australian survey of consumer understanding internet use found only 62 percent of all of respondents were able to distinguish between a paid-for advertisement

57. Thaler and Sunstein, *Nudge: Improving Decisions about Health, Wealth, and Happiness*.

58. David Deller et al., ‘Collective Switching and Possible Uses of a Disengaged Consumer Database’ (Centre for Competition Policy, August 2017).

59. Ofgem, *Ofgem energy customer database service*, 13 November 2017. <https://www.ofgem.gov.uk/consumers/household-gas-and-electricity-guide/how-switch-energy-supplier-and-shop-better-deal/ofgem-energy-customer-database-service>

60. David Deller et al., ‘Collective Switching and Possible Uses of a Disengaged Consumer Database’, 51–72.

61. Thomas et al., ‘Measuring Australia’s Digital Divide: The Australian Digital Inclusion Index 2017’, 28.

62. *Ibid.*, 29.

63. *Ibid.*

64. *Ibid.*, 23.

65. ABS, 8146.0 - *Household Use of Information Technology*, Australia, 2014-15, 2016.

66. Thomas et al., ‘Measuring Australia’s Digital Divide’.

(marked by an “Ad” notification) and an organic search result conducted through Google’s search engine.⁶⁷ Younger respondents (18-24 year old) were more successful in identifying the sponsored advertisement (74 percent), compared with respondents in the 35-44 age bracket (55 percent) or the 65+ bracket (56 percent).⁶⁸ The study found that those with graduate or post-graduate qualifications (71 percent) were better able to identify sponsored content compared with those without a tertiary education (51 percent), yet this suggests sizeable portion of *tertiary educated* Australians still have difficulty identifying organic search results.⁶⁹

The results from this survey, the first of its kind in Australia, support research conducted in the UK by the Office of Communications (Ofcom).⁷⁰ Ofcom also found a ‘continued lack of understanding’ among ‘a sizeable minority’ of British adult users on how search engines operate (38 percent): 18 percent of users believe if a website is listed by a search engine, it must be ‘accurate and unbiased’; 12 percent hadn’t considered whether the provenance of websites was an issue; while a further 8 percent didn’t know.⁷¹ Counter-intuitively, Ofcom also found that those aged 25-34 were most likely to answer this question *incorrectly*.⁷² These findings have significant implications for policymakers, demonstrating how a significant portion of the population might be easily misled by advertising when seeking advice or information online about a product or service.

Low literacy and numeracy may also create significant barriers to market engagement. According to the Australian Bureau of Statistics, 54 percent of Australians (aged 15-74) are functionally innumerate and 44 percent of Australians (aged 15-74) are functionally illiterate.⁷³ This means they fall below Level 3 literacy/numeracy and do not have ‘a suitable minimum level for coping with the increasing demands of the emerging knowledge society and information economy’, according to the Programme for the International Assessment of Adult Competencies metrics. Those with English as an Additional Language may face similar difficulties understanding some information presented to them in the absence of translated information. According to the latest census figures, 26 percent of Victorians spoke a language other than English at home in 2016.⁷⁴

It is important for business, policymakers and regulators to consider the barriers to engagement encountered by consumers *prior to* developing interventions and support programs. Where intervention is clearly warranted, we recommend testing the intervention against the desired outcome as a central part of policy and regulatory processes.

Precondition 2:

Key information is disclosed, clear & accessible

Objective: Upon reviewing critical product information, customers can comprehend the information and understand to what extent the product meets their preferences.

A clear demand-side precondition of well-functioning markets is that consumers have access to information of sufficient quality and relevance to make an informed assessment and choice of a product that reflects their preferences.

Clear and effective information disclosure – to reduce *information asymmetries* – has long been considered a key pillar of consumer protection.⁷⁵ However, as products and services become more complex, with increasingly tailored offerings, consumers’ ability to compare prices is being diminished.

This section draws on international and Australian policy and research focussed on improving information disclosure and the critical information required for consumers to make effective informed choices. We focus on the types of information that have been found to better enable choice, while the subsequent section will consider the tools and channels through which information can be presented to facilitate comparison.

67. Angela Daly and Amanda Scardamaglia, ‘Profiling the Australian Google Consumer: Implications of Search Engine Practices for Consumer Law and Policy’, *Journal of Consumer Policy*, 10 May 2017, 15.

68. Ibid.

69. Ibid.

70. Ofcom, ‘Adults’ Media Use and Attitudes Report 2016’, 26 April 2016,

8. Ofcom found 51 percent of search engine users were unable to identify adverts or sponsored links correctly, which was more significant among older (65+) users and users from low socio-economic backgrounds

71. Ibid.

72. Ofcom, ‘Adults’ Media Use and Attitudes Report 2016’, 8.

73. Australian Bureau of Statistics, Programme for the International Assessment of Adult Competencies, Australia, 2011-12, 2013, Excel spreadsheet, cat. No. 4228.0

74. Victoria - Language spoken at home. <https://profile.id.com.au/australia/language?WebID=110>

75. Lisa McQuilken et al., ‘Perceptions of Mobile Plan Unit Pricing and Terms and Conditions’, *Marketing Intelligence & Planning* 34, no. 6 (5 September 2016): 734-53.

Clear and effective information disclosure – to reduce information asymmetries – has long been considered a key pillar of consumer protection⁷⁵. However, as products and services become more complex, with increasingly tailored offerings, consumers’ ability to compare prices is being diminished.

Researchers Andreas Oehler and Stefan Wendt suggests that there are prerequisite conditions (or ‘necessary conditions’) for good consumer information for financial products, which can be adopted and applied more broadly to consumers accessing and understanding information.⁷⁶ *Necessary conditions* include transparency, comprehensibility, and comparability.⁷⁷ Information that does not meet these prerequisite conditions considerably hampers the trustworthiness and usability of this information.⁷⁸

Historically, the approach of governments and regulators has been to increase the amount of information presented to consumers to address *information asymmetries*. Yet the behavioural economics literature demonstrates that more information does not necessarily lead to better decisions – consistent with the *bounded rationality* or limited cognitive function view of consumer decision-making. Instead, decision-making deteriorates as the amount of information and number of choices increase.⁷⁹ According to Nobel laureate Daniel Kahneman, when faced with decisions characterised by high levels of complexity, choice, risk and uncertainty, consumers often revert to ‘system 1 thinking’, relying on *heuristics* – ‘rules-of-thumb’ or mental shortcuts – to simplify decision-making and reduce the amount of information processing required to make a decision.⁸⁰ In situations where information is too complex, onerous or lengthy, consumers may opt instead for proxies such as brand or word-of-mouth as an alternative to guide product choice.

Key information required to inform consumers about a product or service often includes:

- › the price of the product
- › information about the quality of the product, and
- › the terms of sale of a product, or the terms of service with an ongoing service provider.

In keeping with Oehler and Wendt’s *necessary conditions*, key information should be comprehensible to ensure that a “lay consumer” – someone without expertise in the product or service area – can understand the information without difficulty and can then easily compare different product or service offerings. Likewise, pricing information needs to be transparent so that consumers can easily comprehend prices, make informed willingness-to-pay decisions and compare prices with other products or services. Without access to useful information about non-price attributes consumers often may experience suboptimal outcomes, making purchase decisions based on price alone or on peripheral information such as a company’s brand.⁸¹

There are a range of techniques currently used by companies to obfuscate key information. Research from the behavioural literature indicates that consumers focus on the prominent characteristics of a product instead of using all relevant information – known as *saliency bias*.⁸² Firms may seek to exploit this bias by engaging in *shrouding* – highlighting certain attractive features of a product (such as a discount) while making other equally important features less visible (for example, the rate from which the discount is applied, aspects of conditionality of the discount, or exit fees).⁸³

There is also widespread evidence that consumers often do not read contractual information, such as terms and conditions, due to the lengthy and legalistic nature of these documents, the often irrelevant level of detail, and having no choice but to accept if they want the underlying product.⁸⁴ For example, CHOICE research found the terms and conditions for an Amazon Kindle reader, constituting more than 73,000 words, took 9 hours to read.⁸⁵ Consequently, consumers may knowingly indicate they have read the terms and conditions when they have not, resulting in a choice that is unreflective of a consumer’s true preferences or even causes consumer detriment.⁸⁶ Ensuring that key information is presented in an accessible, clear and understandable format is likely to require regulatory intervention and standardisation, as informed by consumer testing.

Standardisation of information disclosure is a common remedy across many markets to improve comprehension. For example, the credit card industry in the UK agreed to adopt standardised summary boxes for presenting fees and charges, based on a tabular format which the Office of Fair Trading found was preferred by consumers during consumer testing.⁸⁷ Likewise, the EU Consumer Credit Directive requires that consumer

76. Andreas Oehler and Stefan Wendt, ‘Good Consumer Information: The Information Paradigm at Its (Dead) End?’, *Journal of Consumer Policy*, 10 December 2016, 183.

77. Ibid.

78. Ibid., 179.

79. Barry Schwartz, *The Paradox of Choice: Why more is less*, 2004.

80. For an explanation of system 1 and system 2 thinking see Daniel Kahneman, *Thinking, Fast and Slow*. On heuristics see Tversky and Kahneman, ‘Judgment under Uncertainty’.

81. Robert Hillman and Jeffery Rachlinski, ‘Standard-form contracting in the electronic age’, *New York University Law Review*, vol. 77, (2002): 429-495.

82. Pedro Bordalo, Nicola Gennaioli and Andrei Shleifer, ‘Salience and consumer choice’, *Journal of Political Economy*, 121, (2013): 803-843.

83. Amelia Fletcher, ‘Role of Demand-Side Remedies’, 17.

84. Paul Harrison, Laura Hill, and Charles Gray, ‘Confident, but Confounded: Consumer Comprehension of Telecommunications Agreements’ (Sydney: Australian Communications Consumer Action Network, 2016), 8.

85. Ros Page, ‘Beware the hidden conditions in your user agreement’, *CHOICE*, 15 March 2017. <https://www.choice.com.au/shopping/consumer-rights-and-advice/your-rights/articles/end-user-licence-agreement-hidden-conditions-and-risks>

86. Fletcher, ‘Role of Demand-Side Remedies’, 17.

87. Ibid., 28.

credit suppliers include a representative Annual Percentage Rate of Charge (APR) within promotional material. This singular figure represents the total annual cost of credit, which is based on a specified calculation harmonised across the EU.⁸⁸

The presentation requirements of key information can also have a significant bearing on consumer comprehension. For example, the Office of Fair Trading in the UK has found that changing the font size and position of the different elements of price can have strong effects on consumer comprehension and lead to a decline in welfare, particularly in the case of drip pricing – where additional unavoidable charges are incrementally added or disclosed to an advertised headline price.⁸⁹ In this section, we take a closer look at the presentation of price and cost information, service and quality information, and the role of industry jargon.

A. Price and other costs

Price is often the most important aspect of a consumer's purchase decision.⁹⁰ Transparent and comprehensible pricing is therefore essential for effective consumer choice in markets. Where consumers do not understand prices or cannot effectively compare prices, they not only fail to identify the cheapest offer on the market, they may even switch to a more expensive offer when relevant information is absent or incomprehensible. In their paper, *Do Consumers Switch to the Best Supplier?*, Research Associate Chris Wilson and Professor of Regulation Catherine Waddams-Price found that only a small fraction of switching customers chose the lowest-priced retailer and that, on aggregate, switching consumers realized only between 30 percent and 52 percent of possible savings.⁹¹ While this behaviour may be consistent with consumers facing high search costs, the additional finding that 17 percent to 32 percent of switching consumers appear to have *lost surplus* (that is, they made a choice that made them worse off), demonstrating how poor transparency around pricing can result in consumer detriment.⁹²

There is widespread evidence that consumers rely on particular pricing or pricing features as a *heuristic* to simplify decision making. According to Bain & Co, online marketplaces, such as Amazon have, fundamentally changed the way consumers shop online – they estimate 90 percent of Americans use Amazon's prices as a reference point when comparing products.⁹³ However, Amazon has recently been accused of manipulating the prices it shows consumers, – receiving a warning from the Consumer Affairs Consumer Affairs Agency in Japan – and is reportedly under a Federal Trade Commission investigation the US.⁹⁴ More savvy internet shoppers now use price monitoring tools, such as Camelcamelcamel.com, to identify when Amazon has genuinely discounted prices.⁹⁵ In Australia, Kogan was forced to pay penalties in 2016 for misleading conduct after the ACCC noted it had inflated prices during a promotional period where large discounts had been advertised, resulting in a misleading conduct.⁹⁶ The practice of creating artificially high discounts suggests consumers may use or even rely on discounts as a *heuristics* when comparing prices.⁹⁷ As more commerce moves online, policymakers could consider developing new reference price tools to help online shoppers identify genuinely discounted products and services.

Several approaches have been explored to enable more accurate price comparisons across a range of markets. Standardised unit pricing is one leading approach. A relatively recent development in Australia, standardised unit pricing is now commonplace in supermarkets. Following Ian Jarratt's review of unit pricing in supermarkets in the Europe and the US, similar legislation was introduced in Australia and the ACCC developed standards for unit pricing in supermarkets, which it now enforces to enable consumers to easily compare the cost per standardised weight.⁹⁸ According to a recent Queensland University of Technology study, consumers who use unit pricing can save up to 18 percent on grocery bills.⁹⁹

Standardised pricing is more complex in markets where pricing structures change according to consumption, however evidence suggests that reference prices can assist decision-

88. Ibid., 29. Citing Directive 2008/48/EC on credit agreements for consumers. http://ec.europa.eu/consumers/financial_services/consumer_credit_directive/index_en.htm

89. Steffen Huck, Brian Wallace and London Economics, 'Partitioned Pricing Research A behavioural experiment', OFT1501A (Office of Fair Trading, 2014). http://webarchive.nationalarchives.gov.uk/20140402165048/http://oft.gov.uk/shared_oft/economic_research/OFT1501A.pdf.

90. For retail energy, see Newgate research, *Consumer Research for the Australian Energy Market Commission's 2017 Retail Competition Review*, April 2017, 41; For banking see Blackmarket Research, *Project: Switch - Financial/Banking Institution Survey*, Sydney, 2017, 7; For telecommunications, see Patrick Xavier, *Behavioural Economics and Customer Complaints in Communication Markets – a report prepared for the Australian Communications and Media Authority*, (ACMA 2011), 20.

91. Chris M. Wilson and Catherine Waddams Price, 'Do Consumers Switch to the Best Supplier?', *Oxford Economic Papers* 62, no. 4 (October 2010): 648.

92. Chris M. Wilson and Catherine Waddams Price, 648.

93. Sue Mitchell, 'Amazon to Create Biggest Disruption in a Generation: Bain & Co', *Financial Review*, 13 June 2017. <http://www.afr.com/business/retail/amazon-to-create-biggest-disruption-in-a-generation-bain-co-20170613-gwq1d8>.

94. Kyodo News, 'Amazon Japan warned not to use misleading "reference prices"', *Japan Times*, 28 December 2017. <https://www.japantimes.co.jp/news/2017/12/28/business/amazon-japan-warned-not-use-misleading-reference-prices/#.WnvUDehuaHs>; Diane Bartz, 'FTC probing allegations of Amazon's deceptive discounting', *Reuters*, July 21 2017. <https://www.reuters.com/article/us-whole-foods-m-a-amazon-ftc/ftc-probing-allegations-of-amazons-deceptive-discounting-idUSKBN1A52R5>

95. Note that camelcamelcamel.com does not provide price monitoring for Amazon Australia as yet.

96. 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>

97. Dan Ariely and Jeff Kreisler, 'We Forget That Everything Is Relative', *Behavioural Scientist*, February 20, 2018. Available online: <http://behavioralscientist.org/forget-everything-relative/>

98. Ian Jarratt, *Report investigating unit pricing of pre-packaged grocery items in the European union and the USA*, Churchill Trust 2007. https://www.churchilltrust.com.au/media/fellows/Jarratt_Ian_2006.pdf

99. Donna Field, 'Push for unit pricing to be rolled out beyond supermarkets', *ABC News*, 21 July 2016.

making in these markets. In Ireland, a research program called PRICE Lab – a collaboration between the Commission for Energy Regulation, Competition and Consumer Protection Commission, the Commission for Communications Regulation, the Central Bank of Ireland, and Irish academics – tests interventions, such as consumer comprehension, in different markets. An experimental trial led by academics Pete Lunn and Marek Bohacek found that providing consumers with an ‘estimated annual bill’ figure helped participants to more accurately identify the cheapest energy retail offer from a range of different offers.¹⁰⁰ This estimated annual bill figure was based on usage of the average consumer as defined by the regulator, and effectively enabled consumers to compare the underlying rate in a market where the use of discounting from a higher standard unit-rate is ubiquitous – resulting in complexity and consumer confusion.¹⁰¹ Notably, the study had a small number of participants and limited its analysis to flat tariffs. However, their findings suggest that *heuristics* can be useful to improve consumer decision-making when faced with complex pricing information. In a similar study evaluating consumer choices of health insurance offerings in the US, researchers found that providing a total estimated annual cost figure in a discrete choice experiment increased the probability that study participants chose a cost-minimizing plan by 3.0 to 10.6 percentage points as compared with the control group.¹⁰²

The presentation of pricing information can also have a significant bearing on consumers comprehension and response to a price. A recent PRICE Lab study 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 The inconsistency sometimes equated to thousands of Euros over the course of the term of a loan and demonstrates the importance of trials for regulators and policymakers investigate how different pricing formats can affect behaviour.¹⁰⁴

We strongly endorse the approach of regulators collaborating with researchers to develop experimental trials ahead of a state or nation-wide rollout of a pricing disclosure intervention.

B. Service quality & features

While price is often a key driver of consumer choice, information about the non-price attributes of products and services is also important for consumer decision-making and the effective functioning of markets.

Consumers can encounter unexpected outages or reduced service quality, inexplicable fees and charges, transfer issues when switching providers, and billing errors. This is compounded by automated customer service systems, significant wait times to speak to human customer representatives, or being bounced between different customer service staff to resolve simple queries – all of which creates further costs for consumers in the form of time required to resolve these issues. Yet consumers have little ability to identify the service quality of a provider before they make a purchase.

This represents a basic but significant *information asymmetry* – as articulated in George Akerlof’s 1970 seminal paper *The Market for “Lemons”*.¹⁰⁵ In the absence of comparable measures of service quality, consumers must rely on sellers to price their product or service commensurate with the quality of that service. Yet sellers have little incentive to do so where consumers cannot differentiate between providers. This means that consumers cannot identify a service offering at a price that suits their preferences, nor do businesses necessarily compete on service quality.

The UK Behavioural Insights team recently recommended that: ‘regulators should publish the information they collect on customer satisfaction, complaints and other quality indicators, which should then be displayed on price comparison websites’.¹⁰⁶

100. Pete Lunn and Marek Bohacek, ‘Price Transparency in Residential Electricity: Experiments for Regulatory Policy’ (The Economic and Social Research Institute, October 2016). <https://www.esri.ie/publications/price-transparency-in-residential-electricity-experiments-for-regulatory-policy/>.

101. Ibid.

102. Andrew J Barnes, et al. “Moving beyond blind men and elephants: providing total estimated annual costs improves health insurance decision-making.” *Medical care research and review* 74, no. 5 (2017): 625-635.

103. The Economic and Social Research Institute, ‘Consumers Are Confused by Personal Loans’, July 7, 2016. <http://www.esri.ie/news/consumers-are-confused-by-personalloans/>

104. Ibid.

105. Akerlof, ‘The Market for “Lemons”’.

106. The Behavioural Insights Team, ‘Applying Behavioural Insights to Regulated Markets’ (Citizens Advice, 2016), 49.

The UK Behavioural Insights team recently recommended that: ‘regulators should publish the information they collect on customer satisfaction, complaints and other quality indicators, which should then be displayed on price comparison websites’.

There are a number of examples of service quality measures introduced across industries and jurisdictions. In Canada and the US, the Better Business Bureau (BBB) seeks to improve marketplace trust across a range of industries by providing businesses with a customer-facing rating “grade” – from A+ through to F – according to information BBB is able to obtain about the business, including complaints received from the public. Underpinning this grade are components including; “Business’s complaint history with BBB”, “Type of business”, “Time in business”, “Transparent Business Practices”, “Failure to honour commitments to BBB”, “Licensing and government actions known to BBB” and “Advertising issues known to BBB”.¹⁰⁷ BBB also offers accreditation according to the BBB Code of Business Practices, where businesses affirm to meet and abide by the standards outlined in the Code. This Code is based on a number of components including: “Build Trust”, “Advertise Honestly”, “Tell the Truth”, “Be Transparent”, “Honour Promises”, “Be Responsive”, “Safeguard Privacy” and “Embody Integrity”.¹⁰⁸ Evidence from a mixed-method analysis in Colorado suggests consumers are 4.7 times more likely to trust real-estate salesmen and 17 times more likely to trust an auto- or boat-salesman when they notice the BBB logo compared with when they do not.¹⁰⁹

In the case of residential electricity, the Public Utilities Commission of Texas aggregates energy retailer’s regulatory performance statistics into a comparable 5-star rating which has been incorporated into the government comparator website. In New Zealand, Consumer NZ, a not-for-profit which runs the public comparator site, has developed a customer satisfaction rating for energy retailers based on large scale customer survey data, producing a “hall of shame” for poorly performing retailers.¹¹⁰

In the UK, Citizens Advice developed a customer service star rating for the comparison of retailers, drawing on energy retailer complaints and performance data which is reported to Citizens Advice by energy retailers on a statutory basis.¹¹¹ The rating compares energy providers on “complaints”, “ease of contact”, “bill clarity”, “ease of switching”, “switch guarantee” and an “overall rating”. The rating data is published quarterly and often receives tabloid attention. Anecdotally, the rating helps drive competition among higher-ranking retailers to improve their service, while retailers near the bottom of the table often approach Citizens Advice seeking feedback and suggestions on how they could improve their service offerings. The rankings have been incorporated into Citizens Advice own online comparator, allowing consumers to filter by service rating or price. Ofgem requires that all commercial comparators submit their methodology to the regulator should they wish to develop their own measure of service quality, or use the measure developed by Citizens Advice.¹¹² This ensures that all service quality metrics are consistent with the Citizens Advice ratings; otherwise the new measure of service will be closely scrutinised by Ofgem.

In the UK, the FCA recently concluded that consumers had poor information on the value for money of add-on insurance products. The FCA is currently trialling a scorecard published by suppliers that incorporates a number of measures of value, including frequency of claims, acceptance rates of claims, and average claims payouts, potentially with the inclusion of an average premium metric.¹¹³ These pieces of information enable consumers to maximise preferences by identifying a preferred level of service at a particular price point. Developing measures of competence, reliability, and perceived honesty can create an indicator of trustworthiness, enabling retailers to improve their reputation and build public trust in their brand to attract customers.¹¹⁴

Consumers need to be able to identify information about product or service features quickly and easily, across a range of tools and mediums to suit their needs. Information should be consistent across different mediums to avoid increased complexity leading to consumer confusion. For example, following a market study into ticket agents by the OFT, the UK Government introduced guidance stating that consumers must be informed if a seat has a restricted view.¹¹⁵ The presentation of product features or characteristics can also take into account insights from behavioural economics, including key information displayed through

107. See <https://www.bbb.org/council/overview-of-bbb-grade>

108. Better Business Bureau, *Code of Business Practices*, available online: <https://www.bbb.org/en/us/code-of-business-practices/>

109. John Lee West, ‘A Mixed Method Analysis of the Better Business Bureau’s Third-Party Seal and the Extent to Which It Inculcates Trust among Consumers’, *Journal of Research in Interactive Marketing* 9, no. 3 (29 July 2015): 214–38

110. <https://www.consumer.org.nz/articles/energy-providers#article-hall-of-shame>

111. Citizens Advice has statutory duties under the Consumers, Estate Agents and Redress Act 2007 and Utilities Act 2000

112. Xander Fare, ‘Decision on the partial implementation of the CMA’s Whole of Market remedy & consulting on new Code requirements’, *Ofgem*, 3 July 2017, 27.

113. Fletcher, ‘Role of Demand-Side Remedies’, 30.

114. Onora O’Neill, ‘Onora O’Neill: What we don’t understand about trust [Video file]’. (June 2013) Retrieved from https://www.ted.com/talks/onora_o_neill_what_we_don_t_understand_about_trust?language=en

115. Fletcher, ‘Role of Demand-Side Remedies’, 25.

traffic light labels and warnings.¹¹⁶ In the case of appliance efficiency, the standardised star rating for appliance efficiency is used consistently on in-store appliances, online, and in retailers' marketing materials.¹¹⁷ This helps to prevent consumer confusion resulting from the emergence of different rating schemes based on different standards.

The CPRC is currently conducting research into the potential use of service and quality information to enhance consumer choice, with an issues paper forthcoming.

C. Terms and conditions, jargon and language

Terms and conditions documents are widely disregarded by consumers due to their length and the legalese in which they are written, which cause information overload.¹¹⁸ Where consumers are unaware of their obligations and rights set out in the terms and conditions, they may purchase products and services that are unsuitable for their needs or that result in poor outcomes. Removing industry jargon is also an important part of improving the quality of information, while using simplified language can reduce risk and uncertainty for consumers, particularly those with limited literacy.

The legalese and length of terms and conditions documents has been widely identified as problematic for consumer comprehension and informed consent, and widespread evidence indicates consumers accept these agreements without reading the documents.¹¹⁹

Several studies show that consumers find contracts written in plain language more comprehensible than those written in jargon.¹²⁰ Evidence also suggests that 'a much larger number of consumers have been found to read them once an issue arises that needs to be addressed (ex post)'.¹²¹ Pertinently, consumers appear to read contracts when the product or service fell short of their expectations; for example, if 'the product or service was not as the vendor represented it to be; or the product arrived late or damaged, or malfunctioned'.¹²²

In the case of insurance, the Effective Disclosure Taskforce found that currently 'mandated disclosure documents are not interesting or relevant enough to capture the attention of consumers before a purchase decision is made'.¹²³ In the view of the Taskforce, this means that 'the disclosure regime is not meeting its primary objective of helping consumers buy insurance that meets their needs'.¹²⁴ To ensure that reforms are effective, the Taskforce recommended establishing 'a benchmark of current disclosure and to test the impact of future changes on consumers'.¹²⁵

There are examples, however, of creative approaches to making these documents clearer and more accessible to consumers. Graphic artist Robert Sikoryak has produced a graphic novel of the iTunes 2015 Terms and Conditions, with Steve Jobs transformed into different comic characters on each page as he recites Apple's 20,669-word user agreement.¹²⁶ More succinct is the three-panel cartoon contract first developed in 2016 by Professor Camilla Baasch Andersen and Associate Professor Adrian Keating at UWA to help engineering students understand their legal obligations – in this case, under a full non-disclosure agreement – while working for the UWA Makers.¹²⁷ In the opinion of former Chief Justice of Australia Robert French, as long as the meaning of the pictures in contracts is clear, then they are legal and binding, serving to simplify otherwise complex arrangements that can give rise to disputes and confusion.¹²⁸ While not all contracts can be improved through visualisation or comic strips, some clearly will, and offer a genuine opportunity to ensure consumers understand the full terms of sale.

The second element of jargon can relate to industry-specific definitions and terms that carry little meaning outside the industry and regulatory world. Consumers cannot necessarily be relied on to know the meaning of technical or industry-specific terminology that is not part of their day-to-day vocabulary. For example, in the electricity sector this includes terminology such as "kWh", "unit rate", "standing charge" or "peak demand".¹²⁹ In the UK, semiotics research commissioned by Ofgem found that 'a lack of standardised language across the

116. Oehler and Wendt, 'Good Consumer Information'.

117. <http://www.energyrating.gov.au/>

118. See Jonathan A. Obar and Anne Oeldorf-Hirsch, 'The Biggest Lie on the Internet: Ignoring the Privacy Policies and Terms of Service Policies of Social Networking Services', SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, 24 August 2016), which found 74 percent of study participants did not read the terms and conditions.

119. 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

120. Paul Harrison, Laura Hill, and Charles Gray, 'Confident, but Confounded: Consumer Comprehension of Telecommunications Agreements', 16.

121. Ibid., 13.

122. Ibid., 14.

123. 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, 2.

124. Ibid.

125. Ibid.

126. Sian Cain, 'How the 20,699-word iTunes T&Cs became this year's hottest graphic novel', *The Guardian*, 9 March 2017. <https://www.theguardian.com/books/2017/mar/08/terms-and-conditions-itunes-t-and-c-graphic-novel-robert-sikoryak-interview>

127. See Comic Book Contracts. <https://www.comicbookcontracts.com/>

128. Camilla Baasch Andersen, 'Comic contracts and other ways to make the law understandable', *The Conversation*, 18 January 2018. <https://theconversation.com/comic-contracts-and-other-ways-to-make-the-law-understandable-90313>

129. Lawes Consulting & Lawes Gadsby Semiotics, *Retail Market Review – energy bills, annual statements and price rise notification advice on layout and the use of language – A research report for Ofgem*, (2011). http://www.ofgem.gov.uk/Markets/RetMkts/rmr/Documents/1/Lawes_Language_Report.pdf.

energy industry further compounds the belief among consumers that the energy market is confusing'.¹³⁰ The research found that in general, communications from suppliers were not consumer-friendly; there was 'no easy way to compare the value of tariffs and payment plans within the portfolio of a supplier, never mind comparing between suppliers'; and there was 'low (consumer) awareness of where to get impartial advice about switching suppliers'.¹³¹ The research noted that because energy is essential and not a discretionary purchase, the poor quality of communications in energy markets may result in what psychologists refer to as 'learned helplessness' – where consumers consider efforts to understand energy markets as futile and, instead, disengage from market participation altogether.¹³²

Where terminology around quality or standards is interpreted broadly by industry, consumers may also find comparison problematic. For example, the government standard for "free-range" eggs allows producers to raise 10,000 hens per hectare while the CSIRO *Model Code of Practice for the Welfare of Animals* suggests there should be no more than 1,500 hens per hectare. If consumers understand or expect that the terminology "free range" refers to hen density, as proposed by CSIRO, they may be disappointed or feel misled if they discover a brand adopts a density closer to the upper bound of the standard, rather than the CSIRO measure. Consumer organisation CHOICE has developed virtual reality app "CluckAR" that enables consumers to identify which brands of egg labelled "free range" have higher stocking densities (i.e. less space for the chickens).¹³³ Consumers point their smartphone camera at an egg carton labelled "free range" in the supermarket and this digital tool identifies the brand and its hen density, providing consumers with a clear picture of 'which brands are selling eggs from the most chilled-out, happy hens'.¹³⁴

A fundamental lack of understanding about product terminology may result in consumers purchasing unsuitable products or services with significant implications. Investment bank UBS has suggested that approximately one third of new borrowers with interest-only loans don't understand how their mortgage works, while a survey conducted by ME Bank found 38 percent of respondents admitted they had 'no understanding of interest-only repayments'.¹³⁵ This widespread misunderstanding is only compounded by levels of numeracy and literacy, which may have significant implications in the event of a sudden interest-rate hike, leading to larger mortgage repayments and potentially pushing homeowners into financial difficulty. While these findings suggest further financial literacy outreach is required, there is also a range of approaches to language simplification and readability scales.¹³⁶ For example, several of the Victorian Water Distribution businesses have adopted Easy English in their communications with their customers to improve consumer comprehension.¹³⁷

Precondition 3:

Comparison tools are simple & effective

Objective: Consumers are able to easily compare and assess information on various products and identify the one which best suits their needs.

The inability of consumers to compare product information to make an informed choice has been raised as an ongoing concern across a range of markets.¹³⁸ The comparison and assessment of product information is closely related to the disclosure and the form of key information, explored in the previous section. These aspects need to work concurrently, though they may need to reflect differing consumer needs and experiences across different industry sectors. Similarly, the ability of consumers to effectively compare products and services has a direct bearing on whether consumers can act on this information comparison to switch providers. This aspect will be explored in the following section.

130. Fletcher, 'Role of Demand-Side Remedies', 29.

131. Ibid.

132. Ibid.

133. CHOICE, 'Join the Bad Eggs Boycott'. <https://campaigns.choice.com.au/bad-egg-boycott/>

134. Ibid.

135. Jonathan Shapiro, 'One in 3 interest-only borrowers don't understand their loans: UBS', *Australian Financial Review*, 4 October 2017. <http://www.afr.com/business/banking-and-finance/financial-services/one-in-3-interest-only-borrowers-dont-understand-their-loans-ubs-20171004-gyu2qh#ixzz56V8izjKO>

136. Harrison, Hill, and Gray, 'Confident, but Confounded', 17.

137. City West Water, English as an additional language (EAL). https://www.citywestwater.com.au/community/learn_about_water/english_as_additional_language.aspx

138. Harrison, Hill, and Gray, 'Confident, but Confounded'; Ester Han, 'Choice says health insurance is too complex and stopping people from switching', *Sydney Morning Herald*, 14 July 2017. <http://www.smh.com.au/national/health/choice-says-health-insurance-is-too-complex-and-stopping-people-from-switching-20170713-gxacz2.html>

Regulatory and policy interventions aimed at assisting the assessment and comparison of product information may often include:

- A. Information summaries;
- B. Comparator websites and digital comparator tools;
- C. Consumer data availability and transferability.

This section explores some of the latest research and experiences of policymakers, regulators and researchers in developing interventions to enable more effective comparison of products and services.

A. Information summaries – price fact sheets, critical information summaries & disclosure statements¹³⁹

Product information summaries have been introduced as a regulatory requirement across a range of industries in Australia to increase comprehension and enhance comparison:

- › Telecommunications – Critical Information Summaries (CIS) introduced in 2013¹⁴⁰
- › Banking – Product Disclosure Statements (PDS) introduced in 2001¹⁴¹
- › Energy – Energy Price Fact Sheets (PFS) introduced in 2012¹⁴²

The primary aim of introducing a regulatory requirement for the disclosure of information summaries was to address the recognised problem of *asymmetric information*. This often relates to complexity associated with extensive, detailed product information within the terms and conditions of agreements which hinder comprehension and act as a barrier to switching. Objectives of information summaries have been described by regulators as: to provide customers with clear information to allow easy comparison of what is being offered¹⁴³; to 'promote product understanding... and product comparison'; and to assist customers 'consider and compare the prices of different retail offers'.¹⁴⁴ The consistent objective is for critical information about the features of products to be both easy to access and easy to compare across the options being assessed.

The extent to which these information summaries have achieved their intended outcomes has been mixed, with concerns often raised that the information is still too complex, that consumers do not read summaries, and that there is a lack of awareness of the availability of these information summaries.¹⁴⁵

Numerous reviews and studies have recommended the review and evaluation of the effectiveness of regulated information summaries. A study completed for ACCAN in 2016 by Senior Lecturer in Marketing Paul Harrison *et al* recommended that telecommunications regulator ACMA undertake an evaluation of the Critical Information Summaries (CIS) to determine the extent to which they assist consumers to understand the key features of their telecommunications agreement.¹⁴⁶ While consultation continues as to the application of the CIS, no review has been completed into the effectiveness of the CIS in improving consumer decision-making.

Similarly, in August 2017, the Australian Government announced a suite of interventions in the retail energy sector, including requirements to produce clear, user-friendly fact sheets about terms and late payment penalties, and to work with the AER on a comparator rate. While this review of content is important to ensure the information disclosed in Energy Price Fact Sheets reflects the critical information consumers need in order to identify products that match their preferences, it does not adequately consider the role that price fact sheets currently play, or are intended to play, in the decision-making journey of most customers. If information summaries do not feature within the decision-making journey, their usefulness as a standalone remedy to improve decision-making may be limited.

139. The terms 'critical information summaries', 'product disclosure statements' and 'price fact sheets' while each having slightly different requirements, are all forms of information summary tools. For the remainder of this section we use the term 'information summaries' to describe generic fact sheet like tools to enable the comprehension and the comparison of the information required to be disclosed.

140. Australian Communications and Media Authority, *Cutting the fine print: New information tool for telecommunications consumers*, 28 February 2013. <https://www.acma.gov.au/theACMA/Newsroom/Newsroom/Media-releases/cutting-the-fine-print-new-information-tool-for-telco-consumers>

141. Australian Securities & Investments Commission, *RG 168 Disclosure: Product Disclosure Statements (and other disclosure obligations)*, 28 October 2011. <http://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-168-disclosure-product-disclosure-statements-and-other-disclosure-obligations/>

142. AER, *Retail pricing information Guidelines*, 31 August 2015. <https://www.aer.gov.au/retail-markets/retail-pricing-information>

143. ACMA, *Comparing telco plans: Critical Information Summaries*, August 2017. <https://www.acma.gov.au/theACMA/critical-information-summaries-for-telecommunications-consumers#what>

144. Ibid 45.

145. Ross Alexander Skelton, 'The Impact of Home Loan Key Facts Sheets on Borrowers' Comparisons of Loan Costs' (Queensland University of Technology, 2015); Paul Harrison, Laura Hill, and Charles Gray, 'Confident, but Confounded: Consumer Comprehension of Telecommunications Agreements'; Insurance Council of Australia, "Too Long; Didn't Read" - Enhancing General Insurance Disclosure Report of the Effective Disclosure Taskforce to Insurance Council Board'.

146. Harrison, Hill, and Gray, 'Confident, but Confounded'.

B. Comparator websites and digital comparator tools (DCTs)

Online comparison websites can significantly reduce the effort required by consumers to compare a range of product or service offers available through a single platform, compared with researching individual offers presented on different retailer sites. Comparator websites may be operated and funded by government or a regulatory body (such as AER's *Energy Made Easy*), they may be industry-funded while retaining independence (such as the private healthcare sector comparators in UK) or commercially-funded and -operated comparators (such as iSelect). There remains a number of issues regarding accuracy, comprehensiveness, privacy (where personalised datasets are used), access, and transparency (for less digitally literate consumers) in relation to comparator sites. However, for consumers with adequate digital literacy, Digital Comparator Tools, such as comparator websites, can offer particularly effective means to assess and compare both price and non-price attributes of different products and services.

There is currently a degree of policy disconnect between the establishment of the key product information disclosure requirements and the integration of this information across different comparator tools and platforms. When considering reforms aimed at enhancing comprehension and comparison of product information, policymakers should take a platform- or tool-neutral approach. Reform to government-funded information-only websites should not be considered in isolation from other commercial lead-generation or end-to-end sites, if consumers continue to access both. Consideration should be given to how reforms targeting product disclosure and comparison requirements may affect the use of commercial lead-generation and end-to-end websites, which currently receive the majority of their web traffic from consumers comparing products and services online.

Moreover, the extent to which regulated product information summaries feature within the decision-making and product-choice journey for the majority of consumers is unclear – both as standalone comparison tools and where included on comparison websites. While this will necessarily vary across different sectors, further research is required to examine current decision-making journey for consumers when accessing, assessing and acting on product information, and determine whether product information sheets are used by consumers to make informed choices across different sectors. The channels assessed as part of this research should be industry-specific and neutral (that is, not focussing only on government sites, or price fact sheets) until a clear understanding about the current customer journey and decision-making process in each sector is established. Any changes to key information disclosure should improve the experience and decision-making outcomes for consumers, and ideally changes would be tested before widespread implementation.

The UK Competition & Markets Authority (CMA) recently conducted a comprehensive review into the operation of Digital Comparison Tools (DCTs), concluding that while DCTs are generally a force for good and experiences are largely positive, more can be done to ensure that these benefits are enjoyed as widely as possible.¹⁴⁷ Importantly, the CMA has also developed four high-level principles for how DCTs should behave to improve trust and to support informed choice. These include:

- › **Clear:** explain their services and how they make money;
- › **Accurate:** provide information that is complete, correct, relevant and up-to-date information and is not misleading;
- › **Responsible:** Protect people's details and be easy to deal with;
- › **Easy to use:** Make information easy to find and understand.

The CMA report highlights the key components of a good DCT experience, including the need to minimise 'leakages' of engagement. The CMA identifies three aspects of the consumer journey that can create 'friction' and poor consumer outcomes: the effort required to generate comparisons, the quality of the results, the and completion of the purchase (see Figure 3 on the next page).¹⁴⁸

147. Competition and Markets Authority, 'Digital Comparison Tools Market Study', 26 September 2017, 31.

148. Ibid., 48.

The extent to which these information summaries have achieved their intended outcomes has been mixed, with concerns often raised that the information is still too complex, that consumers do not read summaries, and that there is a lack of awareness of the availability of these information summaries.

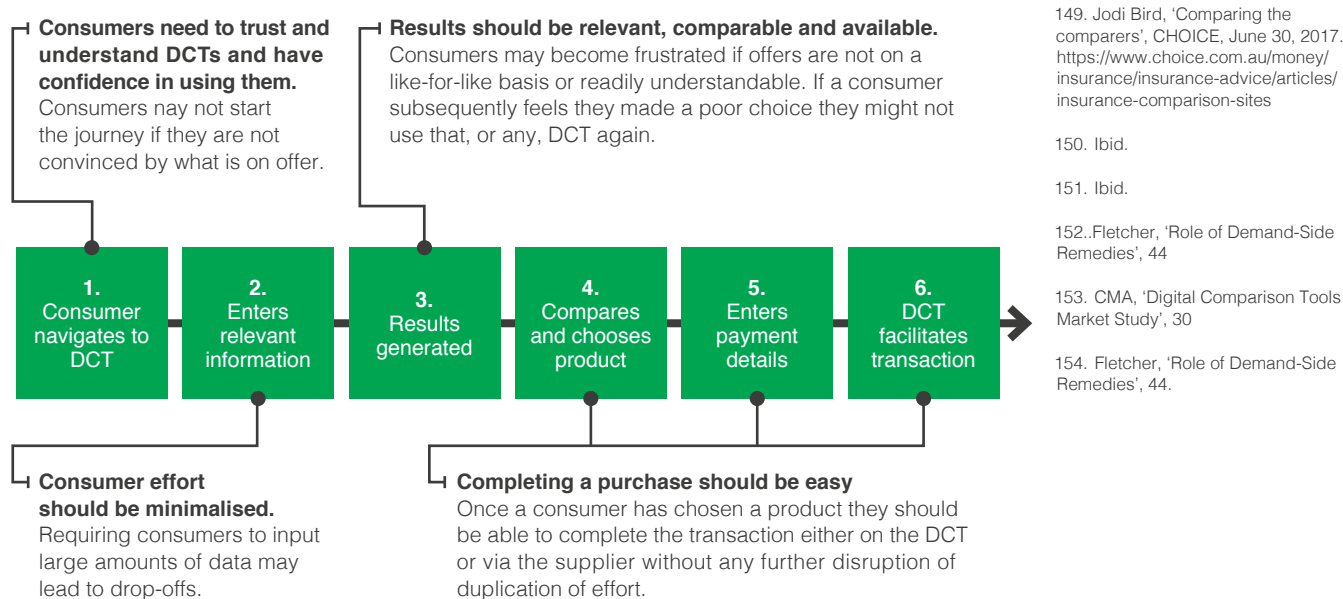


Figure C: A good DCT experience needs to minimise leakages of engagement

The importance of accurate, up-to-date information about offers within a marketplace is central to avoid misleading or deceptive advice being provided to consumers. Moreover, establishing processes to garner accurate information about available offers in the marketplace is critical to fostering consumer trust and confidence in comparators.

Commercial comparator sites may develop commercial relationships and agreements with service providers to ensure product and service information is accurate and up-to-date. The significant variation in the number of providers included in comparator search results is likely to correspond with the number of commercial relationships struck with service providers.

For example, iSelect includes only eleven out of 37 health funds, and eight car insurance products, while Canstar Blue – which operates on a fee-per-click basis – compares 22 out of 37 health funds and 51 car insurance brands.¹⁴⁹ It is important that consumers are made aware of how comprehensive different comparators are, and any commercial relationships between comparator and provider, to avoid misleading information. Consumer organisation CHOICE notes that comparator, Compare the Market, has improved the disclosure of its fee-for-service across different sectors, laying claim to a 'industry-first standard pricing model' for health insurance.¹⁵⁰ For example, Compare the Market charges a standard fee of 25 percent of the first-year premium and 6 percent of the second-year premium for health insurance products sold on its site.¹⁵¹

Where comparators do not provide comprehensible and comparable information, policymakers might consider mechanisms to improve consumer usability including 'accreditation, direct regulation, or the potential for enforcement'.¹⁵² If a significant proportion of consumers using commercial DCTs have trouble comparing products and services or end up with products that do not suit their needs, then reforms could be extended to improve consumer usability.

As the CMA has highlighted, this could be explored through accreditation schemes, or also potentially through strengthening voluntary industry codes.¹⁵³ As Fletcher states:

*'even where information is collated, it may not facilitate effective consumer decision-making. The functionality and the way in which information is presented can be crucial, and this provides further scope for valuable demand-side remedies'.*¹⁵⁴

The importance of accurate, up-to-date information about offers within a marketplace is central to avoid misleading or deceptive advice being provided to consumers. Moreover, establishing processes to garner accurate information about available offers in the marketplace is critical to fostering consumer trust and confidence in comparators.

The CMA notes that regulators of different sectors have varied degrees of authority in managing relevant DCTs – a challenge also evident in the Australian regulatory landscape.¹⁵⁵ While the UK has moved towards sectoral accreditation of comparator sites, Australia does not yet have a consistent and clear pathway for considering how sectoral reforms – aimed at information disclosure requirements and improving product comparison – translate to outcomes for consumers accessing commercial comparator sites. As the CMA notes, many of the issues with DCTs relate to factors such as the ‘relative bargaining position of DCTs and suppliers, technical complexities and the commercial viability of responding to these issues’.¹⁵⁶ The CMA also notes that ‘many of these issues will be sector-specific and regulatory approaches need to reflect the specific circumstances’.¹⁵⁷

After significant consultation with the retail energy industry, consumer groups and policymakers, in 2015 CPRC (then CUAC) launched the Energy Comparator Code of Conduct, a voluntary industry Code aimed at establishing a clear standard for improved information disclosure by retail energy comparators.¹⁵⁸

- › Comparators who sign onto the Code agree to abide by the principles of: disclosing information about retailer offers in an impartial and transparent manner;
- › presenting the retailers deals clearly and comprehensively;
- › that websites correctly reflect the retailers offer and that it is accurate for the consumer needs; and,
- › that the website recommendations are consistent with the selecting methodology of the website.

CPRC and Sales Assured Limited (SAL) are currently developing a monitoring and compliance framework to operationalise the Code, to be finalised in early-2018. The Code is to be reviewed annually, once the monitoring and compliance framework is implemented.

By comparison, government comparator websites are often perceived as more accurate and trustworthy by consumers, though they can be plagued by a low level of awareness, when compared to commercial sites. Examples of government comparators in Australia include: AER’s *Energy Made Easy*, Victorian Government *Victorian Energy Compare* and the Private Health Insurance Ombudsman’s site *PrivateHealth.gov.au*.

AEMC research from 2017 found that only two percent of respondents recalled, unprompted, the name of any government run comparator site.¹⁵⁹ The same research found that 9 percent of respondents were aware of the Energy Made Easy website, when prompted, while 23 percent of Victorians were aware of the *Victorian Energy Compare* website.¹⁶⁰ Furthermore, the AEMC’s 2016 vulnerable consumer research found ‘virtually none of the participants’ were aware of the *Victorian Energy Compare* or the *Energy Made Easy* comparators.¹⁶¹

The research also noted that ‘many participants’ had, in fact, raised the concept of an independent (i.e. non-commercial) energy comparator unprompted.¹⁶² They envisioned this service would be delivered by government, which they unanimously identified as the most reliable and credible source of this sort of information and support.¹⁶³ When government websites were presented to these participants, ‘reactions to the existence and user experience of the sites were overwhelmingly positive’.¹⁶⁴

A key advantage of government comparators is that legislative requirements could be introduced for service providers to provide all current market offers, which ensures that government comparator sites are comprehensive and up-to-date.

Recommendations for changes to government-operated and commercial DCTs should be accompanied by consumer experience research or ‘A/B testing’ both before significant changes are made, and on an ongoing basis. The difference between good changes in theory and in practice is significant. Better understanding the customer experience and behavioural response can significantly reduce implementation costs, the likelihood of increased consumer dissatisfaction, and other unintended consequences.

155. CMA, ‘Digital Comparison Tools Market Study’, 30.

156. CMA, ‘Digital Comparison Tools Market Study’, 48.

157. Ibid.

158. CUAC, Energy Comparator Code of Conduct, August 2015. <http://cuac.org.au/consumer-and-community-resources/energy-comparator-code-of-conduct>

159. Australian Energy Market Commission, ‘2017 AEMC Retail Energy Competition Review’ (Sydney, 25 July 2017), 83.

160. Ibid., 83.

161. Newgate Research, ‘AEMC 2016 Retail Competition Review: Understanding Vulnerable Customer Experiences and Needs’ (Australian Energy Market Commission, 2016), 49.

162. Ibid., 46.

163. Ibid., 45.

164. Ibid., 49.

C. Consumer data availability and transferability

Central to enabling the comparison of products and services to suit consumer need is the provision of access to consumer data, which is likely to be a significant determinant of product suitability. Reforms that focus on improving ease of access and application of consumers data, to make comparison and switching processes easier, are of high value for improving the consumer experience and reducing ‘friction’.

Increasing access to, and transfer of, consumer data, presents a range of new challenges for policymakers and regulators. Using consumers’ consumption dataset with an existing service provider to identify a more suitable service offering with a prospective service provider has significant potential benefits. However, it also creates privacy concerns and requires standardisation to ensure data is easily transferable.¹⁶⁵

Until recently, energy retailers gave consumers their usage data in a variety of formats, some of which were incompatible with the government’s comparator website. Moreover, distribution businesses were required to obtain a “wet signature” (documents signed in ink) to verify a customer’s identity in order to release their data to them. All Victorian electricity distribution businesses have now developed smart-meter data-portals to enable consumers to upload their own consumption data from these businesses directly to the Victorian Energy Compare website, providing a comparison of more personalised offers. This eliminates the need for consumers to download their data themselves and re-upload this data to the comparator, input their own data, or answer numerous consumption profile questions which can be confusing. Consumers, however, seem to be largely unaware of the distribution businesses or how their portals interact with the *Victorian Energy Compare* website to provide personalised offers.

The *2017 Productivity Commission Data Use and Availability Inquiry* has highlighted the importance of increasing data availability to enhance consumer outcomes and better inform decision-making. The Commission found that “data” includes material on: ‘the characteristics, status, appearance or performance of an individual, product or service or object; and expressed or inferred opinions and preferences’.¹⁶⁶ Importantly, the Commission has recommended that a Comprehensive Right be established for Australia’s consumers with regard to the use of their digital data, such that ‘no longer will it just be the collectors of data that are able to determine uses and realise its value’.¹⁶⁷

The Comprehensive Right would enable consumers to:

- › Share in perpetuity joint access to, and use of, their consumer data with the data holder
- › Receive a copy of their consumer data
- › Request edits or corrections to it for reasons of accuracy
- › Be informed of the trade or other disclosure of consumer data to third parties
- › Direct data holders to transfer data in machine-readable form, either to the individual or to a nominated third-party.¹⁶⁸

This reform resembles a similar provision in the UK, with the implementation of the General Data Protection Regulation (GDPR), giving consumers rights to access the information held on them. Access to information, and role of that information in enabling choice and decision-making, is critical in an increasingly online and digital consumer environment. Digital comparator tools and website experiences (both government and commercial) can be enhanced through data portability.

The CMA found that a key part of the effectiveness of digital comparator tools is the extent to which significant effort is required by consumers to generate comparisons. Difficulties occur due to the limited accessibility to data and/or the volume of data that consumers must input into comparator sites¹⁶⁹. Automatic access of information held by suppliers or others enables consumers to be more likely to complete a comparison.¹⁷⁰

The CMA also found that the implementation of standard Application Programming Interfaces (APIs) and common APIs for each sector reduces cost to both suppliers and

165. Katherine Kemp, ‘Open Banking Report Recognises Consumer Data Security and Privacy Issues But the Solution is Yet to Be Settled’, UNSW Sydney, 9 February 2018. <https://clmr.unsw.edu.au/resource/digital-financial-services/open-banking-report-recognises-consumer-data-security-and-privacy-issues-but-the-solution-is-yet-to-be-settled>

166. Productivity Commission, ‘Data Availability and Use’ (Canberra, 2017), 3.

167. *Ibid.*, 15.

168. *Ibid.*, 35.

169. CMA, ‘Digital Comparison Tools Market Study’, 49.

170. Competition and Markets Authority, ‘Digital Comparison Tools Market Study - Paper D Making comparison easier and more effective’, 26 September 2017, 24.

DCTs. Furthermore, 'developing an API that facilitates secure delegated access could reduce a significant amount of friction in the consumer journey'.¹⁷¹ Where suppliers 'adopt secure delegated access', DCTs can be 'authorised by consumers to access relevant information in their user accounts without compromising their log-in details'.¹⁷² If privacy concerns arise, the CMA notes that 'access can be controlled or revoked by consumers and can be provided on an ad-hoc or ongoing basis'.¹⁷³

This highlights the interlinkages of reforms aimed at improving comparability – both in terms of the presentation of information in the platforms or tools, and of how data imputation should be considered in an integrated way, reflective of a consumer journey map.

Other initiatives aimed at simplifying the access application of consumer data include the industry-led Green Button Initiative in the United States in 2012.¹⁷⁴ Green Button was supported by the US Department of Environment (DOE) and established in response to the call for greater customer access to their usage data. According to National Institute of Standards and Technology, as of July 2015, 150 utilities and service providers had committed to providing more than 60 million U.S. households access to their own energy data in a consumer- and computer-friendly format.¹⁷⁵

Lastly, both the Productivity Commission and Competition Markets Authority reports highlight the benefits of incorporation and access to relevant government- and regulator-held data – specifically complaint, performance, or regulatory-breach data. This information can be of significant use to consumers, particularly in markets where it may be difficult to judge quality or compare features. Here, the CMA find that regulators might seek to develop or coordinate a sector-wide set of quality indicators or metrics to assist the comparison of products beyond simply price.¹⁷⁶

Similarly, in Australia, the establishment of sectoral Accredited Release Authorities has been recommended to determine:

'whether datasets should be made available for public release, limited sharing with trusted users, approving trusted users, curating datasets and assisting dataset custodians with curation and the development of metadata, ensuring the timely update and maintenance of datasets, and supporting the linkage of NID (National Interest Datasets) and other datasets'.¹⁷⁷

CPRC is conducting two research projects in the fields of consumer data and decision-making, assessing the role of service and quality information, and the impact and use of consumer data in influencing choice. The first of these reports is due for release in mid-2018.

Precondition 4:

Switching costs (financial & non-financial) are low

Objective: Consumers can switch service providers easily, with minimal financial and non-financial barriers.

When making decisions about switching product or service provider, consumers may encounter financial costs (such as exit fees) and/or non-financial costs, which may ultimately create barriers to successfully switching provider. Identifying and minimising financial costs may involve intervening to change, or even limit, contractual obligations. Reducing non-financial barriers, including *thinking and time costs*, involves developing remedies to make switching quicker, easier, more reliable, and more attractive.

Financial barriers to switching can include exit fees, connection or establishment fees, and other charges associated with switching service providers.¹⁷⁸ Likewise, where consumers are mid-contract, they may be required to pay an early termination fee to

171. Ibid., 19

172. Ibid.

173. Ibid. 19

174. <http://www.greenbuttondata.org/>

175. National Institute of Standards and Technology, *Green Button Initiative*. <https://www.nist.gov/engineering-laboratory/smart-grid/hot-topics/green-button-initiative>

176. CMA, 'Digital Comparison Tools Market Study', 20.

177. Productivity Commission, 'Data Availability and Use', 23.

Whether datasets should be made available for public release, limited sharing with trusted users, approving trusted users, curating datasets and assisting dataset custodians with curation and the development of metadata, ensuring the timely update and maintenance of datasets, and supporting the linkage of NID (National Interest Datasets) and other datasets.

break that contract.¹⁷⁹ These financial costs create a direct financial barrier which can reduce any financial advantage obtained through switching to a cheaper provider, offsetting this benefit entirely or, in some circumstances, leaving consumers worse off. Policymakers and regulators should consider whether direct financial costs create barriers to switching and limit competition.

In a context of uncertainty about financial fees to switch providers, consumers may revert to *inertia* out of *loss aversion* – a cognitive bias whereby individuals view losses as more significant than gains, and seek to minimise losses when faced with uncertainty, which may entail reverting to the status quo.¹⁸⁰

There is evidence of this sentiment among residential energy consumers. The 2016 AEMC retail energy review found that ‘60 percent of residential and business consumers are concerned about hidden fees and charges if they did switch’.¹⁸¹ In the UK, Ofgem found that ‘one of the big factors preventing people from switching is the fear of it going wrong’ and that ‘the very people who have the most to gain from switching are quite often the ones who have the most to lose if it goes wrong’.¹⁸² This widespread perception that switching providers may entail unknown financial costs makes engagement a risky proposition and results in *inertia*.

Among the various consumer biases unearthed by behavioural economics, *inertia* is particularly pertinent in decision-making.¹⁸³ As stated by Ran Spiegler ‘making an active decision [to switch] is cognitively and emotionally taxing’ so where there is a default option – that is, remaining with an existing retailer – ‘the consumer clings to it as a way of “deciding not to decide”’.¹⁸⁴

Even where the benefits of a cheaper offer clearly outweigh the costs of switching, there is evidence that consumers may not treat this calculation rationally. The Centre for Competition Policy study into the collective switching exercise run by British consumer organisation WHICH?, found that ‘well-educated, highly-engaged, savings-seeking’ participants in the process encountered ‘pure switching costs’, even after all search costs were eliminated in a market for a homogeneous product.¹⁸⁵ Participants opted-in to the process, provided consumption information and received a personalised offer and an invitation to switch from the retailer who won a reverse auction to supply the collective at a lower cost.¹⁸⁶ However, only 27 percent of participants completed the process and transferred provider. Moreover, many participants who were offered large savings left money on the table – approximately 50 percent of participants who received an offer equivalent to a saving of £300 per year did not finalise the switch.¹⁸⁷ The study found that ‘simply being shown two offers rather than one reduced the probability of switching, all other things being equal’.¹⁸⁸ However, the researchers also noted ‘some consumers consciously choose to remain with more expensive suppliers’ which they attribute to ‘non-price preferences’.¹⁸⁹ They concluded that ‘policymakers should lower their expectations about the power of consumer engagement to promote competition’.¹⁹⁰

The inability of consumers to compare product information often relates to the perceived or actual time required to compare information, and the cognitive load of comprehending the product and price information of many offers. In the case of retail energy markets, there is evidence that consumers perceive there are significant search costs involved in switching energy retailer. Newgate’s findings suggest consumers would need to save \$336 a year (on average) to consider switching energy retailer or plan.¹⁹¹ This indicates consumers perceive there is significant difficulty in the process to switch energy retailer, which includes: *accessing* or even identifying relevant information, *assessing* different offers and *acting* on this information to switch providers. Perceived switching costs may be compounded by low differentiation of providers’ offers or awareness of comparative prices. Blackmarket Research recently found 15 percent of respondents thought that all the banks were the same while 26 percent of respondents said they did not expect to save much by switching home loans.¹⁹²

178. CHOICE, *The hidden costs of retirement village contracts*, 26 June 2017. <https://www.choice.com.au/money/property/buying/articles/retirement-village-contracts>; AER, *Tariff and fees explained*, <https://www.aer.gov.au/consumers/my-energy-bill/tariff-and-fees-explained>

179. ACMA, *What is an early termination fee?*, 15 September 2016. <https://www.acma.gov.au/theACMA/what-is-an-early-termination-fee-acma>

180. Daniel Kahneman Amos Tversky, ‘Advances in prospect theory: Cumulative representation of uncertainty’, *Journal of Risk and Uncertainty*, 5, 4 (1992): 297–323

181. Australian Energy Market Commission, ‘2016 Retail Competition Review, Final Report’, 2.

182. Tom Grimwood, ‘Customers fear bungled switching’, *UtilityWeek*, 20 January 2017. <http://utilityweek.co.uk/news/customers-fear-bungled-switching/1293692#.WITOK0qWaHs>

183. Stenner, Frederiks, and Hobman, ‘Household Energy Use’; The Behavioural Insights Team, ‘Applying Behavioural Insights to Regulated Markets’; John Gardner and Danie Nilsson, ‘Exploring the Drivers and Barriers of Consumer Engagement in the Victorian Retail Energy Market’ (CSIRO, 2017).

184. Ran Spiegler, *Bounded Rationality and Industrial Organization* (New York ; Oxford : Oxford University Press, 2011).

185. David Deller et al., ‘Switching Energy Suppliers: It’s Not All about the Money’, SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, 21 August 2017), 15.

186. Offers were not necessarily the lowest in the market

187. Deller et al., ‘Switching Energy Suppliers’, 5.

188. *Ibid.*, 1–2.

189. *Ibid.*, 15.

190. *Ibid.*

191. Newgate Research, *Consumer Research for the Australia Energy Market Commission’s 2017 Retailer Competition Review*, (Australian Energy Market Commission, June 2017), 46.

192. Blackmarket Research, *Project: Switch - Financial/Banking Institution Survey*, Sydney, 2017.

The switching process may also include a range of non-cost barriers – perceived or otherwise. For example, if consumers must, or are unsure whether they must, inform their existing provider they wish to cancel their service *before* they are transferred to a new provider or fill in complex paperwork, these steps can themselves create barriers to action. Individuals may also prefer to avoid the awkward conversation about why they are leaving one service provider for another – creating a further behavioural barrier to action. Moreover, if the transition between providers is not seamless, resulting in a period of service outage, consumers may consider the transition itself risky, creating a further barrier to action.¹⁹³ These logistical barriers in the switching process should be minimised wherever possible.

Potential remedies that have been introduced with the aim of intervening and encouraging switching at key moments include:

- A.** Improving comparator switching processes;
- B.** Encouragement of third-party brokers and collective switching;
- C.** *Nudges*.

A. Improving switching through comparator websites and digital tools

For those consumers with internet access and the capacity to engage in markets, regulators should consider how the usability of digital comparison tools, such as price comparison websites, can be improved. The ACCC has identified three different models of comparator website with varying functionality:

- › Information-only sites – most government sites are information-only sites;
- › Lead generation sites – where comparisons are provided to consumers, the website then generates leads through a click-through link to the provider's website, or collects customer details for the provider to contact the customer directly;
- › End-to-end sites – the comparator complete the switching process on behalf of the service provider.¹⁹⁴

While many comparators provide information about different offers or facilitate direct comparisons, fewer sites provide consumers with an end-to-end service to facilitate the switching process itself. End-to-end functionality is exclusive to commercial comparator sites, which often require consumers input contact details to enable comparator sales staff to contact consumers directly and facilitate a switch. Yet, survey data relating to the retail energy market indicates that nearly half of respondents found follow-up phone calls and entering contact details created key barriers to switching provider.¹⁹⁵ More than 20 percent of survey participants doubted that commercial comparison websites were acting in their interest as 'true consumer champions', and raised concerns that commercial comparators 'do not reflect all available providers, get kick-backs, and can't be trusted'.¹⁹⁶ Policymakers, regulators and comparators themselves should consider measures that improve the transparency of their commercial arrangements with providers, ensure product and service information is comprehensible and easily comparable, develop accountability measures, and consider their own consumer testing to improve the consumer experience.

By comparison, government websites are currently valued by consumers due to their ability to compare a more comprehensive range of offers, the perceived or real absence of aggressive sales tactics and their impartiality.¹⁹⁷ In seeking to improve the usability and efficacy of government websites, it is important to understand the dropout rates from the referral process provided by government websites, though this may be difficult for policymakers and regulators to capture. Reducing the number steps required to compare and then complete the switching process – through end-to-end functionality, for example – minimises the number of consumers failing to complete the process. This raises key questions for policymakers as to whether government comparator websites should provide an end-to-end comparator functionality or

193. Fletcher, 'Role of Demand-Side Remedies', 6.

194. Australian Competition and Consumer Commission, 'The Comparator Website Industry in Australia', 21 November 2014. <https://www.accc.gov.au/publications/the-comparator-website-industry-in-australia>.

195. Bastion Latitude, *Energy Made Easy - Market Research, Usability & User Experience Report*, Prepared for the ACCC/AER 2017, 20 [internal unpublished document]

196. Ibid.

197. Ibid, 28

198. Energyinfohub, 'The Secret to Finding Better Energy Offers', 15 September 2016. <https://www.youtube.com/watch?v=wA4alLGD9vE&t=24s>

Policymakers, regulators and comparators themselves should consider measures that improve the transparency of their commercial arrangements with providers, ensure product and service information is comprehensible and easily comparable, develop accountability measures, and consider their own consumer testing to improve the consumer experience.

whether this should be left to commercial sites, coupled with a greater focus on requirements for information disclosure, transparency and accountability.

For consumers who can access online comparator websites but encounter difficulty in completing the comparison process, tools to guide and assist them through the process may improve switching completion rates. Useful tools might include walk-through videos, demonstrating how to understand bills, how consumers can upload more personalised datasets to comparators, and how to use the comparator site to switch provider.¹⁹⁸ Other tools include 'chat-bots' – a self-learning online assistance tool which can simulate conversations to provide answers to questions from users. Examples include *DoNotPay*, which offers consumers legal advice for people wanting to challenge parking fines, helping to appeal over \$4m in parking tickets in 21 months.¹⁹⁹ More recently, *DoNotPay* was expanded to assist consumers fill in transactional legal forms – including maternity leave and landlord contract violations, for example – across all 50 U.S. States and the UK.²⁰⁰

The National Disability Insurance Agency has been developing a self-learning virtual assistant, dubbed the 'Nadia project', to help provide general information and assistance when comparing services to disabled consumers. 'Nadia' is intended to provide assistance by answering queries and reducing the expected call volumes for the NDIA call centres – even as the number of participants in the NDIS expected to grow to nearly half a million Australians over the next three years.²⁰¹ However, consumers without internet access or with lower internet literacy may require a dedicated phone service to assist them navigate the switching process.

Even when a consumer has successfully navigated the comparison process and identified a preferred product, they may encounter switching barriers when they contact the new service provider. A recent ACCC inquiry indicates that retail energy providers do not necessarily offer larger discounted offers to all consumers in all circumstances.²⁰² The ACCC noted that energy retailer call centre staff may not recognise the reference number for a retail energy offer created by comparator websites, or as identified by the ACCC, and may deliberately steer consumers away from larger discounts offers.²⁰³

This may indicate the use of the *low-ball* phenomenon, where consumers can be manipulated into agree to a higher price because they have already made the decision to switch.²⁰⁴ However, it may also result in consumer confusion or uncertainty, and potentially diminishes trust in comparators, switching sites and the market as a whole. Providing a consistent and recognisable reference number for particular service offerings across different mediums will improve transparency and may reduce consumer confusion and dropouts during the switching process, as has been proposed by the AER in their Retail Pricing Information Guideline review.²⁰⁵ Government comparators might also consider developing Easy English explainers around how to use a reference number, and how to seek recourse if a provider does not accept a quoted reference number.

B. Encouragement of third party brokers and collective switching campaigns

Tools to reduce search costs and effort required on the consumer's behalf include collective switching campaigns, third-party brokers or automated switching services.

Collective switching campaigns run by trusted intermediaries can help to reduce consumers search costs and rebalance negotiating power to secure a lower-cost offering for a large consumer cohort. In the UK, the largest collective energy switching exercise was conducted in 2012 by consumer organisations WHICH? and 38 degrees called "The Big Switch". Participants provided information about their energy consumption, which was aggregated and provided to the energy retailers bidding in a reverse auction to provide the lowest price for the group.²⁰⁶ Participants then received a personalised offer from the winning retailer, but was under no obligation to accept the offer. The campaign saw 145,000 people sign up to the campaign, offering participants an average saving

199. Jeanie Patterson, "Putting the "E" into E-Consumer Protection", *Pursuit*, 16 May 2017. <https://pursuit.unimelb.edu.au/articles/putting-the-e-into-e-consumer-protection>; Samuel Gibbs, "Chatbot lawyer overturns 160,000 parking tickets in London and New York", *The Guardian*, 28 June 2016.

200. John Mannes, 'DoNotPay launches 1,000 new bots to help you with your legal problems', *TechCrunch*, 12 July 2017. <https://techcrunch.com/2017/07/12/donotpay-launches-1000-new-bots-to-help-you-with-your-legal-problems/>

201. Andrew Probyn, NDIS' virtual assistant Nadia, voiced by Cate Blanchett, stalls after recent census, robo-debt bumbles, *ABC News*, 21 September 2017. <http://www.abc.net.au/news/2017-09-21/government-stalls-ndis-virtual-assistant-voiced-by-cate-blanchett/8968074>

202. Australian Competition and Consumer Commission, 'Retail Electricity Pricing Inquiry', 127.

203. Ibid., 128.

204. Robert Cialdini et al. 'Low-ball procedure for producing compliance: Commitment then cost', *Journal of Personality and Social Psychology*, 36(5), (1978): 463-476; Saul McLeod, *Techniques of compliance*, 2014, retrieved from www.simplypsychology.org/compliance.html

205. AER, DRAFT - *Retail Pricing Information Guidelines v5.0*, January 2018

206. Deller et al., 'Switching Energy Suppliers'.

of £120.²⁰⁷ More than a quarter of participants provided an offer did make the switch, however the number of consumers who did not accept the offer indicates other ‘pure switching costs’ as mentioned previously.²⁰⁸

Other new and innovative business models that reduce search costs and the need for consumers to engage in a market include automated switching services. These providers act on behalf of consumers, continuously reviewing consumers billing data and switching them to cheaper offers when they appear. A UK based switching service Flipper is financed through a subscription fee model rather than commission from retailers.²⁰⁹ Flipper charges consumers a flat fee of £25 (around A\$41) but only if it can save consumers least £50 (around A\$82) over the year. Flipper commits to reviewing a customer’s billing data four times per year and analyses whether they can be switched to a better retail offer, inclusive of exit fees and discounts. Flipper acts on behalf of the consumer to switch contract or retailer, though consumers can ultimately still cancel any switch within 14 days. In Australia, CHOICE is piloting a similar program called POWERUP, while the *Review of Electricity and Gas Retail Markets in Victoria* has recommended a broker be established by a not-for-profit organisation to assist concession card holders to switch to a cheaper tariff.²¹⁰

In order to ensure that these businesses can effectively deliver consumer benefits, policymakers and regulators need to consider how privacy issues around consumption data can be managed, and how to ensure smooth migration of consumers from one provider to another, particularly with regard to payment settings. It is essential that commercial relationships between brokers and providers are made clear upfront to avoid misleading consumers. Though consumers make an initial decision to subscribe to a third-party intermediary – such as a broker or automated switching service – continued reliance on these services to act on behalf of consumers has implications for consumer agency. Where third-parties fail to fully explain any particularities of new offers – which might include a new cost structure such as *dynamic pricing* – consumers may end up worse off if this does not suit their preferences or consumption profile, especially if it requires a behavioural response.

C. Nudges

Regulators may also consider *nudging* consumers to improve engagement or switching rates. *Nudges* are interventions that seek to change consumers behaviour by altering the structure of choices available, known as *choice architecture*.²¹¹ *Nudges* take many forms, but perhaps most relevant here are interventions that prompt consumers to engage in markets and make decisions to switch provider. These *nudges* tend to be delivered through new informational frames or prompt consumers at key moments where they may be more receptive to *act*.

Switching rates are often used as a proxy for market engagement, especially in service industries where consumer disengagement results in higher prices when benefit periods expire, often referred to as a ‘lazy tax’. As is well-established in the energy sector, the majority of consumers have not switched provider or plan in recent years.

According to the ECA’s December 2017 consumer sentiment survey, in Victoria – the first state to deregulate electricity markets – only 29 percent of Victorians switched either plan (17 percent) or provider (12 percent) in the past year. Furthermore, in the past two to three years, 34 percent of Victorians switched either plan (17 percent) or provider (17 percent).²¹² The survey also found that 35 percent of Victorians considered switching either their provider (26 percent) or plan (19 percent) in the past year, but ultimately did not, while a large proportion reported they had never switched provider (32 percent) or switched plan (50 percent).²¹³ However, there are key differences in attitudes towards switching due to differences in internet access or internet literacy.

207. David Deller, ‘Who switched energy suppliers in The Big Switch and why?’, *WHICH?*, 9 Jan 2015.

208. Deller et al., ‘Switching Energy Suppliers’, 1.

209. See for example Flipper in the UK - <https://flipper.community/>

210. Thwaites, et al., ‘Independent Review into the Electricity and Gas Retail Markets in Victoria’, Recommendation

211. Thaler and Sunstein, *Nudge: Improving decisions about health, wealth and happiness*, (New Haven: Yale University Press, 2008).

212. Energy Consumer Sentiment Survey – December 2017, February 2018, 75.

213. Ibid.

‘Nudges’ are interventions that seek to change consumers behaviour by altering the structure of choices available, known as choice architecture.²¹¹ Nudges take many forms, but perhaps most relevant here are interventions that prompt consumers to engage in markets and make decisions to switch provider. These nudges tend to be delivered through new informational frames or prompt consumers at key moments where they may be more receptive to act.

A separate survey conducted by Bastion Latitude found that 34 percent of those with low internet literacy are likely to have never considered switching compared with 19 percent of respondents with higher internet literacy.²¹⁴

The UK Behavioural Insights Team (BI Team) has suggested that well-timed prompts can assist when it comes to disrupting *inertia* in switching. Their research finds that prompting people at the beginning of the new year, new month, or even contacting people immediately after their birthday or when they have recently moved house, may be points at which people are especially disposed to switching providers. But importantly, the BI Team recommends that regulators work with suppliers to systematically test these ideas to find out what works. Larger consumer campaigns, such as ‘switching weeks’, could also be evaluated to see if they are effective timely prompts.²¹⁵

The same objective of intervention as through prompts has also been recently adopted by the Australian Government in the energy market through the introduction of a Rule Change, which requires energy retailers to notify all current consumers on a current contract that:

- › The benefit period in their contract will change and the date of change/expiry;
- › A reference to the comparator website;
- › A reference to the customer’s ability to request their billing data and electricity consumption data from their retailer;
- › Any early termination charges payable under the contract.

Timing prompts should be informed by consumer research whenever possible. Evidence from consumer research commissioned by the AER found consumers consider switching retail providers after receipt of a larger bill (19 percent), every time they receive a bill (10 percent) or when others around them discuss the topic of switching (10 percent).²¹⁶ However, this research also notes that this rarely translates into acting to switch provider. Qualitative evidence from the research suggests consumers may be more receptive to prompts in anticipation of a large bill for summer or winter.²¹⁷ Other moments that prompt switching include moving to a new house, as individuals are forced to make an active choice about whether to remain with their existing energy retailer.²¹⁸ While end of contract notifications provide useful triggers in other markets, the need for ongoing supply creates additional complexity in the case of retail electricity. The form of prompts is also important – qualitative evidence suggests consumers are prompted to consider switching in response to repeat television advertising, which also includes offline forms of advertising such as flyers.²¹⁹

Ofgem has also been trialling different communications strategies to prompt disengaged consumers to switch. In its ‘small-scale database trial’, Ofgem trialled two different mail-out prompts in a randomised controlled trial, drawing on the Competition and Markets Authority ‘database remedy’.²²⁰ A sample of 2,400 eligible customers – drawn evenly from two major retailers and who had not switched energy supplier for more than three years – were selected from the trial. In advance of the trial, participants were sent a letter from their supplier advising they could opt-out of being sent communications on energy deals. After the 28 day opt-out period, the remaining participants received either:

- › No letter (the control group)
- › A Best Offer Letter from Ofgem or;
- › Up to six marketing letters in total from other suppliers – based on the CMA recommendation (CMA group).

The trial found the underlying switching rate for the control group was 6.8 percent while the Best Offer Letter – a single letter that presented several cheaper options tailored to the consumer based on their consumption profile – led to switching rates of 12.1 percent.²²¹ The third group – where three different providers could send the consumer up to two letters each with tailored offers – led to switching rates of 13.3 percent among providers.²²² During the switching period, Ofgem observed the switching rate in the control group

214. Bastion Latitude, *Market Research*, 16

215. The Behavioural Insights Team, ‘Applying Behavioural Insights to Regulated Markets’, 51.

216. Bastion Latitude, *Market Research*, 15

217. *Ibid.*, 26.

218. *Ibid.*

219. *Ibid.*

220. Francisco Moraiz and Roger Tyers, ‘Small Scale Database Trial’ (Ofgem, 2017). https://www.ofgem.gov.uk/system/files/docs/2017/11/small_scale_database_trial_paper_pdf.pdf

221. *Ibid.*, 4.

222. *Ibid.*

was far higher than expected, noting a sector-wide price rise along with media coverage around switching from an influential journalist during the course of the trial may have had an effect on all three groups. The increased switching resulting from Ofgem's Best Offer Letter is notable given this was a single prompt compared with multiple letters sent to the third group. Moreover, qualitative evidence indicates some participants found the CMA recommended approach intrusive.²²³ In all three groups, Ofgem observed more participants switched to an internal offer – a cheaper offer provided by the same retailer – compared with switching to cheaper offer provided by another.

Between June and August 2017, Ofgem repeated this intervention with a sample of 137,876 consumers in the first of a series of trials using new licensing powers.²²⁴ Against the control group's baseline switching of 1 percent, the Ofgem branded letter led to 2.4 percent of participants switching, while 3.4 percent of participants who received a supplier branded letter switched tariff within 30 days after letters were sent.²²⁵ While this study was conducted over a different time period to the small-scale study, switching rates for both intervention groups and the control group were lower. It is also notable that participants of both intervention groups and the control were more likely to switch to an external provider rather than switch tariff with their current provider. Further, Ofgem also found consumers in either intervention group saved on average £50 more than consumers in the control group.²²⁶ Perhaps most importantly, both these Ofgem trials demonstrate how low-cost interventions can *nudge* long-term disengaged consumers to switch providers. Further trials may identify how prompts can be better refined to reduce the effort required by consumers to increase the response rate.

Elsewhere, the literature indicates interventions, such as financial literacy programs, are most effective when they intervene at 'teachable moments' in participants lives.²²⁷ With regard to financial prompts – teachable moments occur when a financial choice is imminent, and when the content of the program has immediate practical applications.²²⁸ Above all, interventions need to be timely if they are to be effective. The available evidence shows that relatively small differences in timing can have a big impact on consumer behaviour. The key is to ensure that consumers receive the information when it is mostly likely to be salient for their decision-making.²²⁹

The form and medium of a *nudge* can also have significant bearing on the success or failure of an intervention. The BI Team completed two randomized controlled trials in Chattanooga, Tennessee and Lexington, Kentucky, seeking to improve repayment of outstanding sewage bills which often resulted in water being shut off. In Chattanooga, the intervention group received a courtesy notice with their bill, informing account-holders that the city of Chattanooga would now consider their non-payment a "deliberate choice" rather than treating the missed payment as an oversight. After 19 days, this increased the likelihood of a payment being made within the due date by 3.7 percent.²³⁰ In Lexington, the BI Team replicated this *nudge*, but added a handwritten note addressing the customer on the outside of the envelope: "John, you really need to read this." In this sample of 1,500 envelopes, this increased the likelihood of repayment by the due date by 34.2 percent.²³¹ The BI Team also regularly utilised text message as the platform for a *nudge* for a range of reasons including low cost, acceptability – a GP, teacher or local government official contacting an individual using WhatsApp or Facebook Messenger may be viewed as intrusive – along with the hurdles created where target groups have to download and use apps.²³²

Precondition 5:

Consumers are aware of how to access, assess and act on information

Objective: Consumers are aware of how to access, assess and act on information to secure a product that meets their needs.

223. Francisco Moraiz and Roger Tyers, 'Small Scale Database Trial', 6.

224. Ofgem now have the power to direct suppliers to test consumer engagement measures. See: https://www.ofgem.gov.uk/system/files/docs/2017/01/slc_32a_decision_final_website.pdf

225. Roger Tyers, 'Cheaper Market Offers Letter Trial - Research Results' (Ofgem, 24 November 2017), 3.

226. Ibid., 4.

227. Jennifer Robson, *The case for financial literacy: Assessing the effects of financial literacy Interventions for low income and vulnerable groups in Canada*. (Carleton University: Canada 2012).

228. Ibid.

229. Fletcher, 'Role of Demand-Side Remedies', 7.

230. Martin Sweeney and Owen Phillips, 'How can a letter increase sewer bill payments?', *The Behavioural Insights Team*, 3 May 2016. <http://www.behaviouralinsights.co.uk/north-america/how-can-a-letter-increase-sewer-bill-payments/>

231. Ibid.

232. Michael Sanders and Bibi Groot, 'Why text?', *The Behavioural Insights Team*, 1 February 2018. <http://www.behaviouralinsights.co.uk/trial-design/why-text/>

Relatively small differences in timing can have a big impact on consumer behaviour. The key is to ensure that consumers receive the information when it is mostly likely to be salient for their decision-making. The form and medium of a nudge can also have significant bearing on the success or failure of an intervention.

Underlying the four previous preconditions of consumer engagement is consumer *awareness*. To effectively engage in a market for a product or service, consumers need to be sufficiently *aware* how they can:

- › *access* assistance and fair products when they have reduced capacity;
- › *access* key information about competing products and services;
- › *assess* which product or service offering best meets their preferences;
- › *act* on information that enables switching to a product where that service offering better meets preferences.

Interventions that address any one of these aspects of consumer engagement in the absence of consumer awareness about that intervention may see minimal take-up or use and diminish efficacy of the intervention. Consumer awareness is essential to ensure interventions targeting improved information disclosure, comparison or minimising switching costs are effective in delivering improved outcomes for consumers. This does not mean that consumers must retain a comprehensive knowledge of the various processes across a range of different markets at all times. Such an approach is likely to be counterproductive and even potentially result in decreased satisfaction. More information is not necessarily useful when it comes to driving behaviour change, evidence raised in this paper indicates it can have the opposite effect. But well-targeted awareness-raising initiatives, delivered at the right time, through salient channels, from trusted sources can result in improved outcomes. Three types of awareness strategies are explored here, namely: grassroots outreach to targeted communities, broad-based awareness campaigns, and *nudges*.

Ensuring vulnerable consumers, and frontline staff assisting them, are aware of tools and support services available is essential. Yet the current evidence suggests that vulnerable consumers are often those least aware of assistance designed specifically for them.

The European Commission's Second consumer market study on the functioning of the retail electricity markets for consumers in the EU, released in 2016, found that only 24 percent of consumers who participated in the survey were aware of policy measures aimed at protecting people who have difficulties with paying their energy bills. Perhaps most notably, consumers who had the most difficulties in paying their electricity bills appeared to be the least likely to be aware of these policy measures (17 percent compared with 22 percent to 25 percent across other groups).²³³ This suggests policymakers need to consider how policies designed for vulnerable and disadvantaged consumers are made visible to these constituents as the intended beneficiaries. While this survey includes consumers from a range of different countries with different energy market structures, it may be indicative of vulnerable and disadvantaged consumers in general.

Outreach strategies that aim to increase capacity and awareness within local community agencies are critical to ensuring all segments of the market are supported to engage and obtain offers. Across 2015-16, CPRC ran a number of energy information workshops in four towns as part of an energy literacy pilot with AusNet Services. In a follow-up survey evaluating the pilot, almost all the respondents (84 percent) had reported taking steps to reduce their energy consumption; half (53 percent) had switched or negotiated with their retailer for a better deal; and one in five (21 percent) had used Victorian Energy Compare.²³⁴ In qualitative comments, respondents indicated the workshop had even provided them with the confidence to shop around in other sectors, such as insurance.²³⁵ "Train the trainer" programs have all been developed and implemented successfully by QCOSS (*Switched On Communities*), CPRC (*Energyinfohub*) and St Vincent de Paul Society (*Energy Forums*), building capacity and training up local, trusted community networks to engage and support consumers directly.

The CPRC *Energyinfohub* was developed by the prior CUAC, with funding from the Victorian Government Energy Information Fund back in 2015, to provide an online information support service for advocates and frontline staff. The *Energyinfohub* was

233. Ipsos-London Economics-Deloitte, *Second consumer market study on the functioning of the retail electricity markets for consumers in the EU*, (European Union: Luxembourg, 2016). http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=53331

234. Consumer Utilities Advocacy Centre, *Follow-up Survey Results from the AusNet Services Energy Literacy Workshop*, September 2016, 10.

235. Ibid.

a central resource for the community sector undertaking outreach and engagement to support vulnerable consumers engaging in the energy market. It also produced shareable videos and a social media presence to maximise reach. The program was not funded on an ongoing basis. Consistency and longevity of message are critical to driving lasting change, however most of these programs have been funded on an ad-hoc basis, with much corporate memory and momentum lost once funds are withdrawn.

The ‘train the trainer’ model is most effective where the information is consistently co-ordinated and collated to keep it up-to-date, combined with effective training, outreach and upskilling strategies undertaken for specialists engaged with the vulnerable customer groups outlined in Precondition 1 of this chapter. Ongoing support for these outreach programs is particularly important as markets evolve, with the introduction of new consumer protections and assistance for vulnerable consumers, changes to key information and disclosure requirements, the development of new comparison tools, and the rollout of new switching methodologies. Where frontline community workers are *themselves* unaware of changes or key assistance mechanisms, they may be unable to direct vulnerable and disadvantaged consumers to programs designed for those constituents. Integrating tailored information provision – along with training and upskilling, and empowerment, of those at grassroots organisations with touch points within the community – is the one of the most effective methods for raising awareness amongst disadvantaged and hard-to-reach consumers.

Secondly, awareness-raising campaigns can be a useful way of directing consumers to comparison services. While information disclosure about key aspects of products and services needs to be comprehensible and clear, consumers also need to be aware how and where to *access* this information easily. While the internet has, in many ways, reduced search costs for consumers, a study in 1971 suggested firms were able to charge monopoly prices if search costs were high enough that consumers chose a firm at random.²³⁶ Too much choice can be overwhelming – referred to as ‘choice overload’ or ‘overchoice’ – which can also result in consumers choose poorly or reverting to default options²³⁷. Likewise, where tools to compare service quality information, features or terms-of-sale information have been developed, consumers may need to be made aware of these tools and how to use this information. In the case of efficiency star ratings for appliances, consumers may not be aware of the link between lower running costs and higher star ratings, especially where consumers have limited literacy or numeracy.

In more complex markets, consumers need to be made aware of comparison tools that help *assess* different offers and may need assistance using these tools. As previously mentioned, the AEMC’s retail energy research has found the government comparator websites have low awareness among consumers. Research produced for Citizens Advice in the UK found that half of the time spent browsing electricity or mains gas supply websites by research participants could be attributed to just 10 percent of visitors – which suggests that a minority of engaged consumers may responsible for the majority of the online traffic to websites, attempting to make a comparison.²³⁸ More recent data from usage rates of government energy comparator sites also showed significant spikes in access by consumers to comparator websites following high-profile discussion by politicians around intervention in the energy market.²³⁹ This indicates the importance of considering the full spectrum of communication options available to governments and regulators, not only standalone broad-based media and print advertising.

Consideration should also be given to the level of investment by governments in awareness-raising activities when compared to the commercial sector. Without sufficient investment, the impact of enhancements will be limited. Similarly, policymakers could consider how campaigns and interventions can be delivered in collaboration with businesses in targeted sectors to maximise impact.

As new tools are developed to draw on consumers’ consumption data or usage history, processes will need to be developed to ensure consumers understand how to access their data, and ensure consumers are aware of these processes, and the comparison

236. Paul Diamond, ‘A Model of Price Adjustment’, J. Econ. Theory, 3(2), (1971): 156-58.

237. Schwartz, *The Paradox of Choice*.

238. GfK, ‘Consumers’ Hierarchies of Priorities’ (Citizens Advice, 2014), 44.

239. AER, *Energy Made Easy web analytics provided to AER stakeholder reference group*, September 2017 [internal unpublished document]

Ensuring vulnerable consumers, and frontline staff assisting them, are aware of tools and support services available is essential. Yet the current evidence suggests that vulnerable consumers are often those least aware of assistance designed specifically for them.

tools, brokers or switching services, to transfer providers. The ACCC's preliminary retail energy inquiry report raised concerns that the process for consumers (or third parties acting on their behalf) to access and use their smart meter data is unnecessarily difficult, creating a significant barrier to consumers benefiting from the use of their own data.²⁴⁰ The report also noted consumers have poor levels of awareness that they can access their own electricity consumption data – even though this functionality has already existed for some years in some states.²⁴¹

Where business incentives are not aligned with reforms intended to increase competition between providers, or to lower barriers to entry for new providers, they may not be incentivised to make consumers aware of these processes – which means government must take a stronger role.

Ensuring consumers are aware of how the switching process itself works – including their rights, responsibilities and where to seek assistance if things go wrong – is also important to ensuring consumers can act and switch providers where appropriate. As previously articulated, there can be a range of factors that create barriers in the switching process itself. Even where regulators have resolved these issues through 'gaining provider-led switching' reforms – where the new provider effectively does the leg-work to transfer the customer from their existing provider – consumers may still *mistakenly* believe there are barriers or risks involved with transferring provider if they are unaware of the reformed switching process. Setting expectations for consumers around expected delays is important to mitigate consumers concerns and reduce uncertainty. While guides developed by consumer organisations and governments to assist consumers through these markets are invaluable, consumers need to be aware they exist to ensure their usefulness.

Where governments determine that markets and competition can deliver services more efficiently than government service delivery, ongoing government information and awareness campaigns may be required to help maintain consumer engagement. Professors Henrik Cronqvist and Richard Thaler have documented the Swedish privatisation of social security in 1999, noting that citizens were sent a catalogue of 456 mutual funds along with instructions on how to invest for their own future – effectively providing citizens with access to key product information and assistance assessing different options.²⁴² An extensive education campaign encouraging individuals to make active decisions meant that two thirds made active choices about their social security investment, while the remaining third of participants effectively "opted-out" – putting their entire investment in the default fund.²⁴³ However, three years after the government's publicity campaign was concluded, the number of Swedes who had reverted to the default fund increased to 93 percent of the population.²⁴⁴ This research demonstrates the need for policymakers to recognise the role of effective awareness raising strategies in driving consumer behaviour change especially in low frequency purchase markets such as regulated and essential services.

Lastly, *nudges* can help make a consumer *aware* of aspects of market engagement, such as what their current service provider costs are compared with others, where to go to switch providers, where to seek further information or direct assistance, as well as prompting them to act with particular information. In the UK, the Financial Conduct Authority (FCA) trialled a prompt to increase switching in the home insurance market.

The FCA found that including the previous year's premium on insurance renewal notices – against which a consumer can easily compare their premium for the upcoming year – prompted between 11 and 18 percent more participants (or about 3.2 percent of participants) to switch or negotiate their home insurance policies, compared to those who received a standard renewal notice.²⁴⁵

This nudge can be seen as both informing consumers about key pricing information, while prompting these individuals to assess whether this was still a competitive rate at a timely moment. Notably, the majority of participants who responded to the prompt either

240. Australian Competition and Consumer Commission, 'Retail Electricity Pricing Inquiry', 140.

241. Australian Competition and Consumer Commission, 140.

242. David Deller et al., 'Collective Switching and Possible Uses of a Disengaged Consumer Database', 26.

243. Ibid.

244. Ibid.

245. Financial Conduct Authority, 'Occasional Paper No. 12: Encouraging Consumers to Act at Renewal: Evidence from Field Trials in the Home and Motor Insurance Markets', 3 December 2015.

Consideration should also be given to the level of investment by governments in awareness-raising activities when compared to the commercial sector. Without sufficient investment, the impact of enhancements will be limited. Similarly, policymakers should consider how campaigns and interventions can be delivered in collaboration with businesses in targeted sectors to maximise impact.

negotiated a lower premium with their existing provider or switched providers retained a similar level of coverage.²⁴⁶

The Economic and Social Research Institute recently published a PRICE Lab study which tested two policy intervention *nudges*, designed to help consumers to make better decisions in the personal loans market. The study found that providing consumers with a 'high-cost loan' warning helped consumers to avoid choosing loans with above average interest rates.²⁴⁷ In the second intervention PRICE Lab trialled, consumers were provided with a table of example loans before they made their choices, which was also found to assist them to make more consistent decisions.²⁴⁸ Both *nudges* help to provide consumers with awareness of key price information, and how this relates to other prices to enable more effective assessment.

When designing behaviour change and awareness campaigns, policymakers and regulators would benefit from carefully considering the objective or behaviour that is being targeted for change. For example:

- › Increasing the use of government comparator comparison and switching sites might be achieved by changing the perception of time /hassle cost required to compare and switch;²⁴⁹
- › Increasing rates of shopping around might be achieved by mandating a prompt for consumers at key moments to consider alternative providers – for example upon receipt of a high bill prompting customers to access comparator sites;
- › Increasing the number of consumers releasing their consumption/profile data to trusted third parties to enable comparison of products and services might be achieved by encouraging consumers to sign up or provide universal consent for data comparison sites, where privacy and data security concerns have been addressed.
- › Taking an integrated and targeted approach, rather than one-size-fits-all will ultimately assist in maximising impact across different segments of the community.

246. Ibid.

247. The Economic and Social Research Institute, 'Consumers Are Confused by Personal Loans', July 7, 2016. The press release noted that this paper was the first time that interventions have been experimentally pre-tested like this in Ireland.

248. Ibid.

249. Gill Wales research for, 'Consumers' Engagement with Markets and the Implications for Their Use of Time - Review of Existing Research' (Citizens Advice, February 2014), 6.

Summary and Recommendations

Policy, regulatory & practice interventions to improve outcomes of consumer engagement

Improving consumer outcomes in markets often requires changing consumer behaviour. Where consumers encounter complexity in markets, they may revert to biases and rely on *heuristics* rather than engage in more burdensome rational decision-making processes. Some evidence suggests consumers do not necessarily value spending more time to make more rational decisions, even where this has a financial benefit.

Before intervening in markets, policymakers and regulators should first identify the specific problem being experienced by consumers and the outcomes desired from the intervention. Caution should be taken where interventions may impede a consumer's ability to choose or secure a product or service which meets their needs and preferences.

Recommendation 3: Rigorous customer journey mapping research can be undertaken to assist regulators and policymakers better understand how, when and why consumers engage throughout the the product acquisition and decision-making process and where they encounter difficulties.

Precondition 1:

Barriers to access for consumers with reduced capacity or vulnerability are removed

Consumers may encounter barriers in accessing, assessing and acting on relevant information to inform product and service choice. These barriers often relate to vulnerabilities which may include, but are not limited to: financial hardship, mental health issues, language barriers for culturally and linguistically diverse (CALD) communities, or temporary trauma associated with an accident or illness.

Remedies to support and improve engagement for vulnerable consumers encountering barriers should be effectively targeted to the specific types of vulnerability being experienced by the customer segment, such as education and outreach in migrant communities, or developing specific products suited to consumers in financial hardship.

Often, remedies will require collaboration across the private, public and community sectors to deliver support programs. These remedies are generally social policy focused by nature and will require complementary government policies to operate effectively alongside regulatory frameworks.

Recommendation 4: Interventions and remedies for vulnerable customers should consider the specific types of vulnerabilities and barriers being experienced. Tailored outreach and intervention strategies should be developed for these specific consumers segments.

Recommendation 5: Integrated outreach and intervention strategies will be most effective when they leverage the strengths of different sectors and of organisations effective in reaching vulnerable consumers can deliver significant benefits (for example, companies have detailed information on customers who may have fallen behind in payments; or community organisations have trusted, grassroots connections with vulnerable members of the community). Co-design processes to develop effective support programs can yield significant benefits across industry, government and the community sector.

Precondition 2:

Key product information is disclosed in a relevant, clear and comprehensible manner

Historically, policymakers and regulators have focussed on increasing the amount and types of information disclosure to address *information asymmetries*. However, evidence shows that simply providing consumers with more information – regardless of its quality, placement or relevance – can result in negative outcomes by overwhelming decision-making, and giving rise to behavioural biases and the use of *heuristics*.

Necessary conditions for good information provision are transparency, comprehensibility and comparability.

Consumers need good information about the things that are most relevant to them – such as price, service quality and terms of sale – to make informed and effective decisions. The way product information is presented can affect consumer decisions. Information needs to be communicated clearly, such as requiring the use of Easy English. Sometimes complex language may even be required by regulation itself. Focusing on removing the use of industry-specific jargon where it acts as a barrier for comprehension can improve information provision and comprehension.

Recommendation 6: Policymakers and regulators should consider how the quality of disclosed information can be improved to increase comprehension. This may include: standardising the definition of key pieces of information; supporting the development of quality and services measures for public-facing information; or simplifying language and removing industry jargon wherever possible such that consumer information is provided in Easy English; and as translated materials, or alongside easily accessed translation services.

Recommendation 7: Policymakers and regulators making reforms to product information disclosure requirements would benefit from placing greater focus on consumer comprehension testing in order to identify the most effective ways to present information. Comprehension testing will more effectively identify whether changes to disclosed information result in increased consumer understanding of the product information in question. Consumer research and testing during this phase will greatly assist the development of these disclosure requirements.

Precondition 3:

Comparison tools are accurate, simple and effective

Consumers need to be able to easily and accurately compare different products and services using good information about price, service quality and terms of sale. Complex information can be simplified for comparison through a range of tools such as regulated information summaries or online comparator services.

Comparator websites and digital comparator tools can play a valuable role for consumers when comparing different service offerings. Regulators and policymakers should consider the purpose and intent of these tools when reviewing their functionality and efficacy. Again, journey mapping how consumers use these tools in practice can help identify where the comparison process breaks down.

To simplify and improve the accuracy of comparison services, consumers need better access to, and portability of, their data. To maximise the benefits of the development of tailored services, consumers need a greater ability to access and enable transfer of their data to comparator or new service providers.

However, any provision of data to third-party comparators, portals and online “concierge” services will require rigorous privacy and consent provisions to build consumer trust, and to ensure that consumers are extracting the benefits from these data transfer arrangements.

Recommendation 8: Ongoing reviews of the use and user experience of government-run comparator services should be conducted to continually improve their usability, relevance and accuracy.

Recommendation 9: Reforms aimed at improving the comparison of products and services should take a platform-neutral approach. Changes should be reflective of all the key platforms and tools that customers may use to make product comparisons, rather than taking a siloed approach (for example, across government or commercial comparator websites, or price fact sheets).

Recommendation 10: Facilitating easy access to, and transfer of, consumer data can enable more accurate and relevant comparisons of products and services. Reforms aimed at opening up access to consumer data should also carefully consider adequate protections and consent requirements to ensure consumer trust and benefit is prioritised.

Precondition 4:

Switching costs (financial and non-financial) are low

Switching costs – both financial and non-financial – can prevent consumers from acquiring products which suit their needs and preferences. *Perceived* search and switching costs can be sizable. Where consumers encounter uncertainty about the magnitude of switching costs, consumers may revert to *inertia* rather than risk being worse off.

Low trust in markets or providers can reduce consumer engagement and lower the incidence of switching products or providers. Simplifying and removing costs from the switching process can help to improve consumer outcomes. Investigating the journey map of how consumers engage with switching tools (such as comparison websites) or trial new tools (such as automated switch services or ‘chat-bots’) can be one way to reduce ‘leakage’ and friction in the decision-making process.

Recommendation 11: A focus from policymakers and regulators on the customer journey map of the switching process, along with a reduction of identified financial and non-financial costs (such as time), can help more consumers acquire products that suit their needs.

Precondition 5:

Consumers are aware of how to access, assess and act on information

Consumers need to be aware of the different opportunities they have to engage a market and acquire a product that suits their needs, such as where to seek assistance, where to find relevant and good product information, how to compare products and services, and how to switch providers. Where consumers are unaware of any one of these components, they may encounter barriers to acquiring a product that suits their needs, resulting in *inertia* and poor consumer outcomes.

Recommendation 12: Reforms to improve consumer outcomes from engagement and decision-making should also have a sustained focus on raising consumer awareness of the various platforms and tools available. This may involve *nudging* consumers at key decision points to engage with the information, tools, or existing public awareness campaigns.



Trialling and implementing interventions

Policymakers and regulators should trial both behavioural and traditional interventions before they are rolled out and implemented across whole jurisdictions. Importantly, behavioural interventions should not be viewed as isolated solutions to policy problems. Rather, behavioural interventions should be considered a valuable approach to be tested and used in conjunction with traditional policies, and not as a replacement.²⁵⁰

As Nobel laureate Jan Tinbergen argued, a policymaker needs at least as many policy instruments as she has targets.²⁵¹ Furthermore, having regard for the distributional impacts of interventions across different demographics should also be a key consideration for policymakers.²⁵²

This paper makes two key recommendations on implementation for businesses, governments and regulators aiming to drive changes in consumer engagement through practice, policy or regulatory intervention, namely: the benefit of trials, and transparent measurement of outcomes.

A. The benefits of trials

Interventions should be trialled wherever possible – through consumer testing or, ideally, through randomised controlled trials – to ensure that policymakers have a rigorous evidence base to support policy decisions.²⁵³ Trials would be most effective where they are informed by systematic reviews of the existing evidence and research, where the problem is well-defined, and where the desired behaviour change has been identified.

Randomised Controlled Trials are considered the “gold standard” in the hierarchy of research. Although it may be difficult to design trials that meet this standard in some contexts, this should not prevent policymakers and regulators from developing experimental trails to create an evidence base. Others have argued that ‘if you do not know whether the program works, then it is unethical *not to* conduct a randomised trial’ as every dollar spent on ineffective programs might have been better spent on other programs or returned to taxpayers.²⁵⁴

The importance of having a more flexible policy and regulatory framework for testing and trialling interventions to improve consumer outcomes is heightened as consumer markets rapidly move online. The online environment provides a number of opportunities for trials – this shift allows for trials to be conducted quickly and easily, and the costs are significantly lower compared to lengthy field or qualitative research.

Trials should not be limited to government and regulators either. It is notable that the Competition Markets Authority recently imposed a participation requirement for such trials on energy and retail banking firms as part of their license.²⁵⁵ While this may be viewed as a significant intervention, Fletcher notes that voluntary participation can result in participants insisting on conditionality around the trials of specific interventions.²⁵⁶

250. Shlomo Benartzi et al., ‘Should Governments Invest More in Nudging?’, *Psychological Science*, 5 June 2017.

251. Jan Tinbergen, *On the Theory of Economic Policy*, (Amsterdam: North-Holland Publishing Company; 1952).

252. Benartzi et al., ‘Should Governments Invest More in Nudging?’

253. Brian W. Head, ‘Policy Analysis: Evidence Based Policy-Making’, in *International Encyclopedia of the Social & Behavioral Sciences* (Second Edition), ed. James D. Wright (Oxford: Elsevier, 2015), 281–87.

254. Andrew Leigh, “10 Evidence-based policy: summon the randomistas?” In *Roundtable Proceedings*. 2010.

255. Fletcher, ‘Role of Demand-Side Remedies’, 9. Citing Competition and Markets Authority, “Energy market investigation: Final report”, (2016), Para 20.24.

256. *Ibid.*

In August 2017, Ofgem put out an open letter seeking new ideas from energy retailers about how to engage consumers, recognising that about 65 percent of British residential energy consumers were disengaged from the market.²⁵⁷ The UK regulator encouraged energy retailers trialling these new ideas to adopt the Randomised Controlled Trial methodology, offering guidance papers on how businesses could design these interventions. To facilitate trials where businesses might otherwise be hampered by existing legislation, Ofgem indicated a willingness to grant derogations from certain rules.

Naturally, the extent of research undertaken prior to an intervention being developed needs to be proportionate to its potential impact on the community – while best practice often dictates that lengthy and extensive groundwork is undertaken to run a Randomised Controlled Trial, there will also be many instances where simple A/B testing or market research may provide enough guidance to warrant implementation.

B. Transparent measurement of outcomes

Measuring the impact and outcomes of interventions over time is particularly important to improving consumer wellbeing and the functioning of markets.

In their meta-analysis of behaviour change trials, behavioural academics Shlomo Benartzi *et al.* argue that 'tracking failures is as important for knowledge creation as tracking success'.²⁵⁸ Developing longitudinal datasets to identify trends and key outcomes is essential to enhance the knowledge base for businesses, policymakers and regulators. Wherever possible, published results of interventions can improve transparency, trust and build shared understanding across the business, government and regulatory sectors.

Examples of regulators taking this approach include the Financial Conduct Authority (FCA) in the UK, which has trialled a range of interventions to inform regulatory practice since 2013. Notably, the FCA publishes the results of experimental research, including non-statistically significant and negative results, in 'the spirit of good research, combating publication bias, and making [their] research transparent'.²⁵⁹

CPRC strongly commends this approach, both to trialling interventions before their adoption and to publishing all results, regardless of the result, to inform others and build a stronger evidence base for policymakers.

257. Ofgem, *Finding ways to unlock consumer engagement through supplier trials*, 14 August 2017

258. Benartzi et al., 'Should Governments Invest More in Nudging?', 1041.

259. Financial Conduct Authority, "Full disclosure: a round-up of FCA experimental research into giving information", *Occasional Paper 23*, November 2016

Summary and Recommendations

Trialling and implementing interventions

Randomised Controlled Trials (RCTs) are often considered the gold standard in the hierarchy of evidence to identify what intervention is most effective in changing behaviour. However, alternate experimental methodologies may be required where double-blind or lengthy studies are excessively expensive or logistically difficult to conduct.

Greater sharing of the results of behavioural trials and policy interventions will ultimately build the knowledge base for all sectors, providing greater transparency around the effectiveness of various intervention strategies.

Recommendation 13: Policymakers and regulators should trial interventions and reforms with consumers wherever possible, while being cognisant of the materiality of impact, the swiftness of intervention required, and the capacity to measure impact pre- and post-regulatory change.

Recommendation 14: Trials and testing should be co-designed and facilitated by a range of organisations, including businesses and community organisations.

Recommendation 15: Outcomes of consumer trials and regulatory intervention – positive, negative, or even statistically insignificant – should be published by policymakers, regulators and industry to develop a stronger evidence base that better informs all parties about the effectiveness of various consumer intervention strategies.



Conclusion

This paper sets out CPRC's conceptual framework for effective demand-side participation in markets for consumer products and services.

Where policymakers have determined that markets will deliver the best outcomes for consumers, policymakers – while working closely with regulators, industry and outreach or community organisations – must also ensure these preconditions are met to facilitate effective outcomes from consumer engagement when procuring a product or service. Where consumers, or segments of consumers, cannot easily participate in markets due to a shortfall in any one of these preconditions, markets are unlikely to function effectively or deliver positive consumer outcomes.

The examples of interventions presented, as they relate to the five preconditions, are not exhaustive and have been included to provide illustrative examples of how different aspects of the preconditions can be implemented. We encourage policymakers and regulators across different industries to consider and draw on learnings from other industries, as well as trialling similar interventions wherever possible. In the interest of learning from what works, we strongly encourage policymakers and regulators to publish and share the findings of trials and processes, to enable others to learn from and build on these findings. CPRC intends to use this framework as the basis for our future work program, delivering collaborative projects and policy interventions aimed at meeting these preconditions across a range of markets.

CPRC has an ongoing research priority of *Making consumer decisions easier & fairer* throughout 2018 and will be using this conceptual framework as the foundation for further work. Other projects underway which build on the conceptual framework include:

Barriers to access for vulnerable consumers are removed

Lifting the standards and protections for vulnerable consumers across a range of markets is a central focus for CPRC. In early 2018 we established a Vulnerability Forum which will bring together almost thirty experts across a range of fields of vulnerability twice annually to discuss universal access. We are also a founding partner of the Thriving Communities Partnership, a cross-sectoral collaboration ensuring that everybody has fair access to modern essential services they need to thrive in Australia.

Key product information is relevant, clear & comprehensible

In recognition of the value of service and quality information in supporting effective consumer choice, CPRC is currently investigating opportunities for the more accessible display of service and quality information for consumers. A research report on this topic is forthcoming.

Comparison tools are simple and effective

CPRC is working collaboratively with energy comparators, policymakers, energy retailer and consumer groups to deliver an Energy Comparator Code of Conduct. Acknowledging the importance of reform across the government and commercial comparator sectors to improve outcomes for consumers, the Code's objective is to improve transparency, accuracy, comprehensibility and accessibility of product information disclosed on commercial comparator websites. A cross-sectoral Working Group is currently working on an appropriate governance and monitoring framework and about to undertake a review of the Code to ensure it meets intended objectives.

Comparison tools are simple and effective and Switching costs are low

CPRC recognises the important role of data portability in enabling accurate and easier comparison and switching of products and services. CPRC currently has a work-stream dedicated to consumer data, exploring the benefits and protections required in a new environment of open data. A report on consumer data as part of CPRC's *Living Online* research priority will be available for stakeholders later this year.

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