



Right to Repair
Productivity Commission
By email: www.pc.gov.au/inquiries/current/repair

23 July 2021

RE: Right to Repair Draft Report Consultation, June 2021

Thank you for the opportunity to respond to the draft consultation reports.

By way of background, GAMAA was formed in 1957 and currently has 37 member companies both large and small. It is the peak industry body representing the interests of Australian manufacturers and suppliers of domestic and commercial gas heating, hot water, cooking and commercial catering appliances and associated components (gas products). Our member companies employ a combined total of 4,500 workers in Australia, with a significant Australian manufacturing and employment base and extending to the gas appliance service industry. The vast majority of the 12 Million domestic gas products enjoyed by Australian consumers are supplied by GAMAA members.

GAMAA supports the submission from AiGroup and the AWHF on this matter. Our comments below focus on the proposals in the specific and critical context of gas products.

General Comments

The shift from the Trade Practices Act (TPA) to the current Australian Consumer Law (ACL) has resulted in concerns for manufacturers. At the core is that 'acceptable quality' is framed in the ubiquitous 'reasonable consumer' context. The ACL prescribes a Major Failure to be "...*failure in a good or product occurs where a 'reasonable consumer' would not have purchased the good or product had they known about the problem*" and the consumer has the right to decide on Repair, Replacement or Refund. There is virtually no situation in which a consumer could not invoke this clause. The ACL therefore provides a framework for consumers to make unreasonable claims against manufacturers. Of course not all consumer claims are 'unreasonable', but for those that are, such as in cases where the product and/or the service provided by the manufacturer are not the root cause of the problem(s), manufacturers must often address the problem at their cost simply to avoid the potentially even more costly and time consuming litigation path and adverse (and unjustified) social media coverage resulting from consumers 'exercising their rights' without any accountability or acceptance of responsibility on their part. These are not equitable outcomes for manufacturers.

As such, caution is warranted to ensure any additional 'Right to Repair' regulatory intervention strikes a reasonable balance between the rights, responsibilities and interests of consumers and manufacturers.

GAMAA members also note a need for clarity as to whether Right to Repair entitlements and responsibilities would apply within the manufacturer warranty and/or as a result of the ACL consumer guarantee.

Detailed Comments

Draft Recommendation 4.2 *'The inclusion of text in manufacturer warranties that states that entitlements to consumer guarantees under the Australian Consumer Law do not require consumers to use authorised repair services or spare parts'*.

We read the intent of this recommendation to be that entitlements to consumer guarantees do not require the use of repair services and/or spare parts authorised by the manufacturer

Regarding repair services, our February 2021 submission highlighted that, compared to many other consumer goods, gas products are complex, expensive and long lasting and form part of complex systems and require installation, commissioning, fault finding and repair by specialist technicians. From the collective experience of our members over many years, there are serious concerns about the quality and safety of repairs on these complex products and systems by repairers not authorised by manufacturers, as they often lack the necessary skills and knowledge, even if they are licensed by regulatory authorities to carry out such work. There are many cases where repairers not authorised by manufacturers attempt to carry out repairs and either fail to fix the problem and/or introduce new problems and/or cause damage to the gas product and/or installation. There is no warranty or guarantee from the service provider for any of their work and in many cases the provider or the consumer expect the product manufacturer to unpick the (defective) work and rectify it, as well as address any original defects at their cost. This is clearly not fair to manufacturers.

Often the gas product is not the root cause of consumer complaints, problems or failures. Rather it is some other part of the system and/or flaws in the design, assembly, installation or commissioning of that system. In most cases, a specialist technician authorised by the manufacturer can diagnose and repair a product or resolve a 'system' problem more effectively and at a lower cost than an alternative repair service provider.

Regarding parts, the repair of parts contrary to manufacturer instructions and the use of replacement parts not originating from, or specified by, the manufacturer is likely to adversely impact safety, functionality and reliability of the product and in many cases will contravene the requirements of Australian Standard AS4575:2019 *'Gas Appliances – Servicing of Type A gas appliances'* (now mandated in various states and territory jurisdictions and under consideration by other jurisdictions). The testing that confirmed the safety of the product, and the subsequent (mandatory) product certification, will also be rendered invalid. In these cases, the connection of the product to the gas supply and subsequent operation would contravene the various state and territory gas safety regulations and, more importantly, result in serious safety concerns for consumers. This applies whether or not the parts are replaced during warranty or outside of warranty.

In view of the above, GAMAA strongly opposes Draft Recommendation 4.2. for gas appliances. Rather, for warranty repair claims the ACL should place an obligation on the consumer to approach the manufacturer in the first instance. If the manufacturer does not respond in a timely manner or otherwise fails to meet their obligations under the ACL, the consumer has the right to approach an alternative repair service provider.

As a general rule, manufacturers should not be obliged to reimburse consumers for warranty repairs carried out by an alternative repair service provider if they never approached the manufacturer to carry out such a repair in the first place, and/or parts that did not originate from, or were not specified by, the manufacturer were used.

Manufacturers should also have the right to refuse warranty if the root cause of the product defect or fault is consumer misuse or a failure by the consumer in their responsibility to have prescribed periodic service and maintenance works carried out.

Furthermore, there must be an obligation on any service provider to warrant their work for a reasonable period relative to the product and work performed.

Information Request 4.3 Prohibiting manufacturer warranties from being voided if consumers do not use the repairers and spare parts specified by the manufacturer.

From our comments to Draft Recommendation 4.2 it follows that we do not support any proposal that prohibits manufacturers from voiding their warranty if repair service providers and/or parts not authorized by the manufacturer are used.

Draft Recommendation 3.1 'Guidance on reasonable durability of products' and Information Request 6.1 'Product labelling scheme' (for durability).

As we read it, this recommendation aims to provide guidance as to how long major categories of common household product within specific price ranges can be expected to last without fault and that it is expected the consumer does not have to pay for repairs and parts during this timeframe.

Our members are not aware of any widespread consumer perceptions that gas products are not durable. Indeed, many gas products are known to last multiple decades. As such we do not support this proposal for gas appliances.

In any case, the development of credible durability information for the thousands of product categories in the market would be an enormous undertaking and cost and should be subject to a rigorous cost/benefit analysis before any significant work proceeds. The reports also mention that such an exercise should '*draw on estimates developed by manufacturers*'. Whilst we agree on the necessity for a factual basis, the result would be that the ACCC guidance information would reflect manufacturer field experience of product durability which casts serious doubt on the usefulness of such guidance. Nevertheless, if this work is undertaken, we believe there are several important factors that present challenges and warrant consideration:

- a. The meaning of durability needs to be accurately defined. As an example, if a product that typically lasts 16 years requires a relatively cheap and minor part after 8 years and is out of manufacturer warranty, would the ACCC 'guidance' classify the product as not being sufficiently durable?

- b. Should the durability 'guidance' apply to consumable components of products that, by their very nature, have shorter durability than the product they are a part of (for example air filters, sacrificial anodes and certain types of valves)?
- c. Any 'guidance' provided on product durability will set expectation benchmarks in the minds of consumers so is likely to be construed by them as an implied warranty.
- d. The system that the product is a part of will impact product durability. Manufacturers have no control over systems that are flawed in design, assembly or have been incorrectly commissioned (for example, a ducted gas heater with severely undersized air distribution ductwork).
- e. Repairing parts contrary to manufacturer instructions and the use of replacement parts not originating from, or specified by, the manufacturer is likely to have a detrimental impact on product durability and is beyond the control of manufacturers.
- f. Periodic servicing and maintenance carried out in accordance with manufacturer specifications is a core element of durability for many product categories, especially gas appliances. A failure to do this is likely to have a detrimental impact on product durability, as well as functionality, safety and performance and is beyond the control of manufacturers.
- g. The operating environment covers many sets of extreme conditions and usage patterns which impact durability. For example, products subject to domestic use will typically last longer than products subject to institutional or commercial use but the operating environment is beyond the control of manufacturers.
- h. Any correlation between 'price' and 'durability' will vary by product category. More expensive products don't necessarily last longer. The introduction of new technologies may result in multiple benefits such as improved energy and water efficiency, and product safety. These add costs but cannot guarantee greater durability. For example, more efficient gas heaters (those with higher 'Star' ratings) have more advanced and complex technology and are therefore more expensive to produce than less efficient models which is reflected in their pricing. However, durability is likely to be the same as the less efficient product. Other factors that impact price but not durability are features & benefits, aesthetics and country of origin.

Information Request 6.1: The Commission is seeking further evidence about how significant these information gaps are, as well as the costs, benefits and design of a product labelling scheme.

From our comments to Draft Recommendation 3.1 it follows that we do not support a product labelling scheme for durability for gas products.

Please do not hesitate to engage further with us on this matter.

Best Regards

Ross Jamieson
President