

# CHOICE

SUBMISSION TO THE PRODUCTIVITY COMMISSION

**RIGHT TO REPAIR**

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# About us

CHOICE is the leading consumer advocacy group in Australia. CHOICE is independent, not-for-profit and member-funded. Our mission is simple: we work for fair, just and safe markets that meet the needs of Australian consumers. We do that through our independent testing, advocacy and journalism.

To find out more about CHOICE's campaign work visit [www.choice.com.au/campaigns](http://www.choice.com.au/campaigns)

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## INTRODUCTION

Consumers want products that last longer and that are easier to fix when something goes wrong.

There is strong community support for a right to repair. 75% of people agree that Australians need a stronger right to repair the products they own. Only 4% of people disagree.<sup>1</sup>

CHOICE supports the recommendations in the Productivity Commission's Draft Report, particularly those that would provide consumer regulators with greater powers to resolve complaints and the introduction of a super complaints process to help raise major issues spotted by consumer advocacy organisations.

However, not all consumer needs were fully captured in the Draft Report. There is opportunity for the Commission to go further by recommending reforms that will practically assist consumers when they are shopping for products and when they are dealing with a broken product.

The Final Report should recommend a suite of reforms to put quality information into the hands of consumers. People should be able to clearly see:

- How long a manufacturer expects a product to last (to know how long consumer guarantee rights apply).
- The minimum period essential software updates will be provided by the manufacturer
- How durable and repairable a product is in comparison to others.

With this information, more people will be able to identify products that better meet their needs. Over time, manufacturers and retailers will improve durability and repairability for products where they see clear customer demand. Even better, more Australians will be able to recognise when they are eligible for a repair, replacement or refund under consumer guarantees. Done well, these interventions will see more people using their existing rights under the Australian Consumer Law the way they were intended.

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<sup>1</sup> Nationally representative consumer research commissioned by CHOICE, see appendix one.

# 1. Summary of recommendations

## CHOICE response to Productivity Commission Draft Recommendations

	<b>Productivity Commission (PC) Draft Recommendation</b>	<b>CHOICE position</b>
3.1	Guidance on reasonable durability of products	Support but the PC should build on this recommendation and implement a point-of-sale disclosure requirement.
3.2	Powers for regulators to enforce guarantees	Support but regulators should be required to publicly report on complaints and ADR outcomes.
3.3	Enabling a super complaints process	Support but the process should apply to all ACL issues.
4.1	Evaluate motor vehicle information sharing scheme	Support.
4.2	Additional mandatory warranty text	Support but the PC should build on this recommendation and require text to specify further consumer law rights.
7.1	Improving the management of e-waste	Support.
7.2	Use of GPS trackers to monitor e-waste exports	Support.

## Additional recommendations from CHOICE

### **Recommendation 1:**

The Australian Consumer Law is amended to require manufacturers to inform consumers at the point-of-sale about how long a product should reasonably last. This disclosure should be prominent and consistent between products and brands to facilitate comparisons. The disclosure format should be consumer tested before implementation.

### **Recommendation 2**

All State and Territory Fair Trading bodies issue regular public reports on consumer complaints received and outcomes achieved through ADR.

**Recommendation 3:**

Consumer groups should be able to lodge super complaints on systemic issues causing significant harm to consumers or any potential breach of the Australian Consumer Law.

**Recommendation 4:**

The Australian Consumer Law is amended to require manufacturers to inform consumers at the point-of-sale about the minimum period of time that they will provide essential software updates for any product that depends on software to function. This disclosure should be prominent and consistent between products and brands to facilitate comparisons. The disclosure format should be consumer tested before implementation.

**Recommendation 5:**

Additional warranty text should state that goods should last for a reasonable period and that this is often longer than the warranty period, directing people to detailed guidance prepared by regulators. Language should be tested to make sure it's clear and easily understandable for consumers.

**Recommendation 6:**

The Australian Consumer Law is amended to require that manufacturers and retailers proactively inform consumers of their rights under the ACL when consumers contact them about product issues. There should be penalties for businesses that repeatedly fail to inform consumers of their rights.

**Recommendation 7:**

The *Copyright Act 1968 (Cth)* is amended to allow for the reproduction and sharing of repair information through the introduction of a fair use exception.

**Recommendation 8**

The Australian Consumer Law is amended to introduce a prohibition on unfair trading practices.

**Recommendation 9**

A durability and repairability labelling scheme is introduced in Australia. Government funding should initially be made available to establish a ranking system, with the aim of developing a mandatory labelling scheme.

## 2. The Australian repair sector

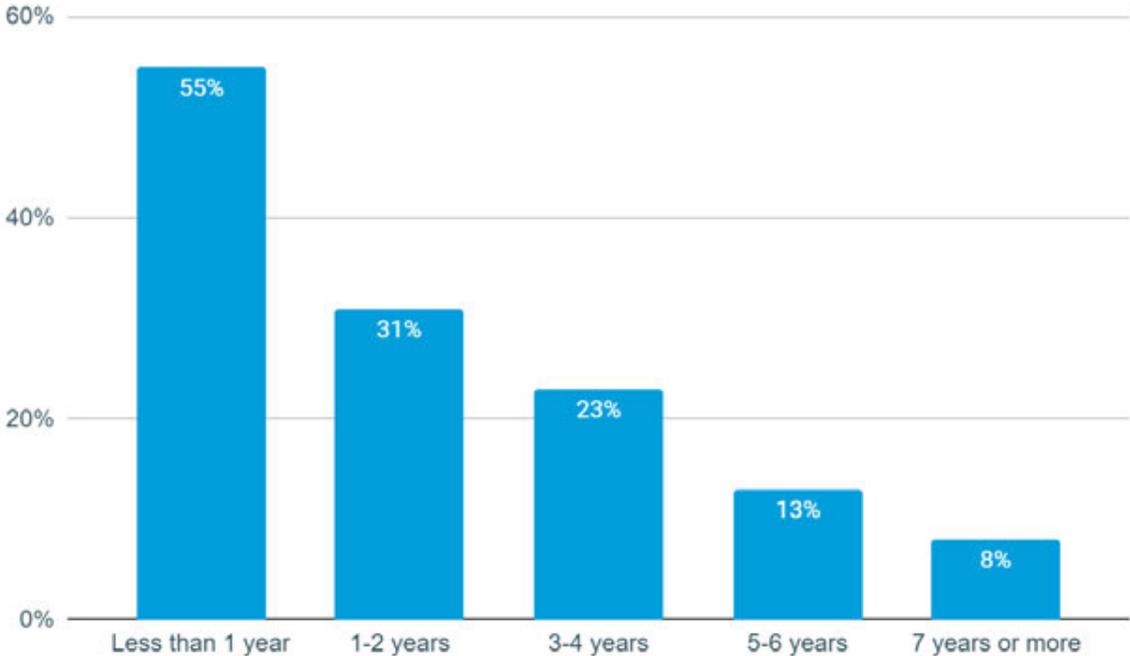
We largely agree with the Commission’s analysis about the Australian repair sector in chapter two of the Draft Report. This section provides additional research and insights for the Commission to consider in the Final Report.

### Consumer preferences when a product breaks

CHOICE has conducted research to better understand consumer preferences for repair when a product breaks (see Appendix One for full results).

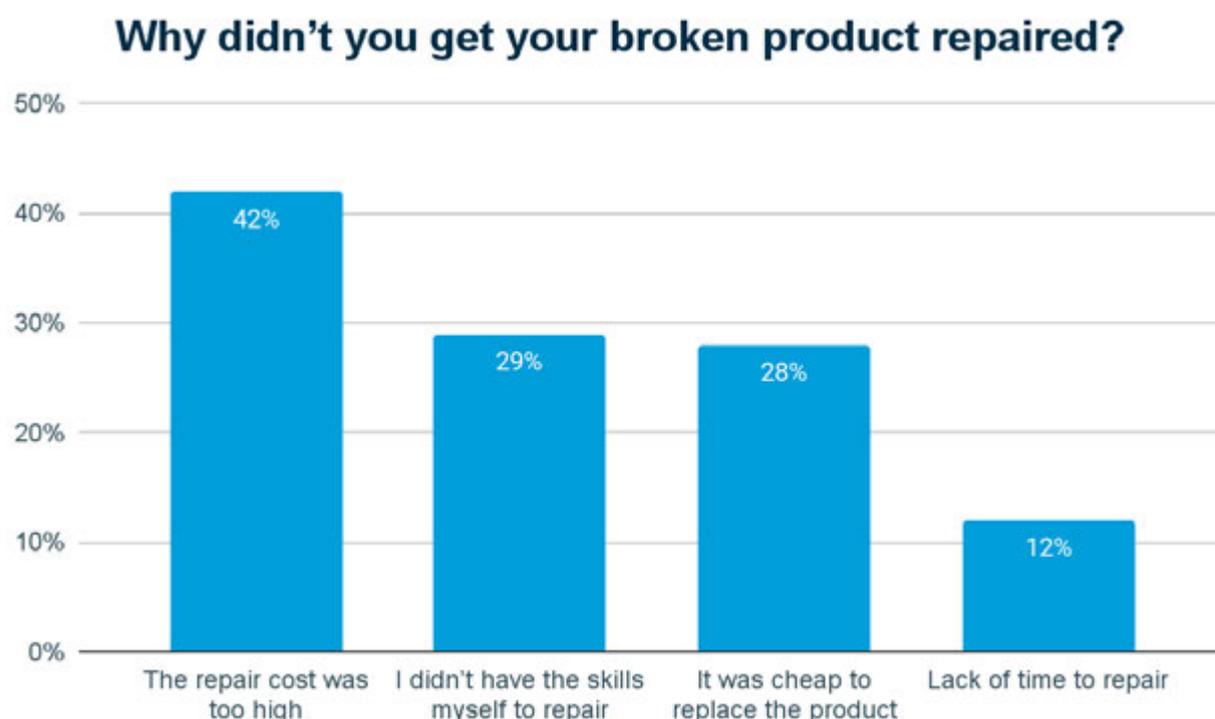
Broken or faulty products are common. In the last 12 months 23% of people have had issues where their products have stopped working, broken or been damaged or worn before they reasonably expected them to. Alarminglly, most people who experienced issues with a product, faced problems in the first 12 months of ownership.

**How long did you have your product before you experienced issues?**



People were most likely to experience issues with small kitchen appliances (28%), whitegoods/large kitchen appliances (22%), phones (19%), TVs (17%) and Computers (13%).

When we asked why people didn't pursue a repair for a broken product, the main reason given was high cost. This confirms Draft Finding 2.1, that a decision to repair a broken product is principally driven by price. However, a lack of skills and time are also important factors for consumers when deciding whether to repair a product. Interventions that increase consumer confidence with repair and make timely repairs easier to access will increase the number of people repairing goods over time.



To further understand consumer preferences when a major appliance breaks, CHOICE asked 6,571 members about the reliability of washing machines, lawn mowers, microwaves and TVs (full findings in Appendix two). Note that this survey was taken by people who are CHOICE members or people who are aware of CHOICE. This group of people is more likely to be aware of their consumer rights and up-to-date about the latest products in the market.

Our findings confirm the Commission's observation that consumer preferences for repair depend on the type of product that has failed. After a failure, most people preferred to have these products replaced (48%). 23% of people in our survey said they preferred a repair at no cost. However, a preference for repair varied greatly across products - many more people wanted a repair of a washing machine (30%) than a microwave (16%) or TV (19%).

Very few people wanted to upgrade their washing machine, lawn mower, microwave or TV when something went wrong. Almost no one was motivated by a desire to upgrade to a new product (1% of respondents). Most people with a problem product didn't go to their manufacturer for a remedy. The reason for this was primarily because the product was out of warranty and there was an assumption that little could be done.

## Factors that will increase demand for repairs

There are some factors that will likely make repair more viable and important in the near future that were not captured in the Draft Report. The Commission should consider these factors when assessing future consumer needs and the importance of access to repair in the Final Report.

Any sustained disruption to international supply chains will push people to repair their existing products. The COVID-19 pandemic is causing some disruption to international shipping. During 2020, CHOICE experienced some delays accessing goods for testing.<sup>2</sup> We are also aware of shortages for some electronics due to a global shortage of semiconductor chips.<sup>3</sup> In Australia, this appears to be affecting the availability of some computers, phones and is especially acute for new gaming consoles.<sup>4</sup> It is unclear how long these disruptions will last but they show that access to goods is not guaranteed in Australia. Any medium or long-term issues that lead to limited supply of consumer goods in Australia will change consumer demand for repair.

The other important factor that will likely increase demand for repair is consumer attitudes. Australian consumers are increasingly concerned about sustainability. As flagged in CHOICE's first submission to this inquiry, a majority (57%) of Australians say that environmentally friendly features are important to them when purchasing goods or services. We expect this figure to continue to rise. Given a growing awareness and concern about waste and the environment, we expect that more people will seek to repair products over time.

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<sup>2</sup> See <https://www.choice.com.au/shopping/everyday-shopping/bargain-hunting/articles/appliance-shortages>

<sup>3</sup> See <https://www.vox.com/recode/2021/8/5/22611031/chip-shortage-cars-electronics-automakers-gm-tesla-playstation-xbox>

<sup>4</sup> See <https://www.kotaku.com.au/2021/03/ps5-shortages-2021/> and <https://www.smh.com.au/technology/eager-gamers-can-t-be-consoled-as-chip-shortage-set-to-ruin-christmas-20210624-p583u6.html>

### 3. Repair rights in consumer law

We agree with the Commission's analysis in chapter three of the Draft Report that consumers have considerable rights under the consumer guarantees in the Australian Consumer Law (ACL). The challenge for consumers is in understanding and enforcing these rights.

#### Unclear rights lead to consumers paying more

We agree with the Draft Report's conclusion that reasonable product durability needs clarification. The lack of guidance leaves consumers and manufacturers or suppliers left to negotiate in each individual case. Given the power imbalance and information asymmetries between consumers and large businesses, consumers typically have less bargaining power in these negotiations.

There are significant costs to consumers because of the confusion about how long consumer guarantees last. In practice, this means that too many people are paying for extended warranties that do not provide any additional rights. In 2020, we found that 18% of people purchased an extended warranty in the last two years, primarily for electronics or appliances.<sup>5</sup> Most people said that they buy extended warranties for peace of mind, indicating that they do not believe they would otherwise have access to repairs should anything go wrong with their products.

Other people are replacing products or repairing products at their own cost when they don't need to (for analysis see chapter 4 on warranty issues).

With these costs in mind, we strongly encourage the Commission to model and include in the Final Report the likely unnecessary costs consumers are bearing due to paying for useless extended warranties. This should be factored into any cost-benefit analysis when considering the necessity of point-of-sale labelling and information interventions for consumers.

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<sup>5</sup> CHOICE, 2020 [Extended warranties and the Australian Consumer Law \(ACL\)](#) accessed 27 July 2021

## Consumers need clear disclosures about product durability

While we would welcome more specific guidance from ACL regulators about product durability, guidance isn't enough to solve the challenges consumers face.

There are two points when consumers need clear and independent information about product durability:

1. At the point-of-sale to make the most informed decision what product best meets their needs.
2. At a point-of-failure when a product breaks to guide them about options available under the Australian Consumer Law or other alternatives (such as self-funded repair).

Guidance from regulators will be a good tool but is unlikely to be present and easily usable when consumers need the information most.

The best outcome for consumers is that information is available at the point-of-sale about how long a product should reasonably last (i.e. a reasonable estimate of how long they can access a remedy under the consumer guarantees). The information would be even more powerful if still prominent and accessible at the point-of-failure, for example through a sticker on the product (placed in a similar way to star ratings for energy and water use).

Disclosure and notification interventions for consumers can have limited success. Disclosures have to compete for consumer attention and can be taken out of context by businesses for commercial gain.<sup>6</sup> However, if used well, disclosure is shown to increase competition and provide a reference point for a consumer when they make a complaint.<sup>7</sup>

To be effective, any information about durability should be prominent and consistent between products and brands to facilitate comparisons. An ideal outcome for consumers would be for this information to be determined by an independent and trusted party, rather than the manufacturer which can have strong commercial interests in limiting the length of time that they assist with product failures. However, we recognise that this level of involvement from regulators would be costly. The affordable alternative is that manufacturers have to provide a range or estimate about how long products should reasonably last. Regulators would need to act if they saw businesses misleading customers about this guidance.

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<sup>6</sup> ASIC (2019) REP 632 Disclosure: Why it shouldn't be the default, <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-632-disclosure-why-it-shouldn-t-be-the-default/>

<sup>7</sup> Ibid.

We note the Commission's brief point on costs of changing labelling and providing this information to consumers. This cost is minor compared to the costs borne by consumers from having imperfect information at the point of sale, through purchasing extended warranties they do not need and in not accessing their right to a remedy under the ACL. Manufacturers regularly change labels and packaging for marketing purposes - much more frequently than would be required for a disclosure about product durability. The cost of providing additional information about product durability is negligible if the Commission considers that changes to labels or packaging can be made alongside regular changes already done for marketing purposes by manufacturers and retailers.

The analysis in the Draft Report also fails to capture the benefits of clearer guidance and disclosure to industry. Greater clarity for business will allow them to plan for the availability of spare parts. NI (formerly National Instruments) has highlighted another benefit to industry from clarity on the lifespan of consumer products - that this information would give manufacturers better information to plan for the availability of spare parts.<sup>8</sup>

We strongly disagree with the Commission's approach of only recommending that ACL regulators provide guidance about product durability. This is a welcome first step but it will not be specific enough to assist consumers or be available when they need it. Instead, information for consumers at the point-of-sale and still available on products at the point-of-failure should be prioritised.

**Recommendation 1:**

- The Australian Consumer Law is amended to require manufacturers to inform consumers at the point-of-sale about how long a product should reasonably last. This disclosure should be prominent and consistent between products and brands to facilitate comparisons. The disclosure format should be consumer tested before implementation.

## Additional enforcement powers for ACL regulators

Consumers need additional practical assistance to enforce their rights under the ACL. Recommendation 3.2 will help achieve this. However, we ask the Commission to consider improvements to the NSW and SA Alternative Dispute Resolution (ADR) schemes when finalising this recommendation.

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<sup>8</sup> NI (National Instruments) 2019, What is reliability?, <https://www.ni.com/en-au/innovations/white-papers/13/what-is-reliability-.html> (accessed 21 July 2021).

All state and territory ACL regulators should be given the power to give directions on low-claim value disputes. However, we are unaware of the power being used in NSW and what any outcomes have been. The power may be used infrequently because the power appears to require the involvement of the Commissioner for NSW Fair Trading, rather than being delegated to NSW Fair Trading staff.<sup>9</sup>

The NSW government should disclose information on the use of the directions power. This would help to improve public policy and the publication of useful data can help industry improve as well.

There are similar challenges with the South Australian ADR model. We note that the SA model has led to a large number of cases being resolved.<sup>10</sup> However, there is no data available on the type or quality of those outcomes. Without this information it is difficult to assess whether consumers have been assisted to properly enforce their rights under the ACL or encouraged to accept an inadequate offer.

The Australian Financial Complaints Authority (AFCA) provides a useful model of disclosure with six-monthly reports that include details such as the nature, outcome and source of the complaint.<sup>11</sup> We strongly urge that this level of transparency occurs for any ADR system used by State and Territory Fair Trading bodies.

**Recommendation 2:**

- All State and Territory Fair Trading bodies issue regular public reports on consumer complaints received and outcomes achieved through ADR.

## A super complaints process would benefit consumers

CHOICE strongly supports draft recommendation 3.3 which would introduce a super complaints process. However, to get the greatest value from this new process, it should be expanded to allow consumer groups to lodge complaints on any systemic issues causing significant harm to consumers or potential breach of the Australian Consumer Law.

In considering CHOICE's recent work, we can identify a wide range of important consumer issues that could have benefited from a super complaints process. The safety and defect issues with Thermomix TM31 that ended up with the ACCC taking the Thermomix and Vorwerk, the German

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<sup>9</sup> <https://www.fairtrading.nsw.gov.au/about-fair-trading/our-services/consumer-guarantee-directions>

<sup>10</sup> Draft report, p 101.

<sup>11</sup> AFCA Datacube, 2021. <https://data.afca.org.au/at-a-glance>, accessed 26 July 2021

manufacturer, to court would have been a prime candidate for a super complaint.<sup>12</sup> A super complaints power could have assisted CHOICE in raising issues sooner and getting remedies for consumers sooner. This case is a good example of the interconnected problems consumers can face. CHOICE heard from many people who were struggling to get a fair refund or replacement from Vorwerk when they had a faulty product. They also were dealing with safety issues and misleading statements from the company. A super complaint from consumer groups should be able to cover all of these matters, rather than just be restricted to consumer guarantee issues.

Another example is portacot safety issues. CHOICE regularly identifies portacots that are too unsafe to be used by infants and toddlers due to suffocation, strangulation or limb entrapment risks.<sup>13</sup> A potential super complaint on this issue should be able to raise issues with product safety as well as the challenges people face in seeking refunds or remedies where a retailer hasn't initiated a recall.

UK consumers have benefited from consumer groups having the ability to lodge super complaints on a broad range of concerns. A recent example is the development of a new banking standard in 2019<sup>14</sup> to address the problem of scams related to real time payment technology after a Which? complaint in 2016 to the Payment Systems Regulator. Another example is a rail super complaint focused on customers seeking compensation in 2015.<sup>15</sup> Some of the recent changes to benefit consumers included the introduction of one-click compensation claims and forcing more rail operators to appropriately deal with consequential losses such as taxi fares or hotel expenses from delays and cancellations.

Overall, the UK Model provides a solid foundation for the design of an Australian super-complaints process. The key elements of the UK super complaints process that CHOICE recommends be adopted in Australia are:

- Designated consumer bodies that can make complaints;
- Stipulated response time from the regulator;
- Stipulated response time from Government; and
- The ability to raise super complaints on a broad range of consumer problems.

### **Recommendation 3:**

- Consumer groups should be able to lodge super complaints on systemic issues causing significant harm to consumers or any potential breach of the Australian Consumer Law.

<sup>12</sup>CHOICE, 2018. [Thermomix to Pay \\$4.6M for Downplaying Burn Risks](#) Accessed 27 July 2021.

<sup>13</sup> See

<https://www.choice.com.au/babies-and-kids/baby-transport/portable-cots/articles/portacots-fail-mandatory-and-voluntary-australian-standards>

<sup>14</sup> Which?, 2020. [Reimbursement for authorised push payment fraud \(which.co.uk\)](#) accessed 22 July 2021

<sup>15</sup> Which?, 2015. [Super-complaint to the Office of Rail and Road](#), accessed 22 July 2021

## Response to information request 3.1 - consumer issues with software

CHOICE asked our members and supporters to provide examples of any issues they had accessing repairs. We received a lot of comments about challenges with software updates that limited product usability.

People have told us about when the lack of software updates has resulted in product faults or has stopped them using the product for the purpose they purchased it. Some of the examples include mobile phones being used only as a music player, or all-in-one computers being used as a second monitor. We received a significant number of comments expressing frustration with Apple products.

Software should be expected to work for a reasonable period and any faults or updates should preserve the utility of the product. The current global shortage of semiconductors is likely to increase the demand for software to be functional for longer periods.

At minimum, products that require software should come with clear information at the point-of-sale on the minimum period that software updates will be provided by the company. The many examples we have received from CHOICE members about frustration with Apple products demonstrate that there is a group of consumers who have different expectations about durability and serviceability. They are paying a premium expecting a long life but would likely have chosen a different product if they had clear information at the point of sale about how long the company expected to offer software support.

### **Consumer voices - challenges faced with software**

*Apple no longer provide updates to software so my iMac is no longer safe and cannot be upgraded. Otherwise it works perfectly well but is too vulnerable to keep using...not good enough. Have to buy new instead of updating.*

*An Apple iMac computer purchased new in 2012 had ceased to be allowed any further software updates by the manufacturer after 6 years of use. There was nothing wrong with the iMac other than it was deemed to be redundant by Apple. A severe waste of some very rare and expensive components with no means of recycling by Apple.*

*Printers are a particular problem. Several times I've found that I've had to buy a new printer because printer drivers were no longer provided for updated operating systems. Invariably, the printer manufacturers and the computer/software manufacturers (e.g. Apple) blame each other. Printers may be cheap but it is extremely wasteful and inconvenient for the consumer.*

*I had a 2008 Mac Air laptop, purchased new in 2010 (I didn't know - and wasn't told - it was already a 2-year-old model). It started having problems with the airport card as well as running very slow by about 2013. I got a new airport card, which was very expensive. A year later the computer stopped working entirely. It couldn't be fixed. I had the hard drive removed and data copied. For a laptop that cost over \$1500, a 5-year lifespan is appalling value.*

*My laptop functions perfectly however it is considered too old to run updated software. The software has been made to not run without faults on older machines, despite my laptop being purchased with the highest possible specifications possible when purchased. the manufacturer will not upgrade it the laptop, they suggest I replace it. It is now almost 10 years old, however I was advised this in 2019 (when 7.5 years in age). It is an apple and in good condition/well cared for with low usage.*

*iphone S6 battery failing to charge ... even with a portable backup battery plugged in ... suspect Apple is manipulating the software to prevent it re-charging. Apple store claims my phone is too old to repair.*

*My biggest beef is with Apple. I have five 'Rolls Royce' Macs in my home (2 did belong to my deceased husband) and they're all working absolutely fine hardware wise. I had to buy the fifth one - a 2020 MacBook Pro because the other Macs were 2013-14 vintage and Apple do not provide security patches to Macs that cannot run one of the last three years MacOS. While it is understandable the the older Macs may not be able to run one of the last three years MacOS, it is not excusable that perfectly good computers have to be thrown out because security patches are not produced by Apple for the older systems.*

Given that software updates are often complex and can take significant resources, companies should nominate the minimum amount of time they will provide essential software updates for a product. The time should be expressed in years or months to allow for comparison between products. This information should be easily available before sale, for example in the product description or on a label. The information could be used in future as a data point when creating an overall repairability and durability labelling scheme.

**Recommendation 4:**

- The Australian Consumer Law is amended to require manufacturers to inform consumers at the point-of-sale about the minimum period of time that they will provide essential software updates for any product that depends on software to function. This disclosure should be prominent and consistent between products and brands to facilitate comparisons. The disclosure format should be consumer tested before implementation.

## 4. Competition in repair markets

CHOICE has concerns about limited competition in some repair markets. We aren't well placed to comment on the issues affecting independent repairers or businesses. Instead we observe that consumers benefit from increased independent access to repair tools and information as it creates more high quality and affordable options when something goes wrong with a product.

### Evidence of competition issues impacting consumers

In surveying consumers, we found high levels of anxiety about restrictions on repair rights and a strong desire from most Australians to use a range of repair options.

- Most people (66%) say they want to be able to use any repairer without losing warranty rights. Only 11% disagree.
- There is clear nervousness about using unauthorised repair options linked to warranty conditions - 63% of people agree that they wouldn't want to use unauthorised repairers to avoid losing warranty rights.
- 61% of people agree or strongly agree that the current law gives manufacturers too much power over which repairers consumers can use.
- Most people (43%) neither disagree nor agree that authorised repairers generally do a better job repairing items than unauthorised repairers. This indicates that consumers are open to using unauthorised repair channels.

We complemented this research by asking CHOICE members and supporters to share their experiences with us to better understand competition issues impacting consumers. Over 3,800 people shared their views and experiences with us. The survey responses indicate that people in regional areas faced significant barriers to having their products repaired. Many people in regional areas expressed frustration with limited options, long wait times and potentially insecure options for repair (like placing a mobile phone in the post to a repair centre). These comments and cases should be considered by the Commission when weighing up the costs of limited competition in the repair market on consumers. We are able to provide all anonymised comments to the Commission on request.

## Consumer voices - challenges with distance and repairs

*With Apple iPhones we always have to send it away through the mail, which seems very risky, and takes a long time.*

*We had a dishwasher and it was only 8 years old when we had to replace it. We had first off to find a company that could assess whether it was repairable or we needed to replace it. As we live in regional Victoria this was not the easiest to do, mainly because no-one would come to our home to do it (too far away). This meant we had to disconnect the dishwasher, load it into our trailer and transport it about 40 minutes away to a company that was willing to assess it... We were told by the company that to replace the part that needed replacing (they were not even 100% sure it was the actual problem) plus the labour costs would be close enough to the cost of buying a new dishwasher... That meant we had to pick the dishwasher up, dispose of it ourselves and purchase a new dishwasher.*

*It has become easier & cheaper to replace an item than repair it. I live in a regional town and lack of access to a skilled repairer for a dishwasher, oven, air compressor and many other items has caused me to simply dispose of broken appliances without attempting to have them fixed. Some were less than 4 years old.*

*I live in a regional area, we only have two repairmen that are constantly fully booked doing warranty work, so trying to get anything fixed is a headache in itself.*

*The computer I am writing this on is an all in one but I have not been able to get it repaired in regional Queensland because the back is not easily removed and the repairer, whom I have used before and am happy with, refused to take on the repair. I have found that, at other times I have had to send products, from Townsville to Sydney, to access the authorised repairer - not good enough.*

*I recently purchased a SMEG kettle where the inside has broken. The lid doesn't close, and it is dangerous with boiling water. I tried to replace it at Harvey Norman in my town of Nowra, but because it is a regional store, they can not replace it as they don't stock it. I have to drive over an hour away to try and have it replaced, and even then, there's no guarantee it will be in stock. It's a \$250+ kettle; it shouldn't be this difficult.*

## Evidence of public safety issues and third-party repair

CHOICE has not seen reports of cases where public safety is at risk due to third-party repair. Efforts by large manufacturers to withhold repair supplies, information or access to data increases the chance that independent repair options will be less safe or of poor quality for consumers. It seems likely that some manufacturers are overstating safety issues in order to restrict competition in the independent repair market.

## Warranties set the wrong expectation for durability

The Draft Report focuses on how some warranties discourage the use of independent repairs. We agree and strongly support action to stop manufacturers from misleading people about their ability to choose independent repair options. But, we also see larger issues. Warranties discourage large groups of consumers from seeking a remedy, including repairs, when their products break just outside of the manufacturer's warranty period.

In April and May we surveyed 6,571 CHOICE members and supporters - these are people with greater literacy about consumer rights issues. We asked them specifically about issues they faced with four different kinds of products: washing machines, TVs, microwaves and lawnmowers. Appendix three has the full details of this research.

Most people who have a problem with these products never try to get a remedy.

- Only 24% of people who had a faulty washing machine tried to get a remedy.
- 15% of people with a faulty TV tried to get a remedy.
- 19% of people with a faulty microwave tried to get a remedy.
- 18% of people with a faulty lawnmower tried to get a remedy.

When we asked people why they didn't attempt to get a remedy, the most common answer was because the product was past its warranty period (31% across all products).

When we examined comments from CHOICE members closely, we were alarmed to see that in many cases people who didn't seek a remedy had products that were only just outside of the warranty period - weeks, months or just a few years and well within the timeframe that they could seek a solution using the consumer guarantees. Many CHOICE members were assuming that nothing could be done with a broken product outside of the warranty period. Others had to argue

and push to get manufacturers to acknowledge that they were owed a repair under the ACL, not just within the manufacturer's warranty period.

### **Consumer voices - problems outside of warranty**

*Samsung Microwave, started smoking after 1 years use. Warranty was for 1 year only...was told would be better off buying a new one than repairing it would be too costly. Ridiculous! Samsung is a good brand and not exactly cheap. - CHOICE member with a broken microwave*

*I was told the remote wasn't covered by the warranty, and told to try eBay to buy a new one - CHOICE member with a broken TV*

*Had to pay in full as problems all occurred after 12 months warranty had expired. There was no problem getting replacement parts but they were very expensive. - CHOICE member with a broken lawnmower*

*As it was out of warranty I had to pay full price for the repair but the 2 years of use is hardly a reasonable period for it to require a major repair. It should have been at least partially covered by the manufacturer. - CHOICE member with a broken lawnmower.*

*Retailer at first told me it was out of warranty but I insisted that it was too young and wanted it repaired or replaced and eventually the manager gave in. It was repaired (simple problem) at no cost to me. - CHOICE member with a broken washing machine.*

*LG tried to use out of warranty as an excuse. Caved immediately when reminded of ACL obligations. Technician attended within a few days. Replaced screen and power supply about a week later. - CHOICE member with a broken TV.*

This research shows that warranty periods can have a “dampening” effect on consumers seeking a remedy. This happens in two different ways:

1. People assume that a product failure occurring out of warranty can't be addressed; and
2. Manufacturers or retailers strongly suggest or tell consumers that nothing can be done outside of the warranty period.

People are relying on warranty information as a guide for how long products should last and when they can get something fixed. This isn't correct - the consumer law provides much greater protections. There are significant costs to consumers because of this situation. People are repairing or replacing at their own cost. Some people are paying for extended warranties even when they provide the purchaser with no additional rights. Some people are replacing products when they don't need or want to.

The information that manufacturers currently have to provide to consumers with their warranty information is limited. Manufacturers are required to include the following text:

*'Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure'.<sup>16</sup>*

This contains no mention that products should last for a reasonable period or that consumer rights to a remedy often extend beyond manufacturer's warranties. We are unaware of the reason for this omission in the original Competition and Consumer Regulations.

Draft recommendation 4.2 should be expanded to require that manufacturers provide consumers with clearer information about their rights under the Australian Consumer Law. This will encourage more people to seek a remedy when a product breaks.

The Commission should also look at options to penalise companies that consistently fail to provide consumers with accurate information about the Australian Consumer Law. Manufacturers and suppliers currently have no obligation to proactively mention consumer law rights when discussing remedies. Far too many companies are still directly misinforming consumers about their rights, for example, by saying that nothing is possible after the end of a warranty period. Even more are lying to consumers by omission. Manufacturers and retailers should have a positive obligation to clearly inform consumers of ACL rights.

#### **Recommendation 5:**

- Additional warranty text should state that goods should last for a reasonable period and that this is often longer than the warranty period, directing people to detailed guidance prepared

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<sup>16</sup> R. 90, *Competition and Consumer Regulations 2010*.

by regulators. Language should be tested to make sure it's clear and easily understandable for consumers.

**Recommendation 6:**

- The Australian Consumer Law is amended to require that manufacturers and retailers proactively inform consumers of their rights under the ACL when consumers contact them about product issues. There should be penalties for businesses that repeatedly fail to inform consumers of their rights.

## 5. Intellectual property protections and repair

CHOICE strongly supports interventions to increase access to repair manuals, tools and diagnostic data. These interventions will make independent repair options more accessible to consumers and we would expect a broad benefit through increased competition in the repair market. Consumers outside of metropolitan areas would be most likely to benefit as they currently face more issues when seeking out authorised repair options in their areas (see consumer comments in chapter 4).

CHOICE has a longstanding view that the *Copyright Act 1968* (Cth) needs reform. The most efficient way to address IP issues would be to amend the Copyright Act to allow for the reproduction and sharing of repair information through the introduction of a fair use exception.

**Recommendation 7:**

- Amend the *Copyright Act 1968* (Cth) to allow for the reproduction and sharing of repair information through the introduction of a fair use exception.

## 6. Product obsolescence and the need for a labelling scheme

### Australian consumers need protection from unfair trading practices

In the CHOICE labs, we regularly encounter products that are poorly designed or manufactured in ways that mean they are likely to fail sooner than other models. For example, they may be made in ways that make it difficult or impossible to remove a panel and repair internal components. Products can be constructed with cheaper parts (like plastic instead of metal) or be assembled in ways that mean they are difficult or impossible to repair in future (components glued together or with proprietary batteries that cannot be replaced).

Consumers would benefit from policy interventions to improve product quality like product design standards or bans on planned obsolescence. We note the Commission's concerns that there is currently little formal evidence of premature or planned obsolescence in Australia to currently justify these reforms. One key reason for this is that no organisation is consistently collecting evidence about the problem in a way that allows products and categories of products to be compared over time.

The Commission should build towards larger reforms by first establishing a durability and repairability labelling scheme. A labelling scheme would provide better data to measure the problem while also providing much needed information to consumers about the quality of products.

Alongside of this, the Commission should recommend a prohibition on unfair trading practices. This reform would allow extreme cases of planned obsolescence and consumer harm to be dealt with by regulators.

#### **Recommendation 8**

- The Australian Consumer Law is amended to introduce a prohibition on unfair trading practices.

## Consumer demand for durability and repairability labelling

Consumers want more guidance and usable information about durability (how long a product will last before needing repair or replacement) and repairability (how easy it is to fix problems when they arise).

The draft report states that public information on product durability or repairability is often readily available (and is expected to expand in the near future) if a customer seeks it out.<sup>17</sup> This is incorrect.

While there is some information available for consumers, it is not comprehensive or available for all major purchases, such as white goods. Most crucially, information about repairability and durability is not available when people need it; when they are buying products or when their product breaks.

The cost to consumers because of these information gaps is significant. It means people are unable to make an informed choice about the product that best meets their needs. It also costs consumers when products fail. As has been detailed throughout this submission, consumers rely on manufacturer's warranty information about product durability far too often. This typically underestimates how long a product should reasonably last and how long someone can receive a remedy under the ACL. Consumers end up bearing costs as they pay for repairs or replacement products when they should be assisted by manufacturers or retailers.

At CHOICE, we test product performance. We do collect survey data to help us assess aspects of durability but this still leaves many information gaps. There is currently no information about, for example:

- If key parts are available and for how long;
- How long will it take/timing of sourcing parts (e.g. do they need to be imported);
- Estimated cost of parts; and
- Whether repair manuals are available for consumers or third parties to repair.

There is also no testing consistently underway for Australian consumers on how long products actually will run for. The procedures for longevity testing exist but CHOICE is not currently set up to undertake this work in our labs.

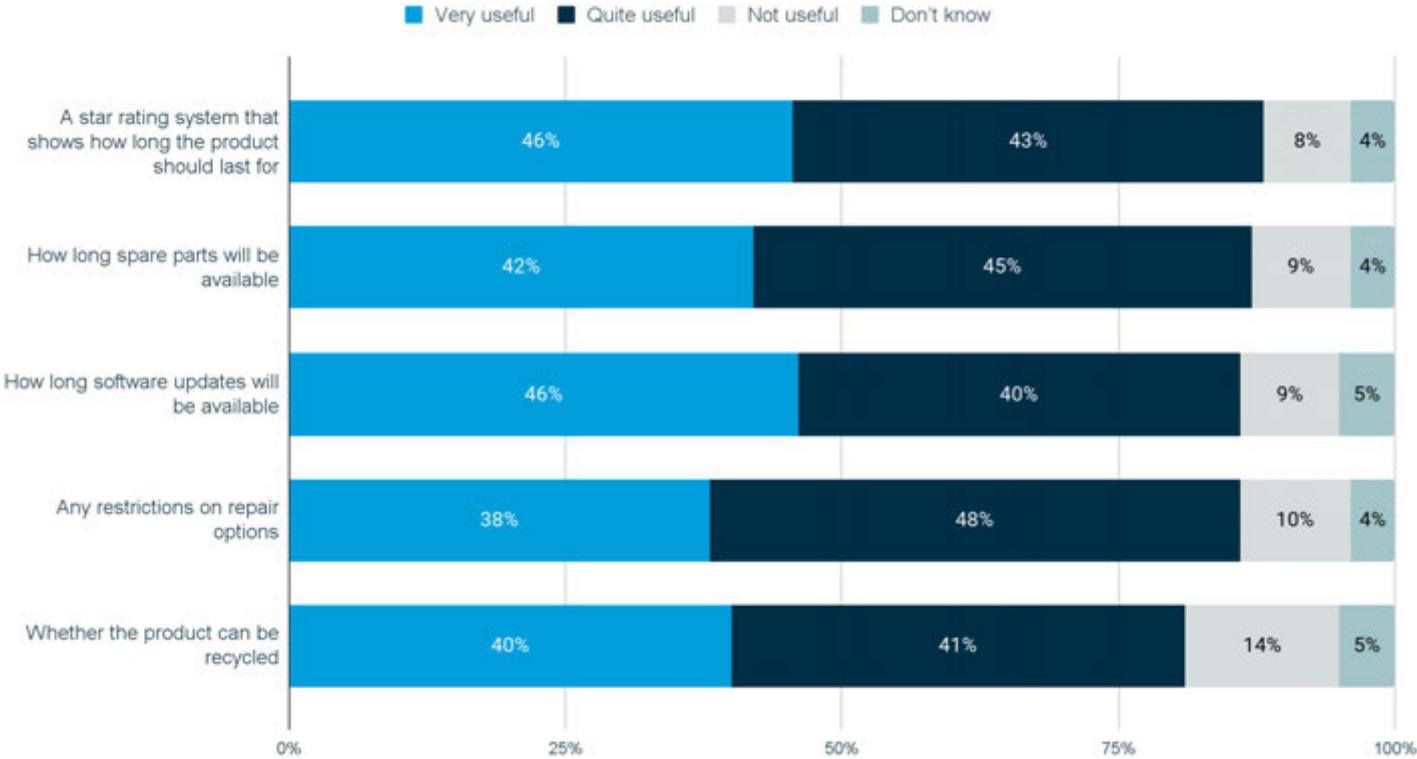
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<sup>17</sup> Draft Report, page 207.

Recent research conducted by CHOICE shows high consumer demand for more and better quality information about products at the point-of-sale (see appendix one for research summary). People would most value:

- A star rating system that tells me how long a product should last for (88%)
- Information about how long spare parts will be available for if a product breaks (87%)
- Information about how long software updates will be available for (86%)
- Information about any restrictions on repair options (86%)
- Information about whether the product could be recycled (81%)

**Perceived usefulness of information when shopping for a new product**



## Establishing a durability and repairability labelling scheme

CHOICE strongly recommends that a durability and repairability labelling scheme is introduced in Australia.

Consumers would benefit from a scheme that ranked and rated products on durability and repairability. It would be even stronger if that ranking was translated to a publicly available piece of information - a label - that let people easily see the information when comparing products. Over time, manufacturers would begin to compete where they saw durability and repairability were factors that were influencing purchasing decisions.

CHOICE has experience in developing criteria to rank products and in developing overall scoring systems that can apply across different products and categories of products. CHOICE was heavily involved in the establishment and updates of the Water Efficiency Labelling and Standards (WELS) scheme, which we consider a successful model that could provide a guide for how a durability and repairability labelling scheme could be developed in Australia.

In our experience there are several steps required to establish a labeling scheme.

### **1. Establish a ranking system**

This involves deciding what criteria is most important for repairability/durability, what data to use, what rating to give each data point and the methodology to calculate an overall score or scores. This ranking system could initially be developed by an organisation like CHOICE or by a government agency with input from relevant stakeholders, including consumer groups and industry.

CHOICE has considered what data points could be used in an initial development of a repairability and durability label. Depending on the approach taken, the scheme could initially use publicly available data (like CHOICE consumer survey data, product specifications and international data from groups like PROMPT and iFixit). However, sourcing additional data would make a scheme significantly more useful. High priority additional data points could include information from manufacturers about the availability of spare parts (especially for components most likely to fail), an assessment of whether repair information is easily available for products and testing data on product endurance.

## **2. Collect data and release the first ranking for feedback**

This stage involves ranking a small number of product categories. These first categories could be products that consumers experience significant frustrations with (mobiles, laptops) or high value products that people expect to last for significant periods of time (fridges, washing machines). Depending on the nature of the data required, governments could mandate that businesses provide data or the scoring system could penalise businesses that choose not to be involved initially.

The first rankings should be publicly released for feedback from experts. This stage should also involve consumer testing of the ranking system to ensure that the information provided is useful and actionable for a large number of people.

## **3. Further develop the ranking system and expand to more product categories**

The next stage involves refining the ranking system based on feedback, confirming the process across new product categories and building data over a large set of products. This stage should continue to seek feedback and conduct consumer testing as new categories are added.

## **4. Develop a labelling scheme**

Next, a visual presentation for a label needs to be developed that summarises the ranking information. The best labelling schemes have simple presentations, even with complex calculations behind them (like the WELS star rating system). Again, extensive consumer testing is required to make sure that the label is well understood by large and diverse groups of people.

## **5. Mandate that labels are prominently displayed at the point-of-purchase to allow consumers to compare options**

CHOICE's strong preference is for any labelling scheme to be mandatory. Information is most useful for consumers when it is consistent and comparable across products, not just on products that score well and use any voluntary labelling in marketing material. When there is confidence in the ranking system, the Federal Government should require that products carry labels with repairability and durability ratings.

## **6. Assess the scheme regularly for continual improvement**

The scheme should be reviewed by an independent party regularly to ensure it is meeting the needs of consumers. Data from the scheme should be publicly available to feed into broader policy debates about product design and durability.

### **Recommendation 9**

- That a durability and repairability labelling scheme is introduced in Australia. Government funding should initially be made available to establish a ranking system, with the aim of developing a mandatory labelling scheme.

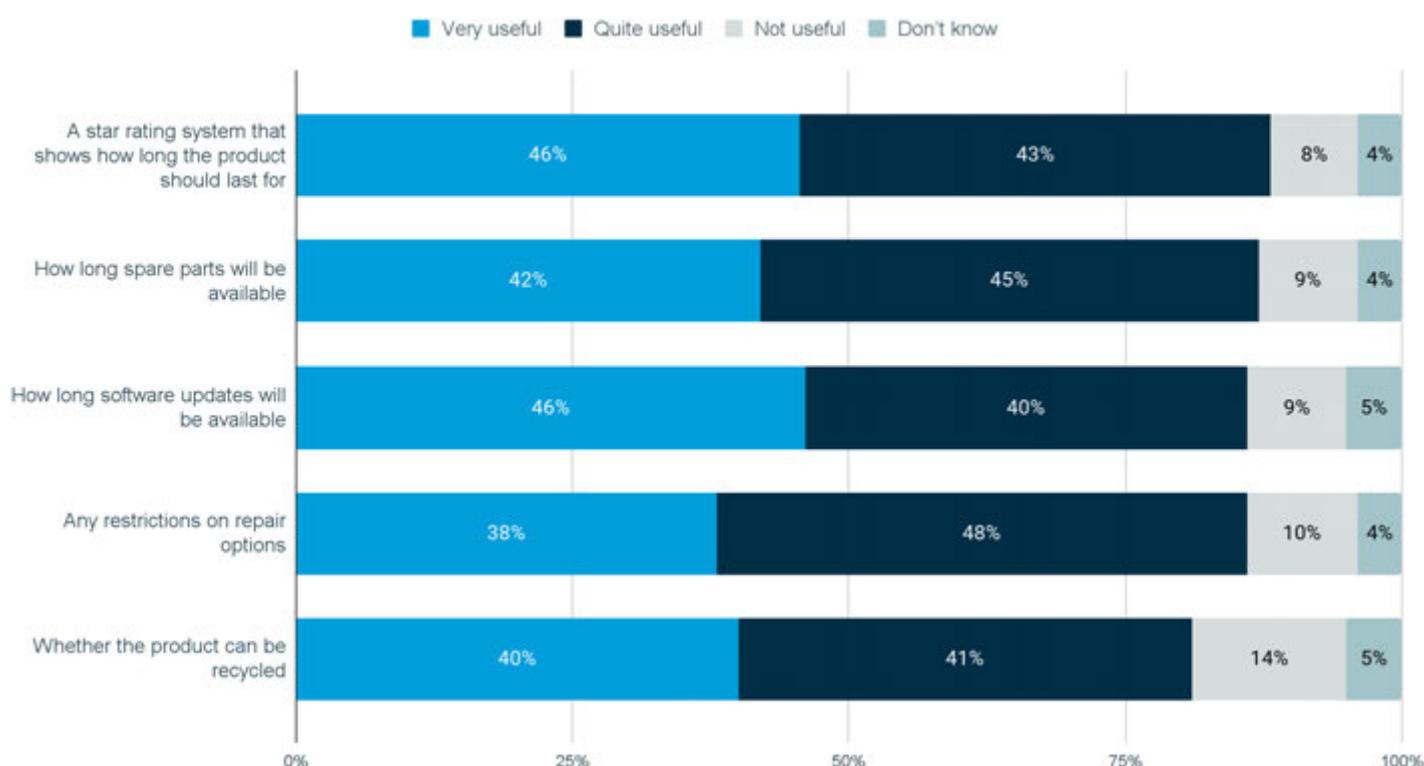
## Appendix one: consumer sentiment research

This survey was conducted online between 25-28 June 2021. The survey was designed and analysed by CHOICE and put in the field by accredited research agency Dynata as part of their weekly “Omnipulse” omnibus. 1,005 people completed the survey, data has been weighted to ensure it is representative of the Australian population based on the 2016 ABS Census.

75% of people agree that Australians need a stronger right to repair the products they own. Only 4% of people disagree. People want more information about products at the point of sale. They would most value:

- A star rating system that tells me how long a product should last for (88%)
- Information about how long spare parts will be available for if a product breaks (87%)
- Information about how long software updates will be available for (86%)
- Information about any restrictions on repair options (86%)
- Information about whether the product could be recycled (81%)

**Perceived usefulness of information when shopping for a new product**



Few people think that it is very easy to estimate the lifecycle costs of a product before purchase (12%). 36% of people think it is quite easy to estimate lifecycle costs. Most people say it's quite difficult (39%) or very difficult (13%).

### Consumer views on using authorised or independent repairers

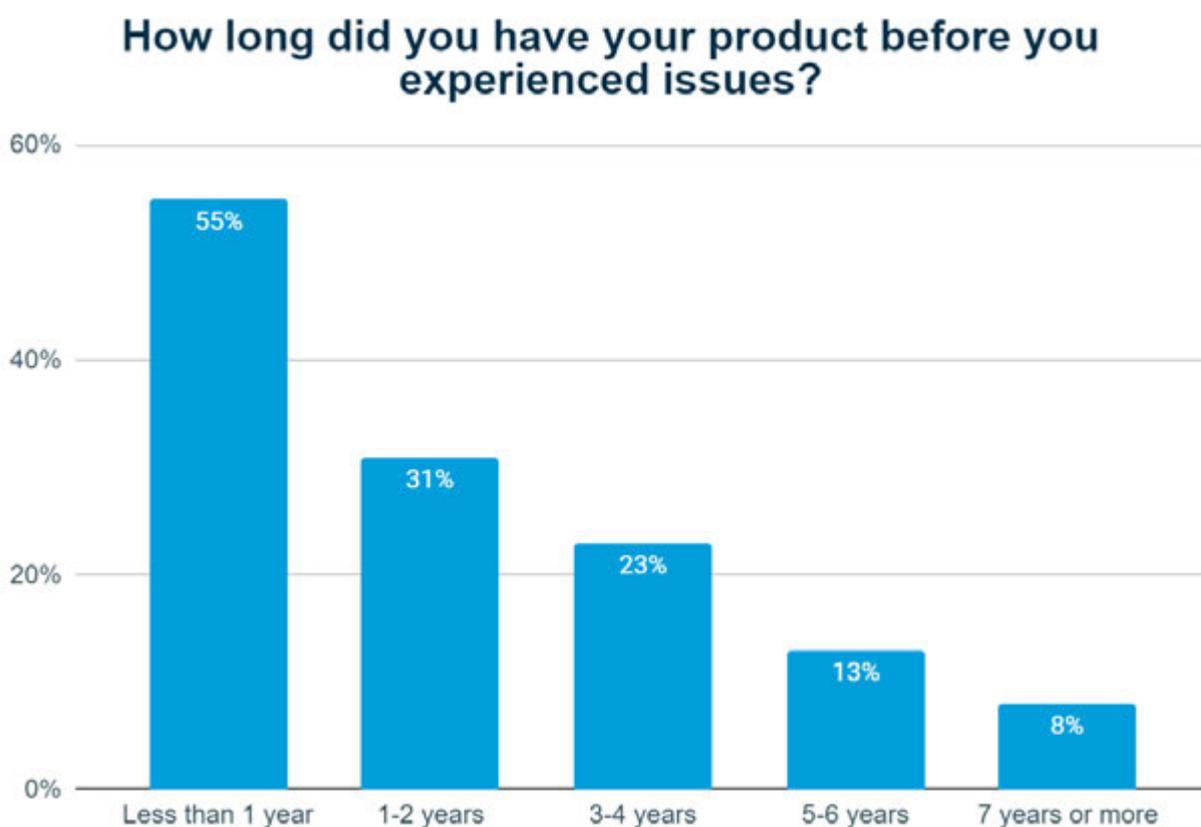
	Strongly disagree	Disagree	Neither disagree nor agree	Agree	Strongly agree	NET: Total agree	NET: Total disagree
I want to be able to use any repairer without losing warranty rights because they may be cheaper or locally available	4%	8%	22%	35%	32%	66%	11%
I wouldn't want to use unauthorised repairers to avoid losing my warranty rights	4%	9%	24%	39%	24%	63%	14%
The current law gives manufacturers too much power over which repairers consumers can use	3%	6%	30%	33%	28%	61%	9%
Authorised repairers generally do a better job repairing items than unauthorised repairers	4%	13%	43%	26%	14%	40%	17%

## Appendix two: consumer experience research

Survey was conducted online between 9-23 June 2021. The survey was designed and analysed by CHOICE and put in the field by accredited research agency The ORU. 1,047 people completed the survey, data has been weighted to ensure it is representative of the Australian population based on the 2016 ABS Census.

In the last 12 months 23% of people have had issues where products have stopped working, broken or been damaged or worn before they reasonably expected them to.

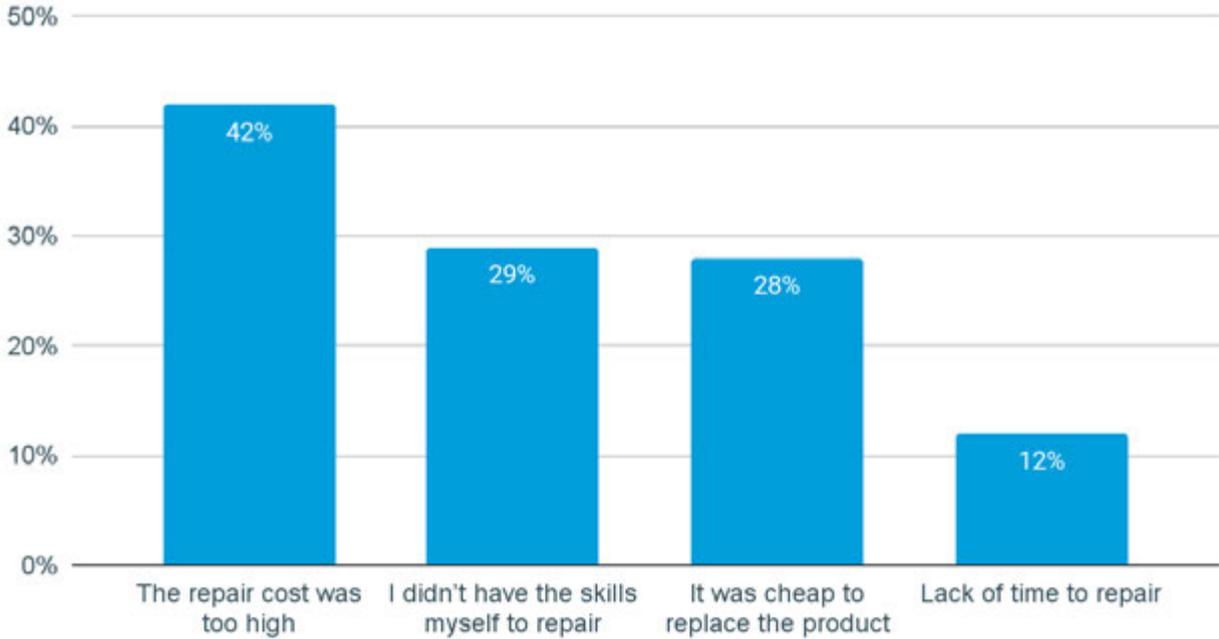
People were most likely to experience issues with small kitchen appliances (28%), whitegoods/large kitchen appliances (22%), phones (19%), TVs (17%) and Computers (13%).



Alarminglly, most people who experienced issues with a product, faced problems in the first 12 months of ownership.

When we asked why people didn't repair a broken product, the main reason given was high cost.

### Why didn't you get your broken product repaired?



## Appendix three: warranty and repair research

This survey was conducted online by CHOICE with CHOICE members across April and May 2021. The sample is not representative of the Australian population. Instead results reflect the experiences of people who are more likely aware of their consumer rights than the general population. A total of 6571 participated in the survey.

We asked people about issues they faced with getting remedies for four different kinds of products: washing machines, TVs, microwaves and lawnmowers.

What came back reflects what consumers tell us generally: most people who have a problem with a product never try to get a remedy like a refund, repair or replacement.

- Washing machines - only 24% of people with problems tried to get a remedy
- TVs - only 15% sought a remedy
- Microwaves - 19%
- Lawnmowers - 18%

When we asked people why they didn't attempt to get a remedy, the most common answer was because the product was past its warranty period. (31% across all products).

- Other common reasons were because they were only minor problems (31%)
- They fixed the problems directly (24%)
- Because they didn't think they succeed (13%)

Very few people didn't seek a remedy because they wanted to upgrade to a new product - just 1% overall (0% for issues with washing machines and lawnmowers and 1% for TVs, 2% for microwaves).

For the people who did seek a remedy, most people (59%) got their preferred outcome (replacement, repair or remedy) at no cost. 8% of people were denied a remedy, 16% had to pay in part or full.

Most people preferred to have their products replaced (48%), 23% preferred a repair at no cost. This varied greatly across products - many more people wanted a repair of a washing machine (30%) than a microwave (16%) or TV (19%)