

Submission on the Productivity Commission's Draft Report Right to Repair

23rd July 2021

By email: repair@pc.gov.au

Dear Commissioners,

Thank you for the opportunity to provide a submission on the Productivity Commission's - Draft Report: Right to Repair. Consumer Policy Research Centre (CPRC) aims to create fairer, safer and inclusive markets by undertaking consumer and policy research and working with leading regulators, policymakers, businesses, academics and community advocates.

CPRC is pleased to see the Productivity Commission make recommendations to strengthen consumer protections and reduce barriers to access repairs and refurbished products. Overall, we are supportive of the Commission's proposed recommendations. However, we consider the recommendations in current form are piecemeal and lacking a relevant underpinning economic framework necessary to develop a holistic regime to tackle the range of overlapping issues. This requires an understanding of these issues through a circular economy lens as the European Union has recently done¹. In addition, we urge the Productivity Commission undertake further economic analysis using a comprehensive framework to understand the potential harm to consumers and the full costs and benefits of a right to repair regime. Focusing only on competition analysis results in a limited understating of the issues and fails to consider the environmental costs, and the opportunity costs to consumers of time required to navigate a broken system. Our submission focuses on where we think the Commission should go further or where CPRC considers the Commission needs more analysis before drawing conclusions.

Information, support, and consumer protections

We are supportive of the proposed recommendations to introduce greater clarity on the reasonable durability of products and measures to enhance access to remedies under consumer guarantees. This submission draws on qualitative research we are currently undertaking with consumers across Australia to better understand the experiences and expectations of being an Australian consumer today. Quotes and evidence in this submission can be attributed to this unpublished research. This research shows that consumers struggle to know and understand their rights and to seek remedies. They can often feel the onus of responsibility for solving problems is on them and companies are not set up to identify and resolve issues². Ensuring there is greater support for consumers to resolve issues easily and quickly should be the priority. However, providing greater enforcement powers and alternative dispute resolution process are critical to act as affective

¹ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_420

² CPRC: *Consumer Wellbeing Report: Phase 1, Draft, Unpublished*

deterrents for poor business performance. It is also essential consumers are aware these mechanisms exist – in the 2016 ACL survey only 44% of consumers reported awareness of dispute resolution services.³

Inclusion of software updates

CPRC recommends software be explicitly included under consumer guarantees to ensure consumer devices are up-to-date, workable, secure, and that consumers' sensitive data is not at risk.

'Warranty void' terms

We also support the inclusion of a recommendation to prohibit manufacturer warranties from containing 'warranty void' terms (including warranty seals). These clauses are likely to be confusing and misleading to consumers, creating a further barrier in accessing consumer protections and seeking third-party repairs. Consumers interviewed for our research felt that navigating and making decisions were deliberately made difficult through confusing terms and conditions, and incomparable products across providers/product lines.⁴

Determination of reasonable durability

We support the recommendation to task the Australian Consumer Competition Commission (ACCC) with determining reasonable durability information for products. This information must be accessible and be presented in such a way as to reduce the search and opportunity costs to consumers of using this information. Our research finds that consumers are overwhelmed with information which leaves them feeling confused, frustrated, and stressed as to how to solve the problem or find a solution. In addition, they feel like they are required to solve the problem for the company or entity they are dealing with rather than the onus being on the company.⁵ The ACCC should work with existing organisations that report on reparability or durability such as CHOICE and iFixit to determine the most appropriate approach.

Durability or reparability information must be readily available to support research prior to the purchase and at the point of purchase. A consumer should not have to visit multiple websites to find the information they need. That is why we support the adoption of a reparability/durability index that is to be displayed alongside the price of a product, similar to the French reparability index. While the French index may have limitations, this provides an opportunity to build and improve on the scheme here.

Supporting rural and regional consumers

Our research also found that consumers in rural and regional areas are increasingly reliant on their telecommunication devices underscoring the importance of their durability, not just for daily activities but as an emergency device to access help or keep informed during emergencies.

“When you live somewhere remote, you rely on that phone for emergencies and you've got to pay for it. Telstra say ‘we've got 98% of the coverage’, so you've got to go with them to know that you can count on your phone in an emergency situation. You're over a barrel.”

³ EY Sweeney, *Australian Consumer Survey* (CAANZ: 2016)

⁴ CPRC: *Consumer Wellbeing Report: Phase 1, Draft, Unpublished*

⁵ CPRC: *Consumer Wellbeing Report: Phase 1, Draft, Unpublished*

Regional NSW

Distance makes consumers more reliant on an online resolution, but it also means less flexibility in service and higher pricing for comparable goods.⁶ Additional support must be provided to consumers living in rural and regional areas to access repairs and support accessing their consumer rights.

Durability, repairability and product design

While there is much to commend in the Commission's draft report, CPRC is concerned with the Productivity Commission's findings that premature or planned obsolescence is not an issue of concern in Australia and the statement '*Consumers often choose to upgrade their products well before they come to the end of their useful life or break*' ignores the complexity and difficulty consumers face in knowing their rights or being able to repair options. There is also a lack of available evidence to support the Commission's findings in this regard. Australian consumers we have spoken to identified examples of planned obsolescence – particularly with electrical appliances or smartphones.

"...does apple want me to buy a new phone? Because my phone has stopped working as well"

Geelong

"I read the more expensive washing machines were dying in like five years, then I asked my mom about the brand that she used to have, which I think it lasted for 15 years. But that brand has gone out of business because their machines lasted so long."

Sydney

"The repair side of things is actually going away when companies are building products that aren't easy to repair. Companies just replace the products instead."

Richard, Melbourne

"So much has built in obsolescence now, anyway, it's just designed to fail."

Sydney

Our research also found getting an item repaired can be time consuming, difficult, and offer unpredictable results. In one example, a consumer sought to replace a faulty blender, but the provider replaced the item instead, leaving the consumer with plastic and e-waste to deal with. Others reported a sense of disempowerment in trying to repair consumer electronics, especially where they lacked sufficient domain knowledge about the item itself. While many reported they wanted products repaired, they feel it is more difficult or expensive, so seeking a replacement promises an easy solution, and a brand-new working product.⁷

Manufacturers might not be designing products to break at a certain point, but product design itself may not be easily repairable or with the capacity for components to be replaced to extend the life of a product. This is a form of premature obsolescence as these products fail and cannot be repaired.

⁶ CPRC: *Consumer Wellbeing Report: Phase 1, Draft, Unpublished*

⁷ CPRC: *Consumer Wellbeing Report: Phase 1, Draft, Unpublished*

We consider it is premature to suggest the benefits of additional policies would be unlikely to have a net benefit to consumers in Australia given the Commission did not undertake research to assess the extent of problem, nor provide modelling of the full costs of any potential intervention. We would like to see a regulatory impact analysis undertaken that considers the costs to consumer wellbeing, mental health and time required to navigate the consumer market before determining that the benefits do not outweigh the costs. This impact analysis would also need to consider the full lifecycle costs of improved durability and reparability and the impacts on vulnerable consumers who spend a disproportionate amount of their income on goods and services. Ensuring products components such as batteries can be replaced would introduce greater competition for component parts. Consumers' value higher quality products but can find it difficult to distinguish higher quality products from lower quality products in the absence of easily accessible and comprehensible information.⁸

Consumer behaviour and the capacity to influence change

CPRC is particularly concerned with the Commission's suggestions that consumers already have enough information sources or are unmotivated to seek out information:

- *As France implements its reparability index ... this information will become available to Australian consumers from French websites.*⁹
- *And for some types of products, such as smart phones, there is publicly available information on product qualities such as durability or reparability **if consumers are sufficiently motivated to seek it out.***¹⁰

These assertions are based on assumptions about the accessibility, trustworthiness and timeliness of the available information about the durability and reparability of products and services, not on the available evidence. There has been no research conducted which provides the evidence to support this finding. No comprehension testing has been conducted to ascertain current levels of consumer comprehension and consumer knowledge or information needs.

Neither is it good market stewardship to place responsibility onto consumers to navigate this complexity alone and expect them source and decipher relevant information and advice from multiple information sources. While there are reputable review websites, not everyone can afford a subscription (e.g. CHOICE), and for-profit comparison sites receive commissions for recommending certain products, introducing an inherent bias into what may be recommended to the consumer. Relying on information flowing through from French websites is a poor substitute for market stewards taking more direct action in Australia.

Our research found that consumers feel options are not clearly defined nor easily comparable. Consumers are left feeling that they need to become a category expert before they decide.¹¹ A 2019 CPRC survey found 82% of Australians looked at online reviews or ratings "at least sometimes", with over a third of us (35%) reporting we "always" or "mostly" looking at reviews or ratings when shopping online.¹² Additionally, AustraliaSCAN showed that more than half of Australian consumers rely on product reviews and this has increased

⁸ Lauren Solomon and Ben Martin Hobbs, *Five Preconditions of Effective Consumer Engagement*, (CPRC, 2018); Ben Martin Hobbs, *"But are they any good?"*, (CPRC, 2018)

⁹ Productivity Commission 2021, *Right to Repair*, Draft Report, Melbourne, pg 207

¹⁰ Productivity Commission 2021, *Right to Repair*, Draft Report, Melbourne, pg208

¹¹ CPRC: *Consumer Wellbeing Report*: Draft, Unpublished

¹² Ben Martin Hobbs, *Online Reviews: A guide not a gospel*, (CPRC, 2019).

over the past four years.¹³ This shows consumers are actively seeking information but are still left without the information they need. Information needs to be provided at a national level so that consumers across the country have access to the same, trustworthy, simple, accessible, and usable information for products purchased across the country.

Furthermore, Australians are early adopters of new technology and are concerned about environmental impacts. Our research found consumers wanted to make sustainable purchases but felt that companies should lead the way and that they had limited ability to make a difference.¹⁴

“I’m not creating products, so how can I be the first point of responsibility [for creating sustainable products]... I can vote with my wallet but companies need to do the best they can”

Central Victoria

CPRC supports TCO Development’s comments at the Right to Repair hearing on 20 July 2021, that we should leverage the purchasing power of large companies and government departments and agencies to drive demand for more sustainable products. If consumers were offered products that had greater reparability or upgrade features that could be implemented in their current device, consumers would be empowered to pivot towards purchasing more sustainable products.

Right to repair regime

CPRC supports the implementation of a regime that can be scaled up to include a greater number of products and/or types of repairs. This provides for the opportunity to learn by doing and to consider where some products may be riskier to repair and to then design the regime to mitigate those risks. The Commission should recommend that measures to address right to repair be reviewed and adjusted to include new products or components on a regular basis. The United States of America and the European Union are currently introducing regulations to improve consumers right to repair. Australia risks becoming a dumping ground of poorly performing products if we do not take steps to deal with this issue, especially in absence of a general safety provision, which currently exists in some form across other jurisdictions.

Safety of consumers and independent repairers is paramount in any effective regime and can be managed within the regime. In fact, the implementation of right to repair regime could result in better safety outcomes for consumers as there is a framework for ensuring greater safety compliance by third party providers and independent repair organisations.

CPRC Recommendations

CPRC welcomes the Commission’s draft report and recommends it considers the following in finalising recommendations:

- The impact of growing complexity on consumer wellbeing, in particular mental health, in navigating multiple complex markets to access their essential services, meet daily needs and exercise their rights
- Understanding of the lived experience of consumers when making complaints, accessing redress, or accessing and acting on information

¹³ Quantum’s AustraliaSCAN study. Sample: Representative sample of Australians, n=2,000 per year

¹⁴ CPRC: *Consumer Wellbeing Report*: Phase 1, Draft, Unpublished



- Including a recommendation prohibiting manufacturer warranties from containing 'warranty void' terms (including warranty seals), and software be explicitly included under consumer guarantees
- Gather further information and conduct rigorous modelling to understand the scale and impact of premature obsolescence within Australia
- Consider recommendations to target the purchasing power of corporations and government bodies to require repairability and reusability in their ICT, telecommunications, and vehicles.
- Measures to address right to repair should be regularly reviewed and adjusted to include new products or components.

CPRC would welcome the opportunity to work with the Productivity Commission during this phase of the Inquiry and to provide further insights from our consumer research as recommendations are finalised. If you have any queries about this submission and the attached reports, please contact Kristal Burry, Policy and Program Director at Kristal.burry@cprc.org.au

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lauren Solomon'.

Lauren Solomon
Chief Executive Officer
Consumer Policy Research Centre