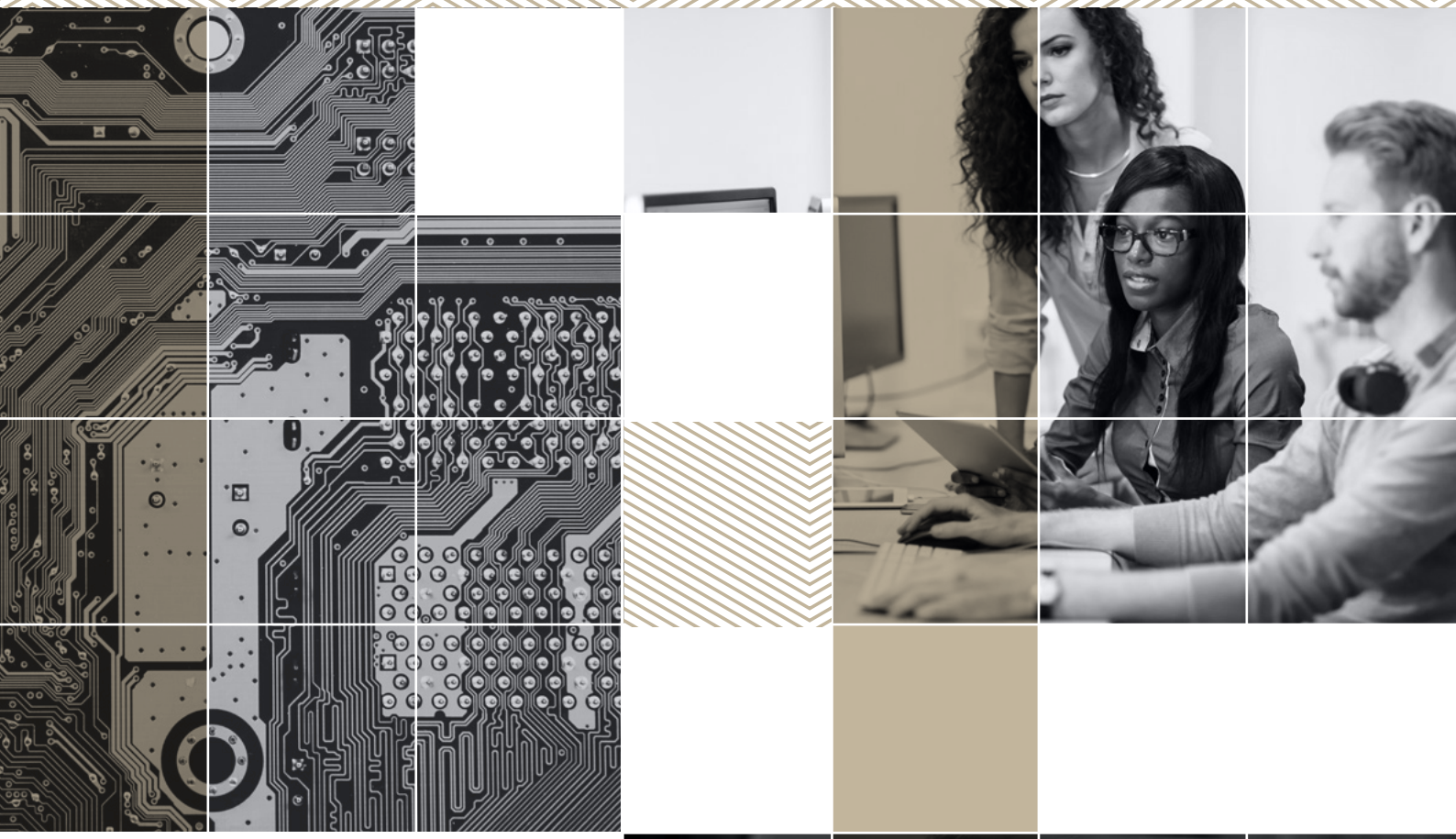


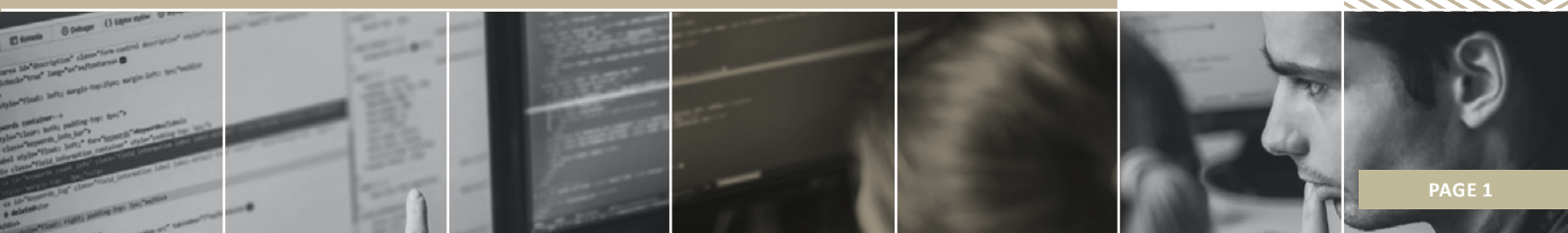
IT Professionals Australia

PRODUCTIVITY COMMISSION INQUIRY INTO

RIGHT TO REPAIR

SUBMISSION BY IT PROFESSIONALS AUSTRALIA
(A PROFESSIONALS AUSTRALIA GROUP)

FEBRUARY 2021



CONTENTS

WHY IS THIS AN ISSUE FOR THE IT PROFESSION?

Professionals Australia is the trading name of the Association of Professionals Engineers, Scientists and Managers, Australia (APESMA). We are a registered organisation of employees under the Fair Work (Registered Organisations) Act 2009. IT Professionals Australia is a group of around 2,000 IT members within Professionals Australia.

Although Professionals Australia is strictly non-party political, our members are often impacted by political decisions as well as recommendations arising from inquiries. In this regard, we aim to make sure that members' concerns are taken into consideration by policy and decision-makers across Australia, including industry leaders, senior bureaucrats, politicians and organisations such the Productivity Commission.

IT Professionals Australia members are employed across all sectors of the Australian economy. This includes not only the IT sector itself, but also all tiers of government and in a diverse range of industries throughout the private sector including Roads, Rail, Water, Electricity, Telecommunications, Consulting Services, Laboratories, Research, Surveying, Architecture, Retail Pharmacy, Mining, Oil, Collieries and Manufacturing.

We advocate for our members to help create a better future for their industry and ultimately their profession and workplace. Given its strong IT membership base, IT Professionals Australia believes that it is in a unique position to assist the Productivity Commission with its deliberations with the Right to Repair Inquiry.

While we understand the focus of the inquiry's terms of reference is on consumers' views on the right to repair faulty goods, our members consider the right to repair issue sufficiently important that it requires a response as a profession. This brief submission is made on behalf of our IT members on that basis.

We understand the terms of reference are as follows:

1. The legislative arrangements that govern repairs of goods and services, and whether regulatory barriers exist that prevent consumers from sourcing competitive repairs;
2. The barriers and enablers to competition in repair markets, including analysing any manufacturer-imposed barriers, and the costs and benefits associated with broader application of regulated approaches to right of repair and facilitating legal access to embedded software in consumer and other goods;
3. The impact of digital rights management on third-party repairers and consumers, and how intellectual property rights or commercially-sensitive knowledge would interact with a right to repair;
4. The effectiveness of current arrangements for preventing premature or planned product obsolescence and the proliferation of e waste, and further means of reducing e waste through improved access to repairs and increased competition in repair markets; and
5. impact on market offerings, should firms have their control over repair removed.

WHY IS THE RIGHT TO REPAIR MORE THAN JUST A CONSUMER ISSUE?

Governments are increasingly putting digital transformation at the heart of strategies for improving economic competitiveness and productivity, particularly so as we move toward economic recovery following the global pandemic. OECD figures show that by mid-2020, 34 OECD countries had a national digital strategy in place that featured emerging digital technologies such as artificial intelligence (AI), blockchain and 5G infrastructure. By mid-2020, 60 countries had established a national AI strategy, and several OECD countries - including Australia, Austria, Colombia, France, Germany, Korea, Spain, the United Kingdom and the United States - had issued national 5G strategies.[1]

It's not hard to see why. According to the 2020 Digital Pulse report:

> *Deloitte Access Economics estimates that, between 2005 and 2019, the productivity benefits from the growing digital economy increased Australia's steady state GDP per capita by 6.5 per cent. This means that the adoption of digital technology during this period added an additional $126 billion to the Australian economy in 2019. By way of comparison, this is larger than the total value added of the entire construction industry in 2017–18. With the adoption of 5G and other emerging digital technologies, the contribution of digital to productivity will only grow. In the last edition of Australia's Digital Pulse, Deloitte Access Economics estimated that mobile technology alone would add $65 billion to GDP by 2023, with 40% of this contribution occurring between 2018 and 2023.*[2]

Digital technologies are becoming increasingly ubiquitous underpinning and enabling transformation and increased productivity in virtually every field and industry across the Australian economy.

Digital innovation involves the application of technologies to support greater efficiencies as well as more fundamental transformation including equipment integrations, interoperability with other technologies and brands and embedding software such as AI and other assistive technologies in products and services.

The accelerating pace of digitalisation however makes it increasingly difficult to anticipate the need for policy direction and legislative intervention. As the OECD noted: "The fast pace of technological change … makes policy oversight … increasingly difficult."[3]

The right to repair issue is an example of such an area – the issue is a fundamental one across fields and industries and is not limited to the impact on consumers or emerging technologies. The reality is that the issue affects industry and governments that are potentially exposed to financial and operational risks through a range of practices related to the right to repair issue such as planned obsolescence and digital vendor locks. The regulation around the right to repair also has massive implications for waste of resources and impacts on the environment particularly in relation to levels of landfill.

It is therefore appropriate that the Productivity Commission consider the issue of right to repair not only from the point of view of consumers but also in the broader context of the fundamental issues of anti-competitive practices, risk management, the ethics of the use of technology and impact on the environment.

HOW WOULD A LEGISLATED RIGHT TO REPAIR ADDRESS ANTI-COMPETITIVE PRACTICES?

OBSTACLES TO COMPETITION IN REPAIR MARKETS

A viable independent repair industry and the ability of consumers to access repair services at a competitive price by the repairer of their choice is fundamental to competition.

Some of the obstacles to repair include:

- the increasing use of digital locks to prevent interoperability or capacity to integrate with other brand/s of product or service;
- lack of access to embedded software;
- lack of access to schematic diagrams – referred to as 'information asymmetry' in the issues paper;[4]
- the use of non-standard tools to repair products;
- some smaller replacement parts only available as part of larger units;
- high pricing of replacement parts which operates as a disincentive to repair;
- authorised repairers refusing to repair products that have previously been serviced by an independent repairer; and
- warranty terms that void the warranty if repairs are undertaken by a non-authorised repairer.

PREMATURE AND PLANNED PRODUCT OBSOLESCENCE

As set out in the Issues Paper, planned product obsolescence refers to the strategy of producing consumer goods that rapidly become obsolete and thus require a replacement purchase of the same or similar product.[5] It includes software updates that reduce the expected lifespan and performance of older hardware, designing products with poor durability, restricting the supply of spare parts or support services, designing or manufacturing products so they are difficult to repair.[6] As acknowledged in the Issues Paper, obsolescence can also be an indicator of a responsive and efficient market, and it can be difficult to differentiate between genuine obsolescence and deliberate attempts to reduce a product's lifespan.[7] We see it as important to legislate against techniques used in manufacturing and design that deliberately aim to reduce the lifespan of a product in order to increase its replacement rate rather than market-driven obsolescence.

WHAT ARE THE EFFECTS OF ANTI-COMPETITIVE PRACTICES?

HIGH-RISK PROCUREMENT PRACTICES

It is imperative that those responsible for asset acquisition and asset and contract management are informed purchasers who are aware of the issues that might impact acquisition and maintenance costs for the life of the equipment they are responsible for purchasing.

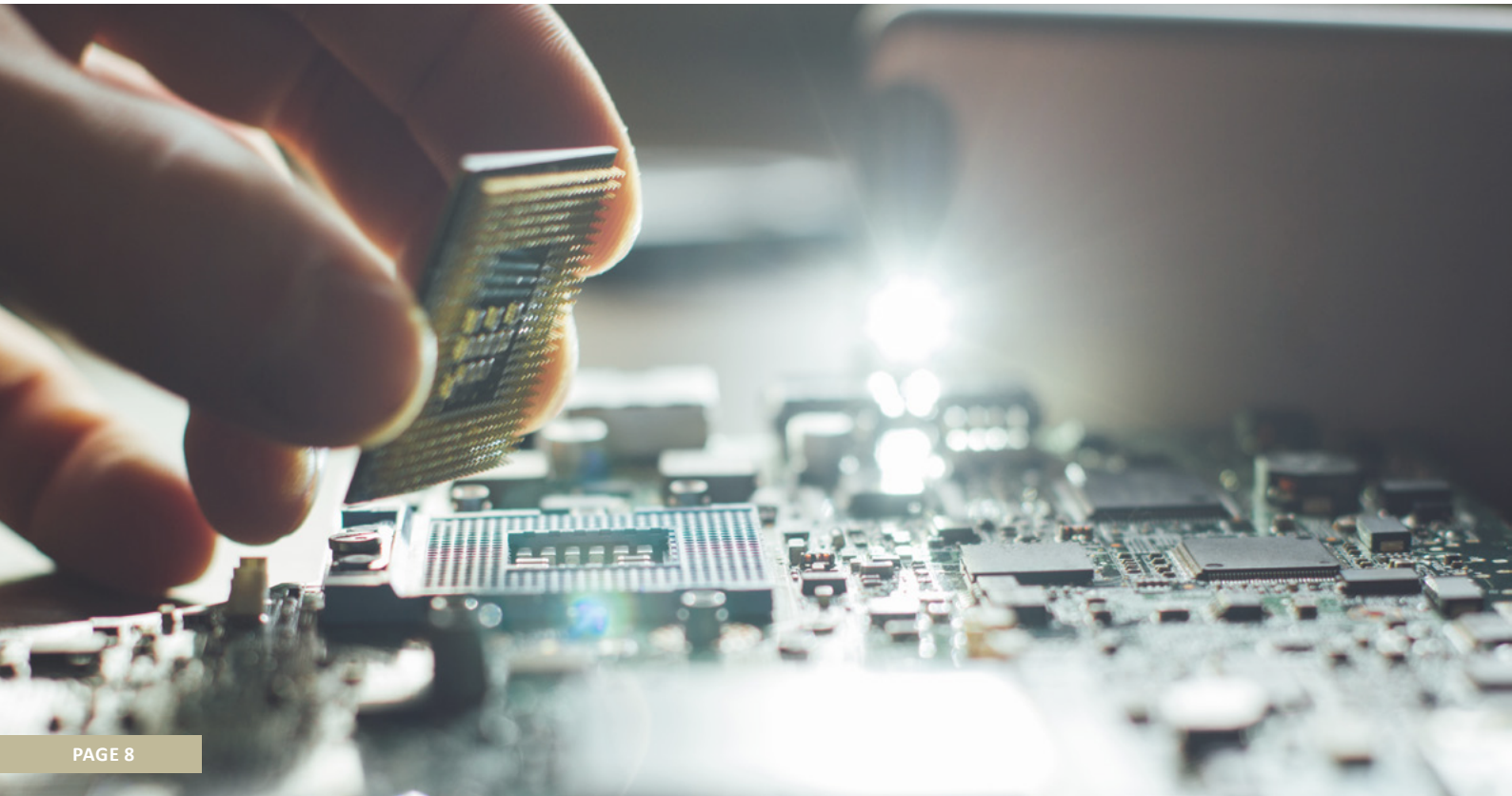
Procurement and quality assurance practices that incorporate an understanding of issues such as planned product obsolescence and obstacles to repair would in turn reduce industry and government exposure to what are currently high levels of financial and operational risks.

HIGH LEVELS OF E-WASTE AND RESOURCES USED FOR REPLACEMENT PRODUCTS

As the Issues Paper notes, when broken or discarded products are not repaired, they generally become waste products. It is vital for the Commission to consider means of reducing e-waste through improved access to repairs and increased competition in repair markets to address major landfill issues created in spite of around 50 per cent of e-waste now being recycled. A legislated right to repair would be a significant contribution to the reduction of e-waste going to landfill.

HOW DO YOU BALANCE COMMERCIAL RESISTANCE TO CALLS FOR RIGHT TO REPAIR WITH RIGHTS OF CONSUMERS AND OTHER PARTIES?

Manufacturers can oppose the right to repair on the grounds that it breaches IP rights, compromises device security, affects data encryption or presents other data/cyber-security risks. Big business not uncommonly says they are protecting consumers by opposing the right to repair but the reality is that software can generally be protected through other means. Clearly the balance between the right to commercial proprietary technologies and the right to repair is an ethically contentious area. It seems reasonable to call for some level of regulation to balance the interests of consumers and other parties with the interests of the multi-national profit-driven organisations that generally oppose right to repair.



RECOMMENDATIONS

1. Work towards some form of legislated right to repair to balance the interests of consumers and other parties with the interests of the multi-national profit-driven organisations that oppose right to repair on purely commercial grounds.

2. Legislate against techniques used in manufacturing and design that deliberately reduce the lifespan of a product in order to increase its replacement rate.

3. Legislate against the use of digital locks and the prevention of interoperability or capacity to integrate with other brand of product or service while accommodating a level of the right proprietary technologies.

4. Legislate for right to access to embedded software in consumer and other goods.

5. Legislate for access to schematic diagrams where appropriate.

6. Legislate against the use of non-standard tools to repair products.

7. Consider legislation that would address the issue of authorised repairers refusing to repair products that have previously been serviced by an independent repairer and warranty terms that void the warranty if repairs are undertaken by a non-authorised repairer.

8. Legislate for reasonable pricing of replacement parts and obligations on manufacturers to produce spare parts for a specific period.

9. Consider commercial incentives for smaller replacement parts to be available individually rather than only as part of larger units.

10. With the largely unregulated practices around right to repair currently presenting a high level of risk to business and industry, make a Recommendation that procurement and quality assurance practitioners have an understanding of issues like planned product obsolescence to mitigate industry and government exposure to what are currently high levels of financial and operational risk.

IT Professionals Australia

Professionals Australia is comprised of a number of profession-based divisions including IT Professionals Australia.

IT Professionals Australia represents ICT professionals across the full spectrum of industries and specialisations. Our members work in a wide variety of roles including ICT trainers, ICT sales, business and systems analysts, multimedia specialists, web developers, software and applications programmers and developers, database and systems administration, ICT security, ICT support, test engineers, telecommunications and ICT management as employees, via labour hire agencies and as contractors and consultants.

We advocate for members primarily about IT workforce and IT workplace-related issues but are also involved in representing members' views around the ethical use of technologies including the impact of implementation of AI on the professional workforce, the ever-increasing rate of personal data collection and ownership of that data, multi-nationals involvement in projects and contracts that condone censorship, the growing digital divide and, as in this case, the right to repair.

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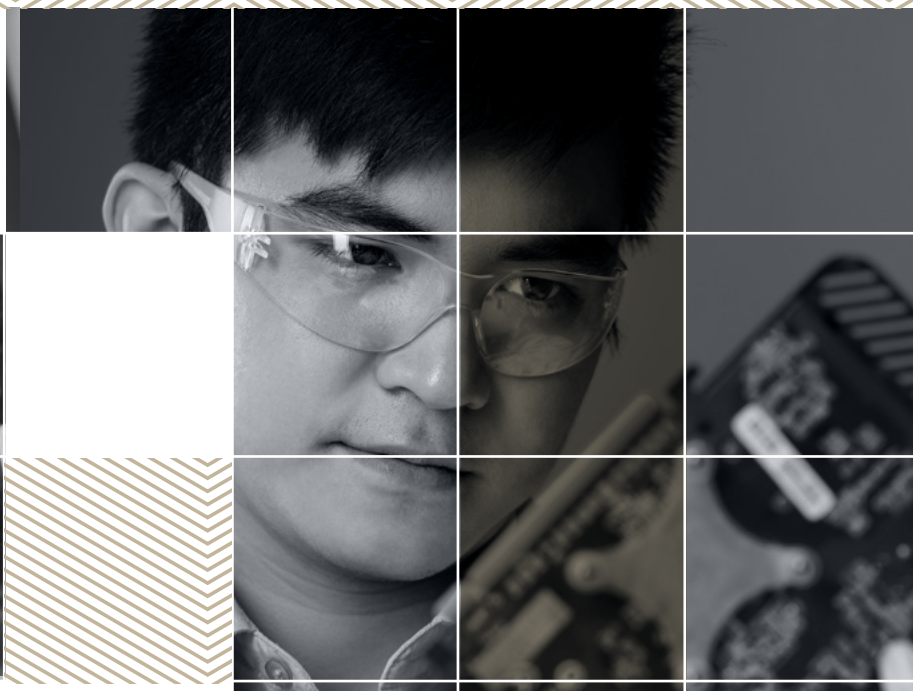
REFERENCES

1. OECD (2020). Available at 4 key findings from the new OECD Digital Economy Outlook – OECD Innovation Blog (oecd-innovation-blog.com)
2. ACS Australia's Digital Pulse (2020), p.25
3. OECD STI 2021 Outlook
4. Australian Government Productivity Commission (2020). Right to Repair: Productivity Commission Issues Paper, p.3.
5. Australian Government Productivity Commission (2020). Right to Repair: Productivity Commission Issues Paper, p.18.
6. Australian Government Productivity Commission (2020). Right to Repair: Productivity Commission Issues Paper, p.18.
7. Australian Government Productivity Commission (2020). Right to Repair: Productivity Commission Issues Paper, p.19.



IT Professionals Australia

IT PROFESSIONALS AUSTRALIA'S SUBMISSION TO PRODUCTIVITY COMMISSION INQUIRY ON RIGHT TO REPAIR

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