Commercial determinants of human rights: for-profit health care and housing

What do the commercial determinants of health look like for goods and services that are human rights?

Follow the money. This is the premise driving commercial determinants of health (CDoH) research. Why do children see gambling advertisements when they watch professional sports? Why do vapes have cartoon logos and candy flavours? Why don't we have better implementation of the Framework Convention on Tobacco Control? Why has progress stagnated on the Paris Climate deal? Money, profits and power cut through all these issues.

The CDoH refer to "the systems, practices, and pathways through which commercial actors drive health and equity".[1] Public health research, advocacy and policies seeking to understand the CDoH have focused primarily on a narrow segment of commercial actors selling harmful products such as tobacco, alcohol and ultra-processed foods. The attention given to these sectors is understandable, given the significant burden of morbidity and mortality associated with their production and consumption. Over time, the CDoH field has turned its attention to the role of other sectors of the economy, including gambling,[2] firearms,[3] incarceration,[4] social media,[5] automobiles[6] and more. The field has also evolved to recognise other pathways through which commercial actors influence health beyond the products in their portfolios, including tax avoidance[7] or the "extractive injustice" of land acquisitions by powerful multinationals in low income countries.[8] Attention has also turned to the underlying systems and structural drivers that enable harmful commercial practices, such as neoliberalism, capitalism and privatisation.[1,9]

One area that has seen little attention within CDoH scholarship, thus far, is analysis of industry sectors that provide goods and services linked to human rights, such as housing, education, and health care. Unlike tobacco or other discretionary products, access to these goods and services improves quality of life and are essential for good health and wellbeing in our society. Article 25 of the Universal Declaration on Human Rights states that "Everyone has the right to a standard of living adequate for the health and well-being of himself [sic] and of his [sic] family, including food, clothing, housing and medical care and necessary social services".[10] Australia is party to several human rights treaties, including those addressing the right to health.[11] Important for our argument here, the United Nations' elaboration on Article 25 stipulates that governments have an obligation to ensure that private sector activities do not undermine access to these goods and services (eg, to food or water).[12] We argue that this should be scrutinised for compatibility with the privatisation and commercialisation of sectors that provide essential goods and services.

In this perspective article, we consider how a CDoH lens extends to healthy goods and services, and what our so-called best buy interventions could look like. We focus on two sectors as examples: health care and housing. These sectors illustrate some of the harmful practices that companies engage in, as well as the structural forces that enable and reinforce those practices.

Commercial determinants of health care

Health care is a multitrillion-dollar global industry. Ostensibly, for-profit health care does not undermine patient wellbeing. However, evidence suggests that commercial profits often come at the expense of patients.

Runner up in the 2022 annual Shkreli Awards (for the most egregious examples of profiteering and dysfunction in US health care) was a private equity acquisition of two rural hospitals (https://lownstitute.org/projects/2022-shkreli-awards). The firm halted employee health insurance (despite deducting premiums from their salaries) and failed to ensure the hospital had sufficient supplies and drugs, while taking $20 million in federal funds. They then closed both hospitals.

Examples like this are common. Perhaps the most prominent historic example of commercial determinants within health care has come from the pharmaceutical industry — an industry that has brought incredible innovation to the sector and benefit to society, but one that is also mired in commercially driven behaviours and practices that risk patient and clinician wellbeing and compromise health equity (Box 1).

Structural influences, such as privatisation and commercialisation, have driven perverse incentives. In many countries, private health insurance, for instance, is defended as a way to save taxpayer money. Yet the flow of government subsidies into private insurers raises questions about whether this is the best or fairest use of public funds. In Australia, researchers have criticised the private health insurance rebate (approaching $7 billion annually) that might be otherwise invested in a universally accessible system.[15]

Market consolidation and integration has been increasing across the health care sector internationally. Even though this has the potential to bring efficiencies and other benefits, it also risks anticompetitive behaviour. Extensive research suggests that providers in more concentrated markets charge higher prices, and this burden falls on patients, not insurers, and

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1 Harms arising from commercial determinants of health care

In the United States, pharmaceutical companies have been criticised for relying on, and profiteering from, taxpayer-funded institutions for basic research, conducting clinical trials to make products look better than they are, flooding the market with "me too" or copycat drugs rather than delivering genuine innovations, engaging in governmental lobbying and legal tactics to stretch out government-granted exclusive marketing rights for years.[13]

In Australia, the entry of "buy now, pay later" companies as an option to pay for health services raises concerns about predatory lending practices exposing financially vulnerable patients to high out-of-pocket costs.[14]

it is often without accompanying gains in efficiency or quality.[16] A 2018 review of US data concluded that hospital and physician consolidation threatened health service affordability and warranted urgent attention from antitrust authorities.[17]

Considerable academic attention has been devoted to the impact that Australia's mixed public–private health care system has on equity of access, including cost barriers.[18,19] However, the influence of other system-augmenting commercial determinants, such as privatisation, horizontal and vertical integration, and private equity, have received sparse academic or policy attention despite the threats they pose. We know privatisation, consolidation and integration have been increasing across primary care and specialties within Australia, but the scale and extent are unknown, as are system impacts and risks thereof.[20]

Commercial determinants of housing

Housing is a human right and a key social determinant of health. Everyone's health is shaped by where they live, and housing-focused interventions have long been effective in protecting and improving population health and reducing health inequalities.[21]

Australia faces a housing affordability crisis. Relative to other countries, the cost of housing (either renting or owning) is high in Australia, resulting in classification of our housing as severely unaffordable (the worst category) on international rankings by Demographia.[22] Young people, in particular, face housing affordability stress, generating intergenerational inequities within the housing market.[23] The financial and social consequence of this is compounded by inadequate safety nets. Australia has a small social housing sector (about 4% of our housing stock) and long waiting lists for public housing.[24] Not only is housing unaffordable in many of our urban centres but it can also often be in poor condition and energy inefficient (especially rental housing) (Box 2).[25]

What has been less well researched is how the scale of investment and wealth generation tied to housing in Australia positions it as a critical CDoH. The Australian housing market is a multitrillion-dollar asset. It generates profits to the private sector (including developers) and taxes for state governments (via stamp duty), and has made millionaires of many

2 Two examples of harms arising from commercial determinants of housing

In Australia, exposure to cold housing (< 18°C in living areas in winter for prolonged period) alone contributes around 89 600 lifetime health-adjusted life years to our population health burden, $0.87 billion in health care costs and $4.35 billion in losses to household income (a productivity loss).[25] Most of this health burden (~60%) is generated by the impact of cold housing on mental health and wellbeing. Minimum standards in rental housing to improve thermal comfort and policies to reduce the cost of housing (and thereby reduce exposure to housing affordability stress and energy poverty) could address this problem.

The Sirius building redevelopment in Sydney is a high profile case of government-owned assets being sold to developers — potentially at the expense of the wellbeing of long term tenants.[26] In this case, the New South Wales government sold a public housing site in a prime position in The Rocks in Sydney to a developer for $150 million to build 89 apartments, retail and commercial spaces in 2019. The justification for this sale was that it would generate more funding for social housing, with funds anticipated to house 630 people. However, relocation of tenants who had lived in the public housing estate for decades drew attention to the consequences of relocation of long term tenants on their mental health and wellbeing, raising the issue of how we value the role of social housing and the people who live in this tenure.

Australian homeowners. Most of this housing wealth is tied to residential real estate ($9.6 trillion) and superannuation and the stock market ($6 trillion combined).[27]

The tension between housing for social good and wealth creation pervades attempts to make changes in this sector. Strong lobbying by well resourced organisations (eg, the Property Council of Australia, which is an advocacy group for the property industry and comprises 2300 member organisations) against removing negative gearing (which would shift our framing of housing as investment) and introducing minimum apartment standards (which would reduce the incidence of problems such as mould and structural deficiencies in apartments) is a case in point.[28,29] The residential real estate sector has powerful allies in Australia's economy, including the banking sector, which is involved in superannuation and wealth management.

A CDoH lens forces us to be clear about our vision for housing: should it be as a wealth creation tool or a social benefit, in which case housing cooperatives, social housing, and minimum standards in the rental sector should be the focus of discussion and part of a prevention strategy in public health. This requires a substantial change in our policy approach and a more explicit discussion of the commercial pressures to generate wealth through housing.

Pan-industry interventions for tackling commercial determinants

As the CDoH field expands from a focus on harmful products to necessary goods and services that are deemed human rights, we must reflect on our current policy responses in public health, and whether and

how we might repurpose them to fit new and different challenges. While we could put warning labels on unsafe houses, the reality is that many people lack the resources to move somewhere better. Education and counselling initiatives to inform people about the importance of good quality housing or health care are useless without secure and affordable access to these essential services irrespective of the social and economic circumstances of users. This requires system level change.[30]

In Box 3, we propose a set of pan-industry interventions that could address CDoH, whether the product is harmful or the service is considered a human right. The examples come from other sectors that have received more attention to date. Where possible, we have indicated the relevance for health care and housing.

Thinking about CDoH in terms of essential services, such as health care and housing, highlights opportunities and challenges for advancing an agenda to address CDoH. First, it is important to look beyond specific products to their producers, manufacturers, retailers and investors; that is, identify the organisations who profit. Moving upstream in this way, from product or service to commercial actor, reveals similarities in the strategies and practices of commercial actors irrespective of the sector (for a more detailed analysis, see the 2023 *Lancet* series[1]). Second, we must understand and harness the diversity within industry sectors.[32] The commercial world comprises for-profit and not-for-profit organisations, quasi-commercial statutory organisations, foundations and more; depending on their legal form, portfolios and resources, these organisations will have different incentives, accountability mechanisms, and impacts

3 Pan-industry interventions for tackling commercial determinants

Intervention	Examples from other sectors	Relevance for health care and/or housing
Conflict of interest policies to manage commercial engagement in research and policy making	The Pan American Health Organisation (PAHO) has developed a tool to assess conflicts of interest in nutrition policy making. This could be expanded to other sectors. This can help to protect government decision making from vested interests and reduce the risk that policies favour commercial interests over the public.	This could help address potential conflicts arising when policy makers have financial ties to pharmaceutical companies or other health care organisations that they are responsible for regulating.
Strict regulations around commercial engagement in politics (eg, campaign contributions, lobbying)	Canada has a mandatory five-year cooling-off period for public servants before they can work as lobbyists. This can reduce the risk of public servants selling their connections and insider information to companies once they leave politics.	Stronger lobbying regulations could prevent some of the tactics used by short term rental companies to influence city planning regulations.
Establish a global minimum tax for multinational enterprises	The Organisation for Economic Co-operation and Development (OECD) developed a tax reform proposal, and governments are developing implementation plans.	This can help ensure that the public sector is adequately resourced to fund social services, including public housing and health care.
Antitrust action to decrease market concentration	Expand privileges and resources for agencies such as the Department of Justice, the Federal Trade Commission and the Australian Competition and Consumer Commission to enforce anticompetitive actions against a wider range of entities, for example, private equity acquisitions in health care, and sector consolidation.	This could help to manage the expansion of private equity into health care and aged care, which has been linked to health harms.
Make data about commercial determinants of health transparent and easily accessible	Open Data and Open Government initiatives can make it easier to monitor commercial practices (such as lobbying or the flow of government funds to private companies) so that we have a better understanding of how actors are trying to influence government policy or shape public knowledge about an issue.	Public information about government contracts and tenders, such as the sale of public hospitals or contracting out government services, is important to ensure accountability.
Restrict marketing to children	In Norway and Sweden, it is illegal to market any product during, and immediately before and after a children's program.	na (To our knowledge, neither health care nor housing are regularly marketed to children)
Mandate greater human rights accountability on transnational corporations	The United Nations is currently negotiating a legally binding treaty on business and human rights.	A binding treaty could include a greater focus on mandating access to essential goods and services (eg, health care, housing)
Municipalise public goods and services (eg, water, electricity, the postal system)	The Transnational Institute has documented more than 1400 examples of governments taking ownership back from privately owned services[31]	This could be used to redress some of the documented failings in privately run aged care facilities.
Support governments to engage more with communities and civil society to rebalance participation in democracy	The Open Government Partnership works with governments around the world to facilitate greater citizen and community participation.	This could help the voices of the communities most affected by poor quality housing and health care have more influence in politics.

na = not applicable. ◆

on health.[32] Organisations that promote health should be identified, supported and scaled-up. Finally, we need better data. It is challenging (and often expensive) to access information about corporate political activity, company structures, revenue and market share, and other data that help to map out and understand the attributes and practices of commercial actors. For instance, in the health care sector, Australia's performance against other countries in the relative value of our pharmaceutical expenditure is visible. Other commercial health care activity — corporatisation of primary care, public–private partnerships, private equity and/or foreign investment — has far less visibility. Better data are vital to understand the impacts of privatisation on health care, housing, and CDoH more generally, and whether the pursuit of profits is compromising the human right to health.

Commercial determinants often undermine health and health equity.[1] It is possible to redesign our systems so that health is prioritised over profiteering. We identify nine types of interventions that act at the systems level, moving the focus from people to structures and organisations. This shift in focus (and the way we think about commercial determinants) is essential, we argue, if we want to address their effect on people's access to essential goods and services — here illustrated through the lens of health care and housing.

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