# Right to Repair

Productivity Commission Issues Paper, December 2020

Responses from Barwon South West Waste & Resource Recovery Group

(responses to Information Requests)

*INFORMATION REQUEST 1*

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

In Australia it would be useful to consider on-shore reparability, i.e. the ability to get products repaired without requiring them to be sent back to manufacturers overseas.

It would entail ensuring that repair options are more accessible:

- Access to information such as authorised or recommended local repairers
- Protection of consumer rights for repairs (i.e. warranty not voided)
- Affordability of repair
- Product design that facilitates repair.

A National Policy should be adopted that covers manufacturers and distributors.

*INFORMATION REQUEST 2*

*a) What types of products and repair markets should the Commission focus on?*

*b) Are there common characteristics that these products share (such as embedded technology and software or a high/low degree of product durability), and which characteristics would allow policy issues to be considered more broadly?*

*c) 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 Commission should perhaps focus on:

- electronic items given that e-waste is a problem material. Household appliances such as washing machines and dryers are often stated as being cheaper to replace than repair. It is not clear why this would be the case, perhaps the component parts are not standard to multiple models or they are assembled without considering the need to repair. Smart phones and computers are a big market, most people having one or both and usually needing to have these items repaired rather than complete replacement e.g. replacement screens, repairing charging ports, headphone jacks, repairing USB ports, keyboards, power supply etc;
- products that contain hazardous or scarce materials;
- products that may be easily repaired by consumers themselves, using parts that are readily available or able to be 3D printed. Government should encourage the manufacturers of these common household white goods, TVs, computers etc to identify common breaking points of the items and develop parts manufacturing onshore;
- high-cost items, particularly where there is significant productivity loss or inconvenience for the consumer if they cannot access timely and affordable repair options (i.e. agricultural machinery).

*INFORMATION REQUEST 3*

*a) 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?*

*Are there barriers to repairing products purchased using new forms of payment technologies, such as 'buy now pay later'?*

*b) Is the guarantee of available repair facilities and spare parts effective in providing access to repair services and parts? Or is the opt out clause being widely used, making the guarantee ineffective?*

*c) 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?*

*d) Are consumers sufficiently aware of the remedies that are available to them, including the option to repair faulty products, under the ACL's consumer guarantees?*

*• If not, would more information and education be a cost effective measure to assist consumers understand and enforce guarantees? What would be the best way to deliver this information? What other measures would be more effective?*

The consumer guarantees under the ACL are not well known to consumers.

*INFORMATION REQUEST 4*

*a) The Commission is seeking information on the nature of repair markets in Australia, including detailed data on the repair markets for specific products, covering:*

*• market size — by employment, revenue, number of businesses, profit margins*

*• market composition — such as market share between authorised, independent and DIY repairers.*

BSWWRRG has identified almost 70 repairers in the Barwon South West region, for a range of products, although primarily electronic goods. https://map.reduce-recycle.com.au/locale/barwon-reduce-recycle

The majority are independent repairers, where repair is one of the many services and products that they offer. Some are authorised repairers. In this region, there are currently four Repair Cafes established. These are community run services which were established by the community to teach repair skills, particularly given the lack of repair options available.

*b) Is there any evidence of a difference in quality, safety or data security between authorised repair networks and independent repairers? Are there ways to address concerns around quality, safety or data security while promoting a vibrant independent repair market?*

Tag and test facilities could be required to address safety concerns.

c*) Are there available examples of the contracts between OEMs and authorised repairers? Do these contracts limit effective competition in repair markets (such as by limiting the number and reach of authorised repairers or requiring authorised repairers to not be authorised by a competing brand)?*

In some instances, the conditions of contracts between OEMs and authorised repairers can be onerous and act as a disincentive to repairers becoming authorised. For example, requiring a

minimum number of repairers available onsite, level of training required for authorised resellers, onerous auditing requirements and significant penalties for non-compliance.

- *What is the process to become authorised? Is it open and competitive?*

*d) Are there specific examples or other evidence of practices by OEMs or their authorised repairers that create barriers to competition in repair markets?*

- *Do other factors also create barriers to competition in repair markets, such as short sighted consumer behaviours, switching costs, poor information availability or consumer lock in?*

*e) What is the relationship between the intensity of competition in the primary product market and the risk of consumer harm from a lack of competition in repair markets? Can competitive primary markets compensate for non competitive repair markets?*

- *Is an absence of effective competition in the primary market a necessary condition for consumer harm from non competitive repair markets?*
- *To what extent would measures that enhance competition in the primary market address concerns about a lack of competition in repair markets?*

*f) Are the restrictive trade practices provisions of the CCA (such as the provisions on misuse of market power, exclusive dealing or anti-competitive contracts) sufficient to deal with any anti competitive behaviours in repair markets?*

*g) What policy changes could be introduced if there is a need to increase competition in repair markets and improve consumer access to, and affordability of, repairs?*

- *What are the costs and benefits of any such proposal to the community as a whole? How does it balance the rights of manufacturers and suppliers, with those of consumers and repairers?*

*INFORMATION REQUEST 5*

*a) To what extent do current IP laws already facilitate repairs by consumers or independent third parties (e.g. the spare parts defence under the Design Act)?*

*b) Are there any aspects of IP laws where consumers' rights with respect to repairs are uncertain?*

*c) Do current IP protections (e.g. intellectual property rights, technological protection measures, end user licencing agreements) pose a significant barrier to repair in Australia? If yes, please comment on any or all of the following:*

- *the specific IP protections that prevent consumers from sourcing competitive repairs and/or inhibit competition in repair markets*
- *the types of products or repair markets these barriers mainly affect*
- *the prevalence of these barriers*
- *the impacts of these barriers on third party repairers and consumers (e.g. financial cost, poorer quality repairs)*

*• options for reducing these barriers and their associated benefits, costs and risks (including potential impact on market offerings).*

*d) In what ways might government facilitate legal access to embedded software in consumer and other goods for the purpose of repairs? What are the pros and cons of these approaches?*

*Information request 6*

*a) What evidence is there of planned obsolescence in Australian product markets? Do concerns about planned obsolescence principally relate to premature failure of devices or in them being discarded still working when more attractive products enter the market?*

The discussion of planned obsolescence of mobile phones is interesting. Mobile phones require software updates at regular intervals and, as well as the possibility of the update itself affecting their performance, the phones also become obsolete quickly if these updates are not possible due to memory size. It should be possible to update in a way that suits the phone in question.

b) *How can the Commission distinguish between planned product obsolescence and the natural evolution of products due to technological change and consumer demand?*

*c) How does planned obsolescence affect repairers, consumers and the broader community in Australia?*

Planned obsolescence potentially limits use of second-hand markets. A mobile consumer survey by Deloitte (2016) found that one in 10 Australian mobile phone users participate in the second hand phone market, compared to global average of 15% and UK average of 22% (https://landing.deloitte.com.au/tmt-mobile-consumer-2016-INB-thank-you.html). Australians replace their TVs, computers and phones twice as quickly as people in the US and UK. Whether this is due to planned obsolescence, lower product costs, lack of reparable products or repair services and an affluent populace (or combination of all these) is unclear.

Planned obsolescence contributes to increased resource use and waste to landfill, which has negative impacts on human health and the environment.

d) *What measures do governments currently use to prevent planned obsolescence or mitigate its effects (in Australia and overseas)? How effective are these measures?*

*e) What are the benefits, costs and risks of Australia adopting measures similar to those currently used overseas, such as product design standards and reparability ratings?*

Benefits: a right to repair supports the circular economy, creates more jobs around the support of existing products, increases opportunities for people to learn transferrable practical skills in maintenance, repairing, and reduces unnecessary waste to landfill.

Costs: repair facilities and independent repairers are likely going to need government assistance to set up, given the current cost of repair versus new products.

Risks: there is a risk that these measures might not be supported by big business due to their impact on product turnover, potentially risking some manufacturers pulling out of the local market.

f) *Do consumers have access to good information about durability and reparability when making purchases? If not, how could access to information be improved?*

The concept noted above of consumer information and product labelling on reparability should be considered in Australia, to allow the buyer to assess the ease of obtaining spare parts and where repair services may be obtained. Labelling should be clear, such as the Australasian Recycling Label, so consumers know the difference between two competing products.

*INFORMATION REQUEST 7*

*a) What data are available on the amount of e waste generated in Australia?*

- *What data is there on the composition of e waste in terms of particular materials (such as hazardous materials) by product type?*

Data on e-waste is difficult to come by; BSWWRRG's own broad estimates suggest approx. 3,000T p.a. is generated in the BSW region each year. We suggest that the NTCRS may have this data for that particular scheme, and Sustainability Victoria will have data for the state as a whole.

- *How does hazardous e waste compare to hazardous general waste in its prevalence and risks? Is there merit in distinguishing between hazardous e waste and non hazardous e waste? And if so, how could this be done in practice?*

*b) What estimates are available on the costs of e waste disposal on the environment, human health and social amenity, in Australia and internationally?*

The Victorian Government Regulatory Impact Statement for Waste Management Policy (E-waste) might be able to provide some information on this.

- *How do the impacts differ by disposal type, or by the type of product or hazardous material?*

c) *How much of Australia's e waste is shipped overseas for recycling? Is there evidence of circumstances where this creates problems for recipient countries?*

- *Are there barriers to the expansion of domestic recycling facilities or the adoption of new recycling technologies in Australia (such as plasma arc incinerators)?*

*d) What are Australia's current policy settings for managing the potential environmental and health effects of e waste (such as landfill bans, the National Television and Computer Recycling Scheme or Mobile Muster)? Are these policy settings broadly right — that is, are they proportional to the impacts of e waste on the community?*

There is a landfill ban on e-waste in Victoria:
https://www.sustainability.vic.gov.au/Campaigns/eWaste/The-Victorian-Ewaste-Ban

Victorian councils have been funded to upgrade e-waste collection points and a campaign to publicise the ban ran during 2019.

*e) How can a right to repair policy further reduce the net costs of e waste in Australia, and would such an approach be an effective and efficient means of addressing the costs of e waste to the community?*

*INFORMATION REQUEST 8*

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

All of the reforms in table 1.

*b) Are there any other barriers to repair and/or policy responses that the Commission should consider?*

*c) What are the costs and the benefits of the various policy responses that have been proposed to facilitate repair (such as those outlined in table 1)?*

There will likely be increases to the cost of products to consumers as spare parts, repair facilities and the extra effort required by manufacturers will cost more. Given this is a relatively affluent country it would seem that consumers could support a price increase on the front end, to prolong product life and create a secondary economy around consumer goods.

*d) Are there other international policy measures or proposals that the Commission should consider as part of this inquiry?*