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Submission to the Productivity Commission
Issues Paper
RIGHT TO REPAIR

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ABOUT US

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most.

To find out more about CHOICE's campaign work visit www.choice.com.au/campaigns

INTRODUCTION

There is not one definitive solution that makes a “right to repair” possible in Australia.

This inquiry covers a complex series of problems: from data access to intellectual property restrictions to the effectiveness of consumer guarantee rights.

CHOICE wants to see a right to repair that encompasses improvements to the consumer experience of the repair market, for product design to be improved and for consumers and businesses to have clarity that they can refurbish single-use items.

There is one recommendation which stands out in meeting an immediate consumer need: **clear labelling about product durability and repairability.**

When CHOICE asked consumers what matters most when making purchasing decisions, the answer was clear - people want more information about how long a product will last and whether it can be repaired.

Our survey results found:

- 85% of Australians say that buying products that will last a long time is very or quite important to them.
- 73% said repairability was important.¹
- Despite a strong interest in product durability, only 39% of people said they regularly choose products that will last longer.
- 46% of people say they choose products that can easily be repaired all or most of the time.

In summary, people do not have the information they need and want when making decisions.

There is currently no simple way to find out how long a product should last or how easy it will be to repair if something goes wrong. We already have a star rating system that tells us how much energy a fridge uses and a water rating system that lets us know how much water our washing machine uses each cycle. These labelling schemes work because they are consistent, mandatory and incredibly clear. You can walk through a retail store and see which products use more energy and water. Australians need the same clarity about product durability and repairability.

¹ For full survey results see Appendix Two.

AN AUSTRALIAN “RIGHT TO REPAIR”

Information request one:

- *What would a ‘right to repair’ entail in an Australian context? How should it be defined?*

Information request eight

- *What policy reforms or suite of policies (if any) are necessary to facilitate a right to repair in Australia?*

CHOICE recommends that rather than starting with a definition of a “right to repair”, that the Productivity Commission instead define the problems that most urgently need addressing and then look at best fit solutions, which may go beyond a “right to repair” in other countries.

These are the issues as CHOICE understands them, combined with solutions we hope the Commission will explore in this inquiry:

Theme	Problem	Possible solutions
Product quality	Lack of information about durability of products restricts the ability of consumers to make fully informed decisions at time of purchase.	Prominent disclosure of information at point of sale about expected durability and/or repair availability for a product
	Planned obsolescence: How can we prevent or manage poor product design that means products fail quickly?	Ban on product obsolescence (French model). Enforceable product design standards. Clarification or expansion of consumer guarantees to stop the sale of known faulty goods.
Repair market	Competition: Are third-party companies able to offer repairs in a way that benefits customers?	Access to data rights for customers and third parties. Consider if intellectual property laws are being used in ways that restrict reasonable access to repairs and the sale of refurbished products.
	Service and repair quality: Do consumer guarantees under the ACL provide adequate remedies? Have some companies failed to offer fair repairs or ongoing service (like	Stronger ACL enforcement options including release of complaints data and action on extended warranties. Require manufacturers to produce spare

	software updates) to customers in a reasonable period?	parts for a certain period of time.
	Individual decisions to repair: Can people who wish to repair products they have purchased do so safely and without losing or limiting consumer rights?	Introduce penalties for unfair contract terms frequently used to limit repair rights. Explore the right to repair manuals for appropriate product categories.
Environment	Product stewardship: How do we encourage companies to take responsibility for product waste?	Consider requirements for company responsibility for faulty products (regardless of whether they are repaired, replaced or refunded)

CHOICE is particularly supportive of policy solutions to introduce labelling about reparability and product durability. Our data shows that consumers want to make decisions that factor in product durability but are not currently able to.

All of the international approaches to a 'right to repair' outlined in the discussion paper have value, and are worth considering for implementation within an Australian context. However, it must be noted that all of the examples listed are in the initial stages, are largely untested and are approaches, rather than a comprehensive response. While they are beneficial in considering how to address a potential right to repair in Australia, they should form part of a wider approach, which also considers how the ACL is not sufficiently serving Australian consumers.

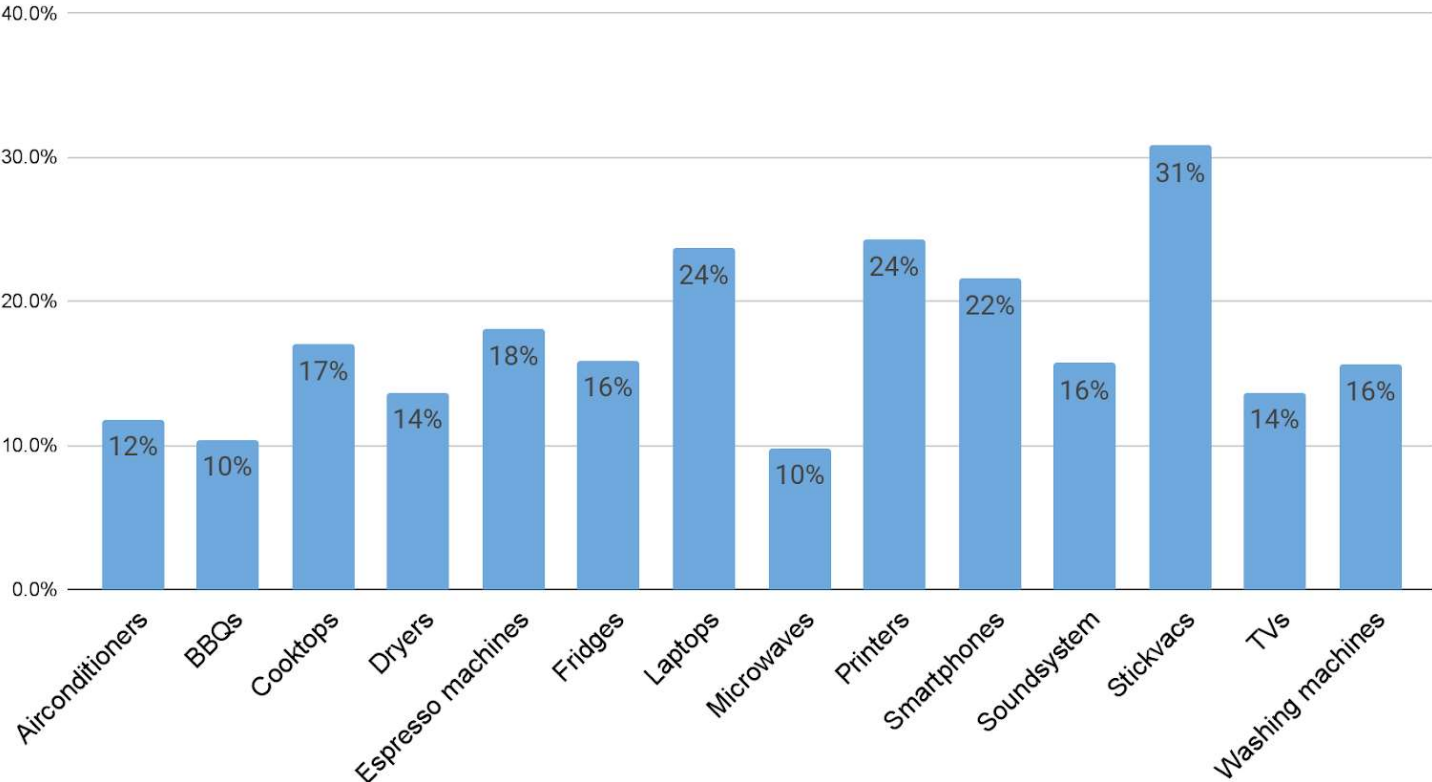
PRODUCT AND REPAIR MARKET ISSUES THAT CONSUMERS FACE

Information request two:

- ***What types of products and repair markets should the Commission focus on?***
- ***Are there common characteristics that these products share (such as embedded technology and software or a high/low degree of product durability) and which of these characteristics would allow policy issues to be considered more broadly?***
- ***If there are particular products that the Commission should focus on, what are the unique issues in those product repair markets that support such a focus?***

The Productivity Commission should focus on product categories where consumers are more likely to experience performance or reliability issues.

Consumers reports of performance or reliability problems in the last 12 months



CHOICE's product reliability survey (**Appendix 1**), shows that people are most likely to have problems with stick vacuums, laptops, printers and smartphones.²

The printer market is a useful case study because brands are deliberately selling low-cost units with high-cost upkeep. They accept a high rate of product failure and, based on the feedback from CHOICE members, are encouraging people to purchase cheaper new models rather than replace units.

Laptops and smartphones help demonstrate the complexity of repairs when hardware, software and security issues intersect. Recent feedback from CHOICE members indicates that independent repairers for smartphones are offering cheaper and quicker repairs for some issues. This case can help the Commission explore the benefits of independent or third-party repair markets.

Finally, stick vacuums offer a positive case for the Commission as some brands have proactively invested in repairability and a high level of customer service. Despite stick vacuums having the most reported problems, the feedback from consumers is very positive about the repair experience, especially with Dyson. This can provide a model for other markets where the Commission wants to encourage repairability.

² Graph shows number of people who responded yes to "In the past 12 months, have you had any problems with the performance or reliability of [your product]?" Note: please think about issues with the product not operating as it should. Do not include issues with the design or not having features you wanted." Data sourced from responses to CHOICE's 2020 and 2019 product reliability survey.

Laptops

Consumers report a wide variety of different and complex problems with laptops. The most common problems reported in our 2020 product reliability survey were:

- Battery life (8.2%)
- Laptop running slowly (6.3%)
- Screen freezing (4.6%)
- Laptop unexpectedly shutting down (4.5%)

These problems could be caused by a range of underlying causes that are difficult for most consumers to detect and address themselves. The intersection between hardware, software (provided by the brand and by third-parties) and security problems makes laptop repair particularly difficult.

Apple owners were the least likely to complain about their laptop continually running slowly. Apple owners also said that the repair service they received was very good. People who own other brands have found the service to be poorer, and some also reported that it took a long time for repair/replacement.³

In our last CHOICE product reliability survey, we received a lot of open ended comments about the quality of repairs and the repair experience. Repairs went well when they were proactively offered by the company, completed quickly and removed friction points like cost of postage for people not close to a repair centre. People were very frustrated when repairs took weeks or months, especially when this meant they did not have access to their laptop in that period (an essential product with many people working from home). High costs also put people off seeking a repair - either the cost of the repair itself or inconvenience, including arranging postage or the time needed for the repair.

Consumers speak: negative laptop repair experiences⁴

Bought the laptop from JBhifi. Had issue with screen which had slight crack. Took back to JB Hi-Fi who sent off to authorised Lenovo repairer for a quote. Took just over 3 weeks to get quote. Quote to repair screen was over \$1000 (more than it cost for laptop). Decided to not to bother with repairs in a day and still took 3 weeks to get laptop back.

Apple did a recall and I had to drop into repair place and they could not order the parts until they had my Mac so they kept it for nearly two weeks. They loaned me a Mac once I'd complained. Also with minor issues, such as the LH side Shift key not working, they didn't fix it and I just put

³ For further background see <https://www.choice.com.au/electronics-and-technology/computers/desktop-and-laptop-computers/articles/laptop-reliability>

⁴ All quotes used in this chapter were provided by CHOICE members in the CHOICE 2020 product reliability survey.

up with this as it's a 30 minute drive for me to get to the repairer and I can't afford to leave my Mac with them for days or weeks.

I had purchased an extended warranty from JB HiFi. This turned out to be a repair warranty and I had to be without the laptop for almost a month. In the end they replaced my laptop with a refurbished unit which after a week exhibited a small defect in the screen. Not enough to stop me using it but annoying as it is a line across the screen. But the hassle of returning it makes me just suck it up.

ASUS said the warranty was 1 year and this laptop outside the by 5 months. To repair it I would have to mail it to Sydney (I live in Canberra) and pay postage both ways.

Bought new computer. Was faulty. Took it back 31 days later . It took over 6 weeks to get back repaired. No new computer, no compensation

Consumers speak: positive laptop repair experiences

I dropped the laptop on a tile floor and the computer stopped working, I called the service team and they sent me a postage paid box then they repaired it for me under warranty.

When extended warranty was used to repair a fault, laptop was sent all expenses paid by Lenovo from country Victoria to Sydney and return. Laptop was back in app 4 days repaired. Really impressed.

Took it to the Genius Bar. Device inspected and a quote of \$zero to fix and estimate of days to repair even though out of warranty. Was contacted by Apple with progress reports, and called to pick it up when ready. All fixed and like new. Same experience with a different problem a year later. Very satisfied with Apple repair process.

A little over 3 years after purchasing the laptop there was a major hardware failure, with the screen no longer functioning. Apple happily agreed to repair the laptop completely under ACL, despite being beyond their stated support period. The repair was quick, and well performed.

Printers

Printer problems involve hardware and software driven problems, including issues caused by updates made to connected tech. In 2020, consumers told us the main problems they experienced with their printer were:

- Connection issues (either with USB, ethernet or wifi connections) (13.7%)
- Poor print quality (10.5%)
- Issues with the paper feed (8.6%)
- Issues with the ink cartridge (6.2%)
- Printer stopped working after a computer operating system update (3.1%)

Despite the high rate of problems with printers, only 11% of people who purchased a printer in the last five years have contacted the brand for assistance. This could be for a range of reasons but we suspect product cost and access to support are contributing factors.

CHOICE members tell us that they struggle to get printers repaired. Some choose not to repair because of the low cost of the product - the time and cost of a repair is not worth it. Printer companies also seem to be taking this approach. People who have a preference for repair over replacement or upgrade tell us they are instructed by the company to buy a new model.

Consumers speak - printer repairs

Previous Brother Ink Jet MFC failed once in warranty and repaired. Failed outside warranty and agent said chuck it and buy a new one.

They are cheap. I would buy a new one rather than try to repair.

Printer was not long out of warranty when issues started - Brother advised out of warranty and recommend I purchase a new machine as not worth repairing. Unit cost @ \$600 and had barely been used @ 2x sets of cartridges.

I had trouble with the paper feed and the reply from Epson was basically it would cost more to repair than a new one.

All print heads simultaneously failed. Cheaper to buy a new one than to repair/service.

The cost of a small repair far exceeded the cost of a new printer. Epson refused to accept that Aus Consumer Law cannot be avoided by appeal to the limited warranty. A printer should definitely last more than 2 years.

Smartphones

Similar to laptops, smartphones have a complex range of problems. The most common issues reported to CHOICE are:

- Battery life (15.7%)
- Phone freezing (7.5%)
- Cracked or broken screen (6.5%)
- Poor or faulty reception (6%)
- Won't charge (4.4%)
- Touchscreen or button stops responding (3.6%)

Consumers are very frustrated with repair processes that take weeks or months, especially when they are not provided with a replacement in the interim. We received positive feedback about both independent and brand-offered repair options. This indicates that competition in the repair market for phones may be leading to a more positive experience across the board.

Issues with repair timing

One phone needed a new battery which should have been done in store (normally is) but had to be sent in to a remote repair centre and I was out of a phone for 2 weeks

Phone went in for repairs through a shop, took months to get it back

Praise for independent repair options

Apple were useless when battery started draining quickly so I just had a new battery installed by a phone repair shop, cost \$90.

Because my Samsung 6 edge was losing charge so quickly I asked Samsung about replacing the battery. It would have cost \$250.00 and they needed the phone for 5 days. I used my local phone repairer - for a genuine Samsung 6 edge battery replacement he charged \$70.00. He had it for repair overnight.

Speaker sound failed but I took it to a repair shop and a new speaker and battery were fitted at very cheap cost. Very happy with repairs and performance.

Praise for brand repair options

Motherboard failed while charging. Although out of warranty a Samsung repaired within 2 days at no cost and supplied loan phone.

Design and software issues

It seems they're designed to outdate quickly. Mine simply stopped connecting to the network and Apple said I must have dropped it in the water. I didn't. They said it was not repairable

Stick vacuums

Problems with stick vacuums are more mechanical than the other products highlighted. Some of the problems reported to CHOICE are more linked to design than after purchase failure, for example, small dirt containers. The major problems consumers report are:

- Short battery life (25.4%)
- Poor suction or vacuum not picking up dirt (10.8%)
- Small dirt container (8.3%)
- Blocked filters (8.1%)
- Brush not spinning or working (6.8%)
- Cracked or broken casing (3.3%)
- Stopped working altogether (3.1%)

Despite the high rate of problems reported, feedback about the repair process is glowing. It appears that stick vacuum brands - especially Dyson - have invested in customer care to make the repair process as smooth as possible. Feedback may also be more positive because a vacuum is less of an essential everyday item for most households. Unlike laptops or smartphones, most people are not inconvenienced if they can't use their stick vacuums for a short period of time.

Consumer comments about vacuum repair

Prompt sending of parts. Excellent instructions to fix. While no one likes when a new appliance stops working, Dyson offered excellent service and I was able to repair it with promptly mailed parts.

The Dyson Service Centre was excellent in providing extensive information and advice. Their repair/replacement fee was good value given I had motor and brush units replaced (out of warranty). I had also used the call centre a few times and found them very helpful but from now on I will just go straight to service centre as they are more knowledgeable and hands on.

I own three Dyson Stick Vacuum cleaners and all three have had a loss of charge within two years of purchase. Tired of getting them repaired.

something was caught in filter. contacted customer service and was talked through the repair over the phone -- excellent service.

Dyson support are very helpful. Really happy how repairable it is. I ordered a new battery, simple to replace and they recycle.

CONSUMER GUARANTEES AND A RIGHT TO REPAIR

Information request three:

- ***Do the consumer guarantees under the ACL provide adequate access to repair remedies for defective goods? If not, what changes could be made to improve access to repair remedies?***
- ***Is the guarantee of available repair facilities and spare parts effective in providing access to repair services and parts?***
- ***Should consumer guarantees seek to balance the broader societal costs of remedy choices (such as the environmental impacts of replacements) with consumer rights and if so how? For example, should repairs be favoured as a remedy?***
- ***Are consumers sufficiently aware of the remedies that are available to them, including the option to repair faulty products under the ACL? Would more information and education be a cost-effective measure to assist consumers to understand and enforce guarantees?***

The Australian Consumer Law (ACL) generally provides strong protections for repair and other fair remedies for defective goods. The options that are available to consumers under the ACL, including the ability to choose a repair, refund or replacement for a reasonable period of time after the manufacturer's warranty has expired are stronger in comparison to some other jurisdictions. For example, consumer guarantees in Europe last for a maximum of two years, and are only binding on the trader, not the manufacturer.⁵

While the law is strong, consumers report regular non-compliance with basic consumer guarantee rights. At CHOICE, our members and the public regularly tell us of businesses refusing a repair, charging unfair fees or denying a remedy if the warranty is expired but the ACL can be reasonably assumed to apply.

Repair should not be favoured as a remedy under the ACL

When a purchased item fails to meet a consumer guarantee, a repair will not always be the most appropriate remedy. In many cases, a replacement or refund may be the preferable remedy, especially in the case of major failure. We strongly caution against unconsciously reducing consumers' current legislative rights when seeking to promote a right to repair.

⁵ https://europa.eu/youreurope/citizens/consumers/shopping/guarantees-returns/index_en.htm

We have seen many people struggle to get a fair outcome when a product fails because a business pushes them into having a product repaired multiple times rather than a replacement or a refund. This is especially common with high value purchases where a business has less incentive to offer a refund or replacement.

For example, in 2016, CHOICE conducted a survey of 1505 Australians about their experience purchasing a new car.⁶ Two thirds of all new car buyers surveyed (66%) reported that they had experienced problems with their cars in the first five years. On average, Australian car owners spent \$858 and 31 hours trying to resolve their problems.⁷ Many people with significant problems (lemon cars) were pushed into cycles of multiple repairs rather than a simple and fairer replacement or refund.

Rather than pushing for repair over more appropriate options for consumers under the consumer guarantees, the Commission should instead consider how to incentivise businesses to take responsibility for faulty products regardless of whether they are repaired, replaced or if the customer is provided a refund. This may require incentives or requirements for manufacturers or importers to take responsibility for products that need to be repaired or replaced. This solution will allow larger industry groups to get environmental benefits at scale (e.g. use spare parts across a range of returned products) and removes the obligation for individual consumers to act.

Quality of service essential to improving consumer uptake of repairs

As can be seen in the section above, there can be a significant difference between the quality of repair experiences.

Initiating a repair can involve significant time and inconvenience. Even if a consumer should be eligible for a free repair under the ACL, they may be encouraged to pay for the repair or asked to pay fees. They also may be without an essential item for weeks and months. This inconvenience and poor experience means that some people chose to replace products rather than seek a repair.

Some companies do not invest in the quality of the repair experience. The Commission should consider measures to improve company investment in repair offerings. This can be done in two ways. First, by encouraging competition in the repair market. As we see from comments about smartphone repairs, access to independent repairers has introduced improved timing and cost of repairs for some Australians. Second, the Commission should consider how enforcement action or additional legal obligations can be used to ensure a minimum standard of quality for repair experiences.

⁶ See <https://www.choice.com.au/-/media/93fca6f74556402390197f4f1ed57955.ashx>

⁷ <https://www.choice.com.au/transport/cars/general/articles/lemon-cars-and-consumer-law>

Stronger enforcement of the ACL needed to encourage repairs

Educating consumers, while welcome, will not solve issues with businesses failing to understand or ignoring their obligations under the ACL. We ask the Commission to consider the value of business level education combined with additional enforcement activity.

Effective enforcement can include penalties and direct regulatory action against businesses, as we've seen from the Australian Competition and Consumer Commission (ACCC) and state regulators regularly over the last ten years. However, there are also options to better highlight business non-compliance. NSW Fair Trading's complaint register is a valuable source of data about consumer issues and also acts as a "name and shame" enforcement tool.⁸ A similar register should be created for each State and Territory and at a federal level for the ACCC using data from reports by consumers. This would help identify companies that are non-compliant and broadly encourage improvements in business practices.

Extended warranty market shows gaps in consumer law education

In CHOICE's experience, most extended warranties offer little or nothing beyond the existing rights in the ACL.

Last year, a CHOICE survey found nearly one in five (18%) Australians are still buying extended warranties.⁹ While six out of ten said they were aware of their ACL rights, consumers who said they were aware of their rights purchased extended warranties as often as respondents who said they weren't aware of their rights.

Retailers are also providing misleading information to consumers on their rights when it comes to consumer guarantees. We conducted two investigations on the quality of information about the ACL provided by businesses to consumers in 2013 and again in 2015. For our 2013 investigation, we mystery-shopped for a big-screen TV priced around \$2500 at Harvey Norman, The Good Guys and JB Hi-Fi, purchasing goods from a total of 80 different stores across every state and territory in Australia.

We specifically asked salespeople if the store had any responsibility if the TV broke down after the manufacturer's one-year warranty period. Under the ACL, the answer to the question we asked would be yes. But 85% of the salespeople we talked to provided misleading information, stating that any repairs or returns would be out of the store's hands. And every salesperson we spoke with also tried to sell us an extended warranty.

In 2015 we conducted a similar shadow shop of the same three retailers, and their understanding of their ACL obligations seemed to have improved – but not enough. The overall failure rate

⁸ <https://www.fairtrading.nsw.gov.au/help-centre/online-tools/complaints-register>

⁹ A nationally representative sample of 1112 Australians conducted 7-30 September 2020

improved but was still 48%, and nearly all the salespeople still tried to sell us an extended warranty.¹⁰

These mystery shops and consumer engagement with the extended warranty market demonstrate the gaps in consumer knowledge of the ACL. Many people rely on business statements about their rights - they ask for advice on what is possible when a product fails. Consumer education will be most relevant and most useful at a point in time when someone is experiencing a product failure.

Businesses remain an essential part of the education process. We need to ensure that businesses are giving their customers accurate and timely information about the ACL. Currently some businesses are misinforming their customers about their rights. Worse still, some business practices - like the sale of extended warranties - are designed to take advantage of this information gap.

The Commission should consider measures to ban extended warranties that offer no or very limited protections beyond those in the ACL. This will remove a source of confusion and misinformation for consumers. The Commission should also consider measures to improve the quality of information that businesses provide customers about the ACL.

¹⁰ <https://www.choice.com.au/WarrantyRights>

INTELLECTUAL PROPERTY AND A RIGHT TO REPAIR

Information request five: intellectual property

- *Are there any aspects of IP law where consumers' right with respect to repairs are uncertain?*
- *Do current IP protections pose a significant barrier to repair in Australia?*

Access to repair information

Some businesses or whole industries use copyright or confidentiality protections to stop information sharing that would help independent repairers or individual consumers from repairing or refurbishing products.

The most well-known example of this in Australia is the car market. CHOICE has long supported measures that give independent repairers access to data and information to allow greater access to repairs.

We also see businesses restricting access to repair manuals and information. The well-known example is Toshiba. The company forced an Australian man to take down the company's laptop manuals from his website, which he had created to help people repair their laptops. Toshiba claimed he was infringing the company's copyright.

Currently, these access to repair issues are being addressed at a market level or case-by-case. We see benefits in applying a broader principle across markets to allow consumers and businesses to access information to facilitate repairs. This could be done through an expansion of the consumer data right to all markets (allowing third-parties to access consumer information about the use of a product in order to diagnose problems or facilitate a repair). It will also likely require legal reform to guarantee better access to information about how to repair products.

Intellectual property and the right to refurbish

CHOICE believes that intellectual property restrictions should never be used to prevent a business or consumer from refurbishing a product.

In some markets, companies deliberately design products with unique single-use parts to require ongoing payments from customers. Some companies lock consumers into buying additional components or refills, often more expensive than the original product. They can rely on intellectual property protections to implement this strategy.

The classic example of this is printer ink. An \$89 printer from the Epson online store, for example, requires at least \$57 in total to replace all the ink cartridges – 64% of the cost of the printer itself.

¹¹

The recent judgment *Calidad Pty Ltd v. Seiko Epson Corporation* [2020] HCA 41 provides some welcome clarification that once a patented product is sold, the buyer has the right to treat it as their personal property. We hope that as a result of this case that more third-party options will emerge across markets where businesses are able to sell refurbished products. This will create greater competition, lowering prices for consumers, as well as address issues with unnecessary single-use items. Ultimately, we hope to see fewer businesses pursuing strategies with single-use components as a result of this change.

We ask that the Productivity Commission consider this case closely and determine if any further legal reforms are required to allow recycling and refurbishing of products. Some advice provided to CHOICE suggests that the Calidad case still has limitations. Our understanding of the Calidad judgement is that a third-party will need to demonstrate that the refurbished product has been remade, rather than just repaired.¹² We are also seeing advice from law firms on strategies to circumvent the benefits of the Calidad case by, for example, applying for patents on individual components of products (a patent thicket strategy).¹³

Companies using product design to encourage repeat consumption of single-use products from consumers have a strong incentive to use intellectual property and other legal protections to prevent refurbishment. We have seen aggressive legislative action in other jurisdictions against companies selling refurbished or repaired products at scale.

Businesses looking to sell refurbished goods and consumers hoping to buy these products need complete legal certainty that they can do so.

¹¹ Example cited is the [Epson Expression Home XP-3105](#), sourced 8 February 2021.

¹² For a fuller discussion of these issues see:

<https://www.choice.com.au/electronics-and-technology/computers/scanners-and-printers/articles/restored-printer-cartridges-dont-infringe-patents-high-court-rules>

¹³ See

<https://www.ashurst.com/en/news-and-insights/legal-updates/death-of-the-implied-licence-high-court-adopts-the-doctrine-of-exhaustion-in-australia/>

PLANNED OBSOLESCENCE

Information request six: evidence about planned obsolescence

- ***What evidence is there of planned obsolescence in Australian product markets?***
- ***What measures do governments currently use to prevent planned obsolescence or mitigate its effects? How effective are these measures?***
- ***What are the benefits, costs and risks of Australia adopting measures similar to those currently used overseas, such as product design standards and repairability ratings?***
- ***Do consumers have access to good information about durability and repairability when making purchases? If not, how could the information be improved?***

Evidence of planned obsolescence in Australia

CHOICE sees two issues related to planned obsolescence in Australia: poor design and continued sale of a faulty product.

We regularly see products that will inevitably fail in a short period of time or would be difficult to repair. We cannot speak to the motivation of manufacturers in the design stage. It is not clear if problems are intentional design features to encourage regular replacements or simple cost cutting. For example, looking closely at washing machines we see some models that are designed to facilitate repairs. Features that assist with repairability are panels which are removable to give technicians easy access to the internals and components that can be separated and replaced. We see other washing machines that are very difficult to repair - panels cannot be removed for repair access and some parts are glued together or parts cannot be replaced.

Some products cannot be repaired at all and must be replaced. The best example we have seen of this is Apple airpods. Airpods are powered by a rechargeable battery in a sealed unit. The battery can't be replaced once it has reached end of life - removing the battery destroys the headphones. This makes Apple headphones effectively disposable, with a working life as low as 18 months.

This poor design issue likely needs to be dealt with in several ways: product standards to increase repairability, product stewardship to increase company responsibility for faulty goods and better information for consumers at the point of purchase to help them factor in durability into their decisions.

The second category of planned obsolescence issues we see are when a product is for sale even when a company knows about design flaws or imminent failures. This is best illustrated by the Nintendo Switch case. The Commission should consider if the ACL needs to be amended or

clarified to prevent companies from selling products with known issues. Failure to act on this problem will see the Australian market fall further behind international jurisdictions, potentially becoming a dumping ground for known faulty products.

Planned obsolescence case study: Nintendo Switch

The Bureau Européen des Unions de Consommateurs (BEUC), an umbrella group for 44 independent consumer organisations from 32 countries, provided a complaint at the end of January 2021 to the European Commission and national consumer protection authorities against Nintendo for premature obsolescence and misleading omissions of key consumer information (on the basis of the EU's Unfair Commercial Practices Directive).

The complaint is based on nearly 25,000 complaints from across Europe, including France, Belgium, the Netherlands, Portugal, Italy, Norway, Slovakia, Slovenia and Greece. Consumers report recurring technical problems with Nintendo Switch controllers, commonly referred to as "Joy-Con Drift". This causes the games' characters to move without touching the controller, making the console unusable. In 88% of cases, the game controllers broke within the first two years of use.¹⁴

BEUC and its members are calling for a Europe-wide investigation into the issue and for Nintendo to be obliged to urgently address the premature failures of its product. The product failure means consumers often have to buy a new set of game controllers after a short time. BEUC alleges that Nintendo is misleading consumers, encouraging the acquisition of new products, boosting sales and causing unnecessary electronic waste. Ultimately the point of planned obsolescence did not occur when the product came onto the market, but when Nintendo failed to take any action to address the problem.

CHOICE has found examples of problems occurring with the Nintendo Switch in Australia. To date, no action has been taken against Nintendo at a systemic level in Australia for problems with Switch controllers.

¹⁴

<https://www.beuc.eu/publications/beuc-launches-europe-wide-complaint-against-nintendo-premature-obsolescence/htm>

Consumers are missing good quality, consistent information about durability and repairability

CHOICE has surveyed Australians and found that they consider product durability and repairability to be very important factors when making purchase decisions. However, they are not currently making many decisions based on these factors, arguably because they don't have the information they need at the point of purchase.

In a nationally representative survey undertaken in January 2021, 85% of people said that buying products that will last a long time is very or quite important to them. 73% said repairability was important.¹⁵

Despite a strong interest in product durability, only 39% of people said they regularly choose products that will last longer. 46% of people say they choose products that can easily be repaired all or most of the time. People are more likely to regularly choose products that save energy or water (51% said they do this all or most of the time). This is likely in part due to the effective water and energy rating schemes that are displayed on products (the Energy Rating Label and the WELS system). No equivalent label exists in Australia to give consumers clear information about durability or repairability.

This frustration about the lack of clear and comparable information is also demonstrated by the number of people (39%) who find it difficult to make decisions about environmental factors for products and services.

¹⁵ For full survey results see Appendix Two.

APPENDIX ONE - DATA ABOUT PRODUCTS

CHOICE regularly conducts research on people's expectations about product reliability and their actual experience.

Specific data sets relevant to this inquiry are:

- **Product reliability surveys from 2016-2020.**

This is an annual survey conducted with CHOICE members and not necessarily representative of the wider Australian community. Depending on the year, a range between 5,000 to 11,000 people have responded to questions about products they own and any issues they experience.

CHOICE primarily uses this data to calculate reliability scores for products, which are then used in reviews on choice.com.au and in CHOICE Magazine. However it also gives us information about people's satisfaction with a brand, any performance/reliability problems experienced and the nature of the problems. For some product categories (e.g. smartphones, washing machines) we have datasets that can be compared over several years.

- **Survey on consumer guarantees in 2018**

A survey designed by CHOICE with fieldwork completed by research agency Research Now SSI. Fieldwork was conducted between 6-15 August 2018 with 1,003 people responding. The survey screened out people who were not involved in the decision making process for household goods.

We asked people what factors were important to them when buying appliances (including the importance of durability). We asked about how long people would expect appliances to last (based on whether they were budget, mid-range or high-end products).

CHOICE is able to provide the Productivity Commission with data sets on request to assist with this inquiry.

APPENDIX TWO - SURVEY ON CONSUMER ATTITUDES

CHOICE has conducted an additional survey of consumers about their views on repairability, durability and environmental factors they consider when making purchasing decisions.

The survey was designed and analysed by CHOICE, with fieldwork provided by accredited research agency, the ORU. Fieldwork was conducted from 12-29 January 2021. 1,107 people completed the survey from a representative sample of the population.

The majority of Australians say that they consider environmental impact when making purchasing decisions. 57% of Australians say it is very or quite important to them that a product or service is environmentally or eco friendly. 33% say it is neither important or unimportant. 10% say it is unimportant or very unimportant.¹⁶

When asked about specific factors they considered important, consumers told us that:

- Product durability is the most important factor (85% of people said that products that will last a long time is very or quite important).
- Repairability (73%), energy/water usage (71%) and reusability (70%) were the next most important considerations.
- Whether a product is recyclable (65%), locally made (64%) and had no single use plastics (58%) were also important.

Despite a strong interest in product durability, only 39% of people said they regularly choose (more expensive) products that will last longer. 46% of people say they choose products that can easily be repaired all or most of the time. People are much more likely to regularly choose products that save energy or water (51% said they do this all or most of the time).

Two in five people find it difficult to make environmentally friendly decisions when buying products or services. 42% of people told us it was very or quite easy to make environmentally friendly choices, 39% said it was not very easy or not at all easy (19% were not sure or rarely sought out environmentally friendly products or services).

We also asked people why they do not find it easy to make environmentally friendly choices when buying products. Here is a sample of responses.

¹⁶ Responses to the question "When you're buying products and/or services, how important is it to you that the products or services are environmentally/eco friendly?"

Distrust about claims

Packaging is often filled with doubtful claims so hard to believe much of the time.

'not always sure the hype of some products is genuine

'Way to [sic] many companies try to make out that their products are better than they actually are

No or poor information about environmental issues they care about

Not enough information available either by asking questions, or disclosed in promotional material and packaging

I have discovered that it is almost impossible to find spare parts or have appliances repaired. It is difficult to ascertain if products are actually recyclable because of the number system. Some may not be easily recyclable because there may be special drop off points. If you live in the outer suburbs there are not many choices.

so much info to plow through to find out the real environmental cost

lack of good solid information, not enough evidence that the item is environmentally friendly

I don't know where to find such information.

There are many products on the shelf with so many different wordings. It's confusing and time consuming

Info on packaging is not always clear or informative. There is inconsistency about source at times

I find labelling is confusing and not straight forward

Price sensitivity

'prices are usually higher

'The prices are often too high, so I turn down environmentally friendly choices

'They're not readily available or way more expensive