

1 February 2021

Ms Yvette Goss
Right to Repair Team
Productivity Commission
www.pc.gov.au/inquiries/current/repair

Dear Sir/Madam

Submission: Right to Repair Issues Paper

The Consumer Electronics Suppliers Association (CESA) welcomes the opportunity to comment on the above Issues Paper regarding Right to Repair and possible policy options to address barriers to repair.

CESA is the premier national, industry body in Australia representing the consumer electronics industry. CESA Members are well placed to comment on possible policy options to address perceived barriers to repair, as they are predominantly global suppliers, well acquainted with the EU Eco Design Directive and have well established repair facilities/divisions inhouse or third-party authorised repair networks.

General Comments

Repair is a vast issue precisely because it is relevant to many actors and brings with it many other topics; cost and convenience of repair, training/qualifications, IP protection, standards, regulations, spare parts and environmental issues.

The crux of this issue is how to ensure that consumers make the right choice as undoubtedly it comes down to consumer preference in the end. CESA's first concern is consumer safety and protection. We believe repair cannot be undertaken by just anyone, it is more important to 'repair it right'. There are some repair operations that are easy and for those there are tools available today. There are other key repair operations for major appliances, however, that must be performed by professional repairers, who will take liability and responsibility for their work.

The European Commission, in their wisdom, decided to put safety first with the finalisation of the eco-design requirements for resource efficiency and opted for repair work to be undertaken by professional repairers.

Reparability is a core topic when it comes to home appliances, both large and small. In this regard, the EU has introduced a Directive to guarantee that spare parts remain in the market for up to 10 years after their production. Even before the EU Directive, it is estimated that 80% of European (and Australian) requests for repair of home appliances to suppliers (APPLiA and CESA Members) resulted in actual repair. These repairs were only possible because home appliance suppliers kept

spare parts in stock for current and old product models. In addition, repair often appears to be a valuable part of the after-sales strategies and remains a way for the different brands to compete to offer suitable services to consumers.

CESA strongly believes the scope of future RTR policies/proposals should focus upon products and repair markets where there is evidence of low durability of products, lack of repair facilities, insufficient nationwide coverage and no effective recycling programs in place. CESA, thus, considers that major household appliances (including home entertainment and AV devices) should be exempt from RTR proposals as Australian Consumer Law provides strong protection for consumers re access to right to repair. In addition, the durability of consumer electronics has vastly improved over time where consumers replace products (consumer preference) long before they become defective.

In addition, CESA considers the ACCC already has substantial powers under the Competition and Consumer Act 2010 to address RTR issues, for example, recent proposed amendments in relation to sharing information for motor vehicle service and repair.

Products under Warranty

In an RTR context, the supplier/manufacturer should have the first' right to repair' if the product is still under warranty.

There should be an obligation on the consumer to approach the supplier/manufacturer for warranty repairs in the first instance. If the response is not timely, or the supplier/manufacturer unable or unwilling to resolve the matter satisfactorily, then of course the consumer should be able to approach an alternative third party and it would then be reasonable for the consumer to seek compensation from the supplier/manufacturer for reasonable costs.

This consumer obligation is not covered under the existing ACL, not does it seem to have been considered in the RTR paper. It considers 'repair' but not the subset and unique case of 'repair under warranty'.

Cost of Repair

The cost of repair has been a discussion topic for a long time and the general consensus is that for large home appliances, for instance, nearly half of the cost of the service of defective products goes to the repairman. The figures further show that for large appliances, such as fridges and washing machines, 37% of the average price for repair is the cost of the spare parts; 16% goes to transport and 5% are listed as other costs.

Within this framework, for the first time, the EU legislation has stated the right to repair has to be pursued through professional repairers in order to guarantee consumers' safety, which is also at the heart of CESA's priorities. When addressing this topic, we have also to look at other data related to durability: the fault rate of

products. For example, it is estimated that in the last decade the percentage of faulty washing machines fell from approximately 9% to 4%. This is an example that product durability has improved and continues to improve.

End of Life – consumer electronics e-waste

Another topic related to repair is e-waste, which is closely connected with durability and reparability of home appliances. Through recycling, materials at the end of their life are recovered and enter again into the manufacturing circles, for use in other products and loops.

CESA was instrumental in the development and implementation of the industry led product stewardship initiative for televisions through the establishment of Product Stewardship Australia (PSA). CESA and PSA were key stakeholders in the development and implementation of the Commonwealth's National Television and Computer Recycling Scheme (NTCRS). CESA members have also had close involvement in battery and mobile phone recycling schemes.

Australia has significant powers under the Federal Product Stewardship Act (PSA) to mandate product stewardship policies and has done so in respect of the consumer electronics sector (mentioned above). CESA does not consider e-waste in the Australian market, particularly home appliances, to be relevant to this inquiry.

Installed Complex Household Appliances

There is no evidence of a problem with RTR for installed/complex household appliances (heating, cooling, hot water). There is competitive service availability, and they are not designed for short term obsolescence and fashions. Installed/complex household appliances need to be treated differently as there are greater safety risks and also complex interactions within the systems that comprise the installation. For example, Heaters, Coolers and Water heaters are subject to multiple energy source regulatory requirements for safety in installation, service and operation and their successful operation depends on the system being installed correctly. These systems require expertly trained service technicians and installers.

It is not of benefit to the community to try to train this entire population, to service and repair such products safely, nor bear responsibility for when they do not. Technicians (such as gasfitters, plumbers, electricians, refrigeration mechanics) even if authorised in their jurisdiction to perform such work may not have the necessary skills and knowledge for appliances from particular manufacturers without specialist training and accreditation from such manufacturers.

Specific Comments

INFORMATION REQUEST 1

What would a 'right to repair' entail in an Australian context? How should it be defined?

Right to Repair (RTR) in the Australian context, similar to other jurisdictions, should entail the ability for consumers to have access to professional repairers for the servicing of defective products at a competitive price. In the Australian context it is

important that such services should be nationwide and take account of Australia's unique consumer laws, electrical safety standards and regulatory arrangements for product stewardship.

INFORMATION REQUEST 2

- a) What types of products and repair markets should the Commission focus on?*
- b) Are there common characteristics that these products share (such as embedded technology and software or a high/low degree of product durability), and which characteristics would allow policy issues to be considered more broadly?*
- c) If there are particular products that the Commission should focus on, what are the unique issues in those product repair markets that support such a focus?*

CESA strongly believes the scope of future RTR policies/proposals should focus upon professional repairers. The professional repairer does not necessarily have to be one directly employed or contracted by the manufacturer/supplier. To CESA, this could also be an independent body as long as the repairers are able to demonstrate they comply with the applicable regulations/standards and that they are covered by relevant insurance, covering liabilities resulting from the offered service.

If justified and evidenced based, RTR proposals could focus upon low-risk products such as ELV (extra low voltage) products with no moving parts where there is a low risk of dangerous electrical shock.

INFORMATION REQUEST 3

- a) Do the consumer guarantees under the ACL provide adequate access to repair remedies for defective goods? If not, what changes could be made to improve access to repair remedies? Are there barriers to repairing products purchased using new forms of payment technologies, such as 'buy now pay later'?*

The ACL does provide adequate choice for repair remedies for defective products, however, consumers prefer the replacement or refund options.

- b) Is the guarantee of available repair facilities and spare parts effective in providing access to repair services and parts? Or is the opt-out clause being widely used, making the guarantee ineffective?*

Yes, the ACL is effective in ensuring repair is a viable consumer option.

It should be noted that as the purchase pricing of more and more household products continues to fall, the consumer is more often opting for replacement with a fully warranted item in preference to the cost to have a repair.

- c) Should consumer guarantees seek to balance the broader societal costs of remedy choices (such as the environmental impacts of replacements) with consumer rights, and if so how? For example, should repairs be favoured as a remedy?*

No, environmental and societal costs are adequately covered by product stewardship and industry policies.

- d) Are consumers sufficiently aware of the remedies that are available to them, including the option to repair faulty products, under the ACL's consumer guarantees?*

CESA considers consumers are sufficiently aware of their rights under the ACL, however, awareness campaigns by the ACCC are welcome.

INFORMATION REQUEST 4

- a) *The Commission is seeking information on the nature of repair markets in Australia, including detailed data on the repair markets for specific products, covering:*
market size — by employment, revenue, number of businesses, profit margins
market composition — such as market share between authorised, independent and DIY repairers.

CESA does not hold detailed data on the state of the repair market in the consumer electronics market. However, we strongly believe a substantial data analysis mapping of the repair sector is required in order to make evidence-based proposals for possible policy/regulatory options.

- b) *Is there any evidence of a difference in quality, safety or data security between authorised repair networks and independent repairers? Are there ways to address concerns around quality, safety or data security while promoting a vibrant independent repair market?*

CESA strongly advocates for repairs of major home appliances to be confined to professional repairers, either authorised repair networks or independent repairers. Thus, ensuring quality, safety and liability of repairs for consumers.

- c) *Are there available examples of the contracts between OEMs and authorised repairers? Do these contracts limit effective competition in repair markets (such as by limiting the number and reach of authorised repairers or requiring authorised repairers to not be authorised by a competing brand)?*

What is the process to become authorised? Is it open and competitive?

Contracts between OEMs and authorised repairers vary significantly between suppliers. This is a matter for individual suppliers and isn't the type of information held by CESA.

- d) *What policy changes could be introduced if there is a need to increase competition in repair markets and improve consumer access to, and affordability of, repairs?*

CESA does not consider policy changes are necessary for the Home Appliance sector or for increased competition between repairs. In the consumer electronics sector it is difficult enough to identify and locate suitable qualified professional repairers.

With continuing reliability improvements and initial purchase cost reductions, overall work availability for repairers is being affected. This in turn is already resulting in keen competition in the household electronics area among professional repairs. No steps should be undertaken that may encourage the appearance of 'unqualified' repairers.

INFORMATION REQUEST 5

Do current IP protections (e.g. intellectual property rights, technological protection measures, end-user licencing agreements) pose a significant barrier to repair in Australia?

In respect of the Home Appliance sector, CESA does not consider current IP protections poses a barrier to repair in Australia. However, IP protection must be considered in the RTR context. It would be pointless to have IP protection in one set of legislation and then introduce additional RTR legislation to remove that protection and hand over IP 'willy-nilly'.

The consumer electronics sector is a highly competitive market and IP and technical design protection underpins the success and competitive edge of

manufacturers. It is therefore critical that technical design confidentiality is maintained/protected and CESA would have concerns if sharing information is mandated. We don't believe that the proposed amendments for the motor industry would serve the interest of the CE sector and CESA members. Introduction of additional policy or regulation could create tensions and conflict with existing laws and regulations (ACL, CCA, IP Rights).

In any modern appliance/equipment market the question of IP protection is increasingly becoming an issue and is often what separates one supplier from another. To remove or reduce IP protection can have serious implications and may result in companies reducing R&D and product development if they believe their IP is going to be made publicly available.

INFORMATION REQUEST 6

a) *What evidence is there of planned obsolescence in Australian product markets? Do concerns about planned obsolescence principally relate to premature failure of devices or in them being discarded still working when more attractive products enter the market?*

CESA has no evidence of planned obsolescence in the Home Appliance sector.

b) *How can the Commission distinguish between planned product obsolescence and the natural evolution of products due to technological change and consumer demand?*

A very difficult issue for the Commission as Australia has a very small role or influence in the product design of Home Appliances

c) *What are the benefits, costs and risks of Australia adopting measures similar to those currently used overseas, such as product design standards and reparability ratings?*

Australia imports all Home Appliance products, thus, already incorporates the beneficial measures and costs of product design standards and reparability adopted overseas.

d) *Do consumers have access to good information about durability and reparability when making purchases? If not, how could access to information be improved?*

Consumers are provided adequate information on the life of the Home Appliance product and their rights under ACL regarding reparability

INFORMATION REQUEST 7

a) *What data are available on the amount of e-waste generated in Australia?*

What data is there on the composition of e-waste in terms of particular materials (such as hazardous materials) by product type?

The Federal Department of the Environment and the Battery Stewardship Council hold information on the composition of ewaste and extent of hazardous materials under the Federal Product Stewardship regulations for ewaste (Computers, TVs and Batteries).

b) *What estimates are available on the costs of e-waste disposal on the environment, human health and social amenity, in Australia and internationally?*

How do the impacts differ by disposal type, or by the type of product or hazardous material?

d) *What is Australia's current policy settings for managing the potential environmental and health effects of e-waste (such as landfill bans, the National Television and Computer Recycling Scheme or Mobile Muster)? Are these policy settings broadly right — that is, are they proportional to the impacts of e-waste on the community?*

CESA as a major stakeholder and participant in e-waste regulatory policy development and implementation considers the mandatory policy settings under the Product Stewardship Act are appropriate and could be extended to other forms of e-waste.

e) *How can a right to repair policy further reduce the net costs of e-waste in Australia, and would such an approach be an effective and efficient means of addressing the costs of e-waste to the community?*

CESA does not consider right to repair policies will have any impact on existing successful e-waste policies already in place, nor do we think additional measures are necessary.

INFORMATION REQUEST 8

a) *What policy reforms or suite of policies (if any) are necessary to facilitate a 'right to repair' in Australia?*

As mentioned above, CESA considers the Home Appliance sector should be exempt from policy reforms to facilitate 'right to repair' as this product sector is subject to stringent regulations under Australian Consumer Law that require the offer of repair. Environmental and end of life (ewaste) issues are also adequately covered under mandatory Federal regulations of the Product Stewardship Act.

b) *Are there other international policy measures or proposals that the Commission should consider as part of this inquiry?*

The Commission could consider the European Eco-Design Directive for product sectors other than the Home Appliance sector. Only when the case for lack of repair and service data sharing has been clearly proven and a net benefit to the community demonstrated should mandatory regulation be considered in any industry sector.

CESA looks forward to further consultation with the Commission on the Issues Paper and is happy to clarify any of the comment above.
Yours sincerely

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