



# Submission

## Right to Repair Inquiry

### Submission by Samantha Kurikawa

Economic theory states that consumers act rationally at all times. *Homo economicus* is demonstrated to be false, but when it comes to the repair of malfunctioning, damaged or broken goods, consumers do tend to act entirely rationally. That is, with the rare exception of those few individuals who place an abnormally high value on mitigating environmental damage and reducing their carbon footprint, consumers don't bother.

As things stand, it is generally less rational - whether due to higher cost, more time, greater inconvenience, or all three - to repair something than to buy it new. By and large, the benefits to consumers of buying new and thus reinstating manufacturer warranties and enjoying broader consumer rights outweigh less immediate self-interests such as environmental costs or supporting local jobs. The advantages of manufacturers' scale, market dominance and the ability to offshore variable costs to cheaper markets makes buying new attractive. Conversely, individual consumers are saddled with bearing the full brunt of Australia's relatively high labour costs when it comes to repair, if they are even permitted and able to do so.

Therefore, quite simply, a 'right to repair' must translate to access, affordability and attractiveness to repair. Government, business, and consumers each have a vital role to play to ensure it is so.

I have lived in places where (and in an era when) people repair things, by choice. There is no inherent difference between people of those places and times versus Australian consumers today. What has changed are the perverse and out-sized incentives of companies and manufacturers to shorten the life of their products, to create real barriers to fixing them, and to drive a cultural shift of manufactured desire for consumer products. On a finite planet with genuinely scarce resources, this is a problem.

At the risk of stating the obvious, the most instinctual, convenient and rational choice should be to extend the life of a thing as long as possible and extract as much value as possible. Furthermore, the active discouragement of excessive resource consumption must be employed at every turn. Yet here we are arguing the relative merits of a legislated '*right to repair*'.

Whether by accident or design, Australia offshores all aspects of pre and post life of electronics goods to more vulnerable nations - from the mining of rare minerals and the low wage manufacturing work (which seemingly does not translate to lower purchase costs for consumers), through to the end-of-life waste management problem and the risks posed to health in resource recovery.



What's more, the market for second hand goods is artificially suppressed. This, I believe, is due to changing consumer norms and the emergence of a 'disposable culture' mindset driven in large part by an accepted business model of 'up-and-to-the-right' expectations of sales. There are disincentives for potential secondhand goods buyers including fewer or a complete absence of consumer rights, while there exists contrary incentives for product manufacturers with their enormous influence and deep pockets to deliver retail growth. The barriers to choosing refurbished and secondhand goods are only exacerbated by the absence of an unimpeded right to repair.

Then there's the fact of planned obsolescence. Premature and deliberate (or unintended yet effective) factors that render an item unusable removes individuals' freedom of choice, and creates an unmitigated environmental disaster. Whether it's the seeming conspiratorial decision by smartphone manufacturers to remove the headphone jack from all post-2020 devices (which results in obsolescence of older style headphones and demands the purchase of expensive new Bluetooth/USB-C ones), or the cessation of iTunes which forced music lovers to throw away their iPods, lose access to music libraries they'd paid for, and sign up to monthly streaming services (and devices capable of hosting them), or the literal impossibility of obtaining a replacement battery/screen/case/workable software update for any phone more than about 4 years old, planned obsolescence is an intrinsic part of the modern business model. And it's not just digital devices.

This higher-than-expected rate of replacement is always labelled as 'technological advancements' or 'safety innovations' or 'design improvements' by way of justification. It seems plainly evident it's simply a business model bolstered by advertising-driven, artificial demand for 'new' which makes people believe that there is always something better/bigger/faster available.

I refute the comment in the Issues Paper that it is difficult to identify deliberate attempts to reduce a product's lifespan so as to forcefully encourage a consumer to replace it.

Since its release in 2007, there have been 12 versions of the standard iPhone. To assess whether this is responding to genuine technological change, I propose a features and capabilities comparison. I hypothesise that the marginal benefit to the average consumer is minimal. To make a further assessment, compare the associated price tag of each version. Economic theory instructs that if one thing is far superior to another thing in the market, then the input costs must be comparatively higher and therefore so must be the priced charged to consumers. It is not so with consecutive iPhones whose comparative costs between versions is minimal, especially as they sometimes come onto the market within a year of the previous version. Meanwhile, Apple have long since stopped updating let alone repairing that first version (or even the more recent iPhones), meaning they are no longer usable.

Consumers already face a captured market that pressures them into phone upgrade at end of their 2 year contract - which always seems to coincide with faltering battery life and slower performance. It has long been accepted wisdom, as well as legally enforceable under Australian Consumer Law, that products should be fit for purpose for a reasonable period. With a price tag approaching the equivalent of an average worker's weekly wage, it cannot seriously be claimed that 2 years is a 'reasonable' timeframe for guaranteed usability of a smartphone.

If a 'natural evolution' defence is to be used as a means to diminish the right to repair, there must be a level playing field in order to restore consumer choice. If consumers are 'luddites' and don't wish to 'evolve', they



must continue to have that choice now and into the future. That is a fundamental principle of free market economics. If an economic defence of manufacturers' profits is to be espoused, a rebalancing of the relative costs to consumers and to the environment must equally be considered.

- Tax companies on products (or components) with short lifespans which 'cannot' be repaired
- Manufacturers should be obligated to take responsibility for the lifecycle of primary materials used, such as rare mineral recovery and the burden of landfill
- Products ought to be taxed for the proportional use of primary/raw materials versus recycled ones
- Mandatory industry contributions or compulsory membership of individual manufacturers in recycling schemes and e-waste solutions

It should not be supposed that the community should not be impacted through financial penalties and disincentives, such as heavy taxation and regulation suggested above, when it comes to opting for new over repair. We are on the precipice of irreversible environmental disaster, and without radical interventionist policies that force attitudinal and behavioural shifts, humanity will be unable to save itself from this existential crisis. Manufacturers must be incentivised to mitigate their impact and penalised for choosing not to. Of course those costs will be passed on to consumers. Government's role must be to enable individuals to make rational economic and environmental choices aligned with the greater need to consume less, including through a robust right to repair. Once in place, a manufacturer's decision to produce goods with short or truncated lifespans, or those which create barriers to repair, and an individual's choice to buy new or not repair goods, must attract consequences.

Regarding waste, the problem with e-waste isn't that it is uniquely (potentially) more damaging to the environment than general waste. The problem is that it's a new and increasingly large form of landfill which is not replacing nor proportionally reducing other types of waste. We just keep accumulating it. To deal with this looming crisis takes a two-pronged approach. In the primary market, taxation has a role. But it is essential that a right to repair and a thriving secondhand market enabled by stronger consumer protections complements and supports rational consumer decision-making.

Whereas planned obsolescence adds to the e-waste problem due to premature failure of devices, the right to repair and fostering a culture of repair would make a secondhand market more viable. When new products do enter the market, it is less likely still-working devices would be so readily discarded. People sell outgrown babies' items and already-read books to a pool of willing buyers - there is no obvious reason except the existing artificial barriers to owning and maintaining a device with confidence of one's legal rights that these products cannot find a hand-me-down market.

One benefit of a right to repair and investment in the repair market which has not been raised is the revival of Australia's fading manufacturing capabilities to ensure we remain a nation that makes things. Genuine competition and the choice of independent repairers, rather than the limits imposed by restricting the repair to 'authorised repairers' can only benefit consumers and the broader local economy through job creation and upskilling.



Original Equipment Manufacturer (OEM) warranties lock in consumers who are informed - rightly or wrongly - that they must use authorised repairers to fix something even if not covered by warranty or else the warranty is forfeited. An owner's right to repair is so minimised that an independent repairer who investigates a problem to provide a quote to fix it may void the manufacturer warranty. In this context it is made significantly more difficult for a consumer able to make an informed choice about a course of action.

I am a (petrol) scooter owner. My three year manufacturer warranty dictates that I undertake mandatory servicing at set intervals. Servicing by an authorised repairer is performed at very limited locations and resultantly, at high cost, therefore negating any gains by choosing a cheaper model. In fact, the number of authorised repairers for all brands of scooters is so limited that competition in the primary market is irrelevant, disproving the assertion that high repair costs cross-subsidise lower prices in the market for the original product. Why are there so few repairers? In the age of delivery riders and a renaissance in two-wheeled transport to beat traffic congestion, I question whether authorised repairers are adequately compensated under warranty schemes, or if the fees paid to them to repair under warranty creates an economic environment which discourages them from participating in the scheme. Or perhaps it is a deliberate constriction of competition to drive up the cost of servicing and repair.

Either way, I feel sure that manufacturer refusal to allow independent repairs with the reasoning of 'quality assurance' removes choice and decision-making autonomy from the consumer (that is, the rightful owner) of the product. And again, OEM servicing is only of benefit when buying new goods and further discourages a secondhand market, so it cannot be claimed that it is "an efficient business strategy that benefits consumers" at large.

The economic theory that purports consumer harm by OEM servicing (and thereby non-competitive repair markets) is likely to be limited if there is a highly competitive primary market by creating downward pressure on product prices is clearly disproven by the case of iPhones. The iPhone is not made cheaper to buy by being difficult to get fixed comparative to other brands.

The argument that consumer data security is at the heart of restricting repairs to authorised repairers is a nonsense, or otherwise easily remedied. If there was legislation which made issues of data security for all repairers equal under the law, and if info sharing in the industry between all repairers was mandated (such as proposed for vehicle repairs), there would not be valid concerns about repair quality, safety nor security between OEMs as compared to independent repairers. Indeed, a non-competitive repair market increases risk to privacy and data security if a consumer's most rational economic choice is to throw away a personal device without deleting its contents because of the prohibitive costs or hassle to repair it first. In such a scenario, the device may subsequently be rescued by someone with the ability to fix it and access the former owner's personal data.

The only argument remaining against the right to repair is the intellectual property rights of manufacturers. While multinational companies may forfeit their monopoly profits if the right to repair becomes enshrined in law, my sympathies are not loyal to them and neither should be the government's. Instead we should be pioneering an age where business model impacts on the environment are not merely deemed 'externalities'.



We could be leading a resurgence in the values of the 'make-do' post-war generation and strengthening the skills and technical capabilities of our citizens. We ought to be demanding that real world impacts be reflected in the cost of business and in product pricing so that informed consumers continue to make rational economic decisions that actually fit the theories upon which our system is built.

Finally, when it comes to ethics and the very foundation of 'private property rights' used as a moral defence of capitalism globally...if I bought it legally, I own it, and if I own it you have sold your right to control what I do with it, and if I control what I do with it I have the right to repair it if I choose to, and if it's economically and environmentally rational, I **will** chose to.