

# Right to Repair Draft Report

Submission by Legal Aid Queensland

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### Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to comment on the Productivity Commission's draft report on the *Right to Repair* (the draft report).

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. We seek to offer policy input that is constructive and is based on the extensive experience of LAQ's lawyers in the day to day application of the law in courts and tribunals.

### Submission

We support the proposal in Draft Recommendation 3.2 concerning powers for regulators to enforce guarantees. As noted in our initial submission, our experience has been that consumers commonly have difficulty enforcing their rights under the Australian Consumer Law (ACL) through the Queensland Civil and Administrative Tribunal (QCAT) or court.<sup>1</sup> The expense and time involved in making an application to QCAT for a consumer guarantee remedy is cost prohibitive where the value of the dispute is below a certain threshold. The introduction of effective alternative dispute resolution models would encourage more consumers to seek a remedy under the ACL such as a repair, replacement, or refund.

We also note references in the Draft Report to recent amendments made to the text of the ACL:<sup>2</sup>

*In December 2020, the ACL was amended to clarify that if a product has two or more minor failures, it is considered a major failure (ACCC 2021g). This has the effect of switching the choice of remedy from the supplier to the consumer. If consumers would prefer a refund or replacement over repair, this becomes an option they can choose.*

The ACL was amended to provide that multiple instances of a failure to comply with a consumer guarantee can amount to a 'major failure' provided a reasonable consumer, fully acquainted with the nature and extent of the failures, taken as a whole, would not have acquired the goods. The amended test reflects the interpretation regularly applied in state and territory tribunals (see *Safi v Heartland Motors Pty Ltd t/as Heartland Chrysler* [2016] NSWCATAP 80 at [92]; *ACH Computing Pty Ltd v Austral Pty Ltd trading as Brisbane City Land Rover* [2020] QCAT 176 at [21]). In our view, these amendments are unlikely to have a material effect on the resolution of consumer guarantee disputes without expanded access to effective dispute resolution.

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<sup>1</sup> Legal Aid Queensland, Submission No 68 to Productivity Commission, *Inquiry into the Right to Repair* (2 February 2021).

<sup>2</sup> Productivity Commission, *Inquiry into the Right to Repair* (Draft Report, June 2021) 95.