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PRODUCTIVITY COMMISSION

RIGHT TO REPAIR - PUBLIC HEARING

MR P LINDWALL, Commissioner
MS J ABRAMSON, Commissioner

TRANSCRIPT OF PROCEEDINGS

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COMMISSIONER LINDWALL: I've got a little bit of text to read out there. So good morning, welcome to the public hearings for the Productivity Commission inquiry into a right to repair. My name is Paul Lindwall I'm the presiding commissioner for the inquiry and my fellow commissioner is Julie
5 Abramson. Today's hearing was scheduled for Sydney so I'd like to welcome any members of the Gadigal and Eora who may be attending today and pay our respects. Being a virtual hearing, my old golden retriever Elodie is also participating so if you hear snoring you'll know where that's coming from.

10 The inquiry started with a reference from the Australian government on 28 October last year, we released an issues paper on 7 December, and have talked to a wide range of organisations and individuals with interest in the reference. We released a draft report on 11 June and have been receiving
15 post-draft submissions and welcome further submissions, preferably by 23 July. We are grateful to all the organisations and individuals that have taken the time to meet with us, prepare submissions and appear at these hearings. I would also like to thank Ana Markulev who was a team leader who delivered the draft report and then her first baby.

20 The purpose of these hearings is to provide an opportunity for interested parties to provide comments and feedback on the draft report, which will assist us in preparing our final report to be provided to the government by 29
25 October. Following these hearings in Sydney virtually, hearings will also be held in Melbourne virtually, and in Canberra in person and virtually. We will then be working toward completing the final report, as I said, which the government has up to 25 sitting days before it has to release the report under our Act. Participants and those who have registered their interest in the inquiry will be advised when the final report is released by the government.

30 We like to conduct all hearings in a reasonably informal manner, but I remind participants that a full transcript is being taken, one hopes. For this reason, comments from the floor cannot be allowed but at the end of the day's
35 proceedings I will provide an opportunity for anyone who wishes to do so to make a brief presentation. Participants are not required to take an oath but are required under the Productivity Commission Act to be truthful in their remarks. They're also to comment on the issues raised in other submissions, and the transcript will be made available to participants and on our website following the hearings. For any media representatives attending today some
40 general rules apply.

There is no broadcast of the proceedings allowed and taping is only permitted with prior permission. Participants are invited to make brief opening
45 comments, which will allow us the opportunity to discuss matters in greater detail. I would also like to ask all online observers and participants who are not speaking to please ensure that your microphones are on mute and turn off your camera so as to ensure minimal disruptions. So, with that, I'd now like

to invite Erin Turner and Dean Price from Choice and if you'd like to provide an opening statement and then we'll proceed with questions, so welcome.

5 MS TURNER: Thank you both for having us and thank you for the opportunity to appear here today. So, we strongly support the recommendations in the draft report, and I wanted to particularly call those out that are about providing consumer regulators with greater powers to resolve complaints, and the introduction of a super complaints power to help raise major issues spotted by consumer advocacy organisation. As you
10 know, myself and my colleague Dean Price represent the consumer advocacy group Choice, we're a not for profit independent organisation that has been established for 60 years. We represent the interest of consumers broadly, and have strong connections to consumers through our membership, 195,000 members of Choice and over 200,000 people who work with us to explore
15 issues and make positive change for consumers.

Now as I flagged Choice largely agrees with the draft recommendations, but for my opening statement I wanted to focus on areas where we see room for the commission to go further. So, I'm going to focus on two matter. First,
20 issues with manufacturer warranties - particularly issues that lead to consumers never seeking to have an issue with a product addressed. And the second I want to focus in on is the information consumers need at the point of purchase. So, I'll start with warranty periods, and specifically look at how failures to inform consumers of their rights under the ACL are discouraging
25 people from seeking repair or any remedy when a product breaks.

So, the draft report focuses on how some warranties discourage the use of independent repairs, and we agree, but we also see larger issues. We're seeing that warranties generally can discourage large groups of consumers
30 from getting a remedy under the consumer law. So, we commissioned new research to better understand why people do or don't get a product repaired. In April and May we have surveyed 6571 Choice members and supporters, and generally I'd say these people have greater literacy about consumer rights than the broader population. We asked them specifically about any issues
35 they faced with four products they owned; washing machines, TVs, microwaves, and lawnmowers, and what was really interesting is that most people who had a problem with these products never sought to get a remedy.

Only 24 per cent of people who had an issue with their washing machine tried to get a refund, repair or replacement, 15 per cent of people with a TV
40 tried to get a remedy, 19 per cent of people with a broken microwave and 18 per cent of people with a broken lawn mower. And when we asked people, 'Well why didn't you try to get a remedy?' The most common answer was because the product was past its warranty period, 31 per cent of people told us that. And when we look at the comments what really worried me was that
45 often these products could be just outside the warranty period, a few weeks, months or years, and with a product like a washing machine - say something

that might be five years old - something that we still see as well within that consumer guarantees period for a large piece of equipment that you want in your home.

5 So, what worried me is that this researching is telling us that warranty periods
in and of themselves could have a dampening effect on consumers seeking
remedy, and it happened in two different ways. First was a large group of
people assumed that a product failure occurring out of a warranty just could
10 not be addressed, and these are people who are quite literate with consumer
rights, they're Choice members. So, a good chunk of that group just assumed
that once the warranty period was over, they couldn't get anything. We also
had a lot of instances where manufactures or retailers strongly suggested or
told consumers that nothing could be done outside the warranty period, and
we see this all the time, timing a big factor for consumers.

15 People are relying on warranty information as a guide for how long products
should last and when they can get something fixed. And as you know this
isn't correct, the consumer law provides much greater protections, and there's
significant cost to consumers from the situations. People are repairing or
20 replacing at their own cost, we know that a lot of people are still paying for
extended warranties that add very little, or indeed nothing in addition to
consumer law guarantees, and some people are replacing products when they
don't need or want to. So, one idea we wanted to put forward to you today is
to expand draft recommendation 4.2.

25 We're interested in adding additional warranty text, or texts to that warranty
disclosure, that specifically lets people that goods should last for a reasonable
period, and that this can be - and often is - longer than the warranty period.
We'd love this language to be tested so to make sure it's as clear and easy to
30 understand for a large group of consumers. And we think there's also room
for more enforcement here. Manufacturers should be obliged to proactively
inform consumers of their rights under the Australian Consumer Law when
people contact them about product issues. There should be penalties for
businesses that fail to do so.

35 Right now, often it's just omitted; they talk about the warranty and they fail to
proactively let people know that the consumer guarantees sit on top of that.
If we added all of these interventions together, we know that more people
will get their products fixed more easily. Now I've talked at length about
40 warranty, but I do want to move before I finish to point of sale information,
particularly the usefulness of labels. So, for labelling I know that the report
looked at it primarily in relation to planned obsolesces. For us at Choice we
see as something that is useful to address a long-standing information
asymmetry between consumers and businesses.

45 People really want to know how long a product should be expected to last. I
was disappointed to read in the draft report a quote that said, 'Public

information on product durability or repairability is often readily available'. Our experience is that actually this isn't the case, there's some information available for consumers, but it's not comprehensive, it's not available on a lot of products where people really want the information - and I'll call out
5 whitegoods here - and it's definitely not available when people actually need to use it which is at the point of purchase. Now at Choice we do test products but we're primarily testing performance; how well does the product work when you first take it out of the box?

10 We collect survey data to help us assess durability, but that's not perfect, and we know that there's a lot of current gaps in information. For example there's no public and easily available consistent information about key parts and their availability, you know; how long are they going to be available for
15 people, how long will it take and how do you source them, are they available in Australia, what's the cost of these parts, are repair manuals available for third parties or consumers? And there's currently, as far as we're aware, no consistent testing done on how long products will actually run for. We're aware of procedures that exist for this, but we're not currently able to do this in our labs in Australia.

20 People really want this information. We conducted a nationally representative survey into consumers - what they want to know when they're buying products, 88 per cent of people support a labelling scheme that informs you at the point of sale about how long a product should last. They
25 really want it. 87 per cent of people would find it useful to know how long spare parts would be available for, and 86 per cent of people want to know how long software updates will be available for. So, we know from experience, particularly with the water and energy labelling scheme, that if you want manufacturers to improve the quality of products start by rating and
30 ranking them.

Consumers would really benefit from a scheme that ranked and rated products on durability and repairability. It would be even better if that
35 ranking was translated to a publicly available piece of information; a label, that let them see the information when comparing products. Over time we would expect manufacturers to compete where they saw that durability and repairability were factors that were influencing consumer product decisions. So, in our upcoming submission we will provide detailed views on how a labelling system for durability and repairability could start in Australia and
40 how it could operate over time. We think it can be done, and that consumers would really benefit from it.

So, I've touched on those two points, warranties and labelling, these are areas
45 where we encourage the Commission to go beyond the recommendations in the draft report, and in particular just to think about what information people need when they're buying products and when they fail. With that, I'll thank you and hand over to you.

COMMISSIONER LINDWALL: Thanks very much Erin that was very good, thank you. Could I just start on your second point which is about labelling. I mean behavioural research does show that it does have - people
5 can be overwhelmed with lots of information, so can you - I know you visit it in your submission - articulate how you see a labelling scheme? Maybe you can even reflect on whether the scheme used in France is something that's interesting, obviously it has durability and repairability and they're different issues, and maybe you could talk about which is more important in Choice's
10 view.

MS TURNER: That's multiple questions and I'll tackle them as best I can, but let me see if I've missed anything, because this is really, I think an interesting area. You're right, information overload at the point of sale is
15 common, we would all experience it everyday at supermarkets. The way I usually explain it to people is stand in front of the toothpaste section and try to figure out what you want. There are ways to do it well though, and I think there's a wealth of research that tells us what information and how to present it in a way that's effective for consumers. It needs to be simple and
20 comparable. So, it needs to be something - I guess there's probably two steps if you think about creating a labelling system.

One is that you need to find a way to rank and rate products. So, what factors go in, what weightings do they get and where do these products sit; what's at
25 the top and what's at the bottom. And you could put it more or less emphasis on durability or repairability as part of that, in fact you could technically have two different ratings systems: one for durability and one for repairability. I think our starting point is a preference for a blended system because they're interrelated issues. Now if you think about the best way to present that it's
30 typically with a score or an easy system, the star rating I think is actually one that is a perfect example of effectiveness the water and energy labelling scheme.

And there's two benefits, one is that a consumer can walk down an aisle or
35 even do an online comparison and just go five stars, three stars, two stars and know immediately where the product they're looking at sits in relation to others, so the information is really simplified. A lot of complex work has to go into the back end of that, but you just reduce it right down so that at a glance someone can put products side by side. But the other benefit for this
40 is actually a longer-term way of engaging with manufacturers and having a conversation about the quality of goods.

Now this won't always be important for all manufacturers and all products on the market, not everyone is focussed on durability for all of their purchases or
45 is able to prioritise that, but you will start to see manufactures respond to a rating system and adjust their products accordingly. The best example where we've seen it is in the water and energy labelling scheme. Years ago,

dishwashers weren't particularly water efficient, right now it is more efficient to put your dishwasher on than to hand wash your dishes. And I think we can strongly point to the water and energy labelling scheme as a big driver behind that. Once you start ranking and rating products and prioritising water use companies started to figure out how to do it better.

So, if we want to see better quality products on the market ranking and rating on durability and repairability will drive improvements for consumers of the type. Now I think you asked me to reflect on the French system, my broad take is I don't know yet, it's so early days. It does look like it's a more complex system than say something like a water and energy labelling scheme which is just one score, if you will, as opposed to multiple scores. And I think because it's the first system in the world there is dispute about what factors go into it, how much industry is self-assessing versus how much is independent information that goes into that ranking and weighting.

So, there's different ways to do it, I think if you were thinking about building an Australian scheme you wouldn't necessarily start by copying the French scheme, you'd use it for inspiration. And we've actually been giving some thought to how would you rank and rate products, there's ways you could start doing it. We could start doing using existing data sets, for example. So, Choice does have some information, product specifications, consumer survey data, data about points of failure and there's some international testing on durability like drop tests for mobiles or spray tests. You could also potentially bring in data internationally where products do have that international reach; and iPhone is an iPhone, you could do it for product categories, we could start doing that.

But, there's also information that would be really valuable, that stuff I flagged in my opening statement around are key parts available in Australia, how long are they going to be available for? If manufacturers provided that information, if we were able to get it in some way, you could actually rank and rate products more holistically. Now I'm not sure if I've answered all parts of your questions there.

COMMISSIONER LINDWALL: I will explore a bit more on that Erin. Firstly, so I take it from your views that you don't need an international system because that would take a long time, presumably, and - and that's a yes just for the transcript. So if Australia went down with its own scheme as you see it with durability and repairability, which agency? Would it be the ACCC? Would you see a mandatory scheme or - and if so, which types of products should it apply to? Would we have a pilot for it or how do you - I mean, how was the energy and water initiative set up initially? Was that something which (indistinct).

MS TURNER: Actually, yes, and Choice was really heavily involved in that. So what I think is interesting about the water energy labelling scheme: it was

a genuine partnership between parties like Choice, manufacturers who were providing information, and governments who helped set up a system. Now, there's lots of ways to start this. Technically, Choice could just start doing this. We could start ranking and rating products on durability and
5 repairability. Obviously I'm not saying that that's the best idea. We don't want to go off into a corner. We actually think a genuine partnership would be the most effective way forward to find something that really works and is fit for purpose for Australian consumers. And there's lots of different inputs. Technically you could have product testing.

10

There's some really interesting work that's coming out of the EU where they've developed testing procedures for longevity tests. Not something we're currently able to do in our labs. We'd primarily test for performance out of the box, what happens, does it work; does it not work. We aren't able
15 to run products for long periods of time just to see - not just does it work, but how long does it work until it fails. There are testing procedures and there's ways to do it. So you could incorporate some of that and I think it would be interesting to think about applying that to products where people really want to know longevity, and I'd say that's the big products in your home: white
20 goods. For other products it's about availability of parts or software becomes more important.

I'd say that's technical goods: smartphones, laptops. We could actually start building a ranking and rating scheme using a lot of base information that
25 Choice has. So as I mentioned, we've got the reliability survey from Choice members that goes back well over 10 years, and with that we know what products are more likely to fail and what parts within those products are most likely to fail. For example, with your fridge it's most likely to be the seal or the fridge shelves themselves. Based on that you could then ask, well,
30 manufacturers, how long do you keep those two essential parts. You could start building a ranking and rating scheme. There's likely a pilot process to start to develop this, though. We think it could be done with a range of agencies. You could have the ACCC look after it. You could have a federal department focused on environment and energy look after it. There is a role
35 for working with manufacturers (indistinct) as well just to understand the different information that they have.

COMMISSIONER LINDWALL: I think, there's someone not on (indistinct) mute. Yes, that's better. Erin - sorry.

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MS TURNER: That's okay.

COMMISSIONER LINDWALL: I got what you were just saying. Now, the - so you do see it as a (indistinct) scheme. We might have a pilot, but
45 ultimately it would have to be a requirement for whatever products you would have (indistinct) comparable obviously. But it ultimately would be the

manufacturer who would put the label on according to that standard; is that right?

5 MS TURNER: That's right. And look, obviously we'd love you to recommend a mandatory scheme starting as soon as possible, but if you did want to explore a roll-out process, the way I'd see it staged is there's a development and piloting process, and that's where you figure out what products is it going to be most valuable on; we've got a good idea, but you could sharpen that thinking a little bit more. What aspects go into a ranking and rating system and what weightings do they get and how does it appear. 10 So that's a pilot program. Then you could have a period where this information is out in the public but not necessarily on goods, and it's a ranking and rating system but not a labelling scheme yet. Potentially then a review and intervention, and then a mandatory labelling scheme.

15 So there is a gentle rollout phase taking however long based on however many resources you throw at this. It's quite an achievable feat, and I think the benefits of an Australian scheme is that it is going to take into account some very Australian aspects to repair. Distance is the big one. When we 20 ask people about any frustrations they have, actually we're starting to see, in particular, some people are noting that there aren't spare parts available for some products, and this seems to have become more acute in a pandemic world, but also just the time and distance it takes to get something fixed. Be great to be able to incorporate that into an Australian system because it's 25 something that if you went international, it just wouldn't be considered.

COMMISSIONER LINDWALL: I will ask one more question, then (indistinct) to Julie, and I've got more, but I just thought I had better give Julie a bit of a chance. So my question would be around how do you see the 30 interaction of durability in a labelling scheme versus consumer guarantee versus the warranty. I mean, say, the warranty could be two year; the guarantee could be - I don't know four years; and the durability could be 10 years hypothetically. Would they be always ascending like that or - and then, I suppose - I always ask multi-part questions. How would that interact? So if 35 I'm a manufacturer required to put on a durability estimate on my machine, my product, would that affect what I would - because I know that would interact with guarantee, would I tend to put a lower number because I would like to not expect people - or people to expect there's a long guarantee?

40 MS TURNER: Definitely, you also might see providers going further and competing on that, going for a higher number. Now, in terms of warranty, consumer guarantee, durability, I think what our research is showing is that warranty complicates it and often is adding very little in addition to a consumer guarantee. These two systems sit side by side and they confuse 45 consumers. In my perfect world - and I don't think we're going to get to my perfect world - it would be ideal to get rid of the concept of a warranty and just have consumer guarantees. It would be clearer; it would be simpler. If a

company wanted to go above and beyond very specifically from the consumer guarantees, that would be useful, but what we see in most markets now is a warranty is obviously much lower than consumer guarantees. It will last for a year or two years.

5

And consumer guarantees could last for five, seven and be much more expansive, not specific to parts or elements of a product. This is where consumers get really confused because if when they're buying a product they're told, for example, the drum of a washing machine has a warranty for five years, the other parts has a warranty for three, that's the number that they're anchoring when they're - when something goes wrong, they go oh no, it's three years; it's over; it's done with. And it's really hard then to have that conversation about consumer guarantees. So, I guess, you know, ideal world: ignore the warranty; go for consumer guarantees and a durability point. In terms of manufacturers providing that information and where you want to peg it, I do think something around a consumer guarantee is actually the most useful information for people to have.

Essentially, if you think about it, it's the information people want to be able to respond to when something goes wrong. If you, say, have a sticker on the front of a washing machine and it says, you know, this gets four stars for durability and repairability and we expect it to last for 7.5 years before - you know, we will repair and assist you for that period of time. That's the number that they want to be able to look at once the water starts leaking out on the floor. They need to be able to anchor it to that. A durability number, I think, is important, but perhaps could be put into an overall ranking or rating system.

COMMISSIONER LINDWALL: Julie.

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COMMISSIONER ABRAMSON: Thank you, Erin, for your presentation. I have a couple of questions about the labelling scheme; and then, Paul, I have a range on the enforcement, but we might come back to that and just deal with the labelling scheme now. Erin, how would we make a labelling and durability scheme meaningful? And the backdrop, which will be no surprise to you given what I normally ask you about, is that whenever there's legal obligations, what usually happens is that people become super cautious because they can be done by the ACCC for misleading and deceptive. So how would we get to a situation where the information is meaningful rather than a manufacturer saying something like, you know, your product may last between X and Y and it's a range of - I don't know - two to three years or something. So how would we manage that issue?

MS TURNER: I think it's a really good point. So I think there's a range of things you'd need to think about to make it meaningful. The first one is to put it in the hands of consumers at the point they need it, which is point of sale. So we really do like the recommendation that the ACCC develop

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5 guidance about consumer guarantees and how long products should last; it's just we see that as the baseline. People really need this information to make decisions and kind of counter that information of symmetry, you know, in store. And in terms of how you do it, I guess I wouldn't leave it up to manufacturers. I would structure something very similar to the way we structure the water and energy labelling scheme.

10 It's not up to manufacturers to put the number on their system; it's actually a really clear - you know, they can figure out what the number. Is it four or is it five. But the scheme itself has been set up by an independent agency. It's been built on testing. There's wide agreement about what factors go in and consistency about that. And there's also testing to hold companies accountable for it. Choice often conducts a lot of this testing and we do find that sometimes companies have fibbed a bit on their energy testing or haven't quite got it right on their water testing, which is really important. So if you're going to make it meaningful, it needs to be transparent, standardised, and there needs to be an element of accountability. I don't think industry alone can do this. I actually think it needs to be done with industry, consumer groups, and government in partnership.

20 COMMISSIONER ABRAMSON: Erin, thank you. Could you do – and this is just an idea; it's not a view of the Commission, but just an idea – as you know, we look very closely at product stewardship schemes. So, could you have a similar system, which perhaps had some backing in terms of what is required, but the industry could develop a code? And I'm just using the words in a general sense.

30 So if we have something for, in particular, whitegoods, rather than having a situation where the ACCC is out there, working on each individual product – as I said, this is just an idea, and I'm just floating it for the purposes of our discussion.

35 MS TURNER: I actually think there's real benefit to thinking about it like that, code development. I guess I wouldn't leave industry to do it alone. That's my (indistinct) experience of code development across the board, from financial services to fridges: don't leave industry alone. I think there needs to be a balance of interests in a code development process, and ideally one that's overseen by a regulator.

40 COMMISSIONER ABRAMSON: Yes.

45 MS TURNER: Industry needs input, though. They know these products in a way that even groups like Choice, who test these every day, we don't necessarily know what they know. There has to be a meeting of minds. And I think, thinking about by categories is also quite important. The way you would rank and rate a dishwasher is really different to the way you rank and rate a laptop.

5 And you might – I think if you’re thinking about building and developing this, you would definitely want to start with some categories that are more urgent and more important to people, and perhaps build over time. I wouldn’t with a toaster.

10 COMMISSIONER ABRAMSON: Erin, you might help us with what product you think, at Choice, which I have a fair idea, because you kind of listed them, as to where you would start with such a scheme.

15 MS TURNER: Definitely. I think there’s kind of a few different scrutinies. Laptops and smartphones is where people have a lot of anxiety, and there’s a lot of international information. There’s a bit more standardisation of products. An Apple is an Apple is an Apple; from Australia, New Zealand, America.

20 So you can build a bit more of an – you can build a scheme for Australia, but that draws on international data. It’s different for something like whitegoods, but that’s actually – these are products that people really want to last, and where durability and repairability play a very different role. You do have a software element, but it’s not as strong.

25 So, yes, I would start with those categories. And then there’s some that I think I would consider for early inclusion, even though they may be less obvious; lawn mowers. In talking with our experts at Choice, what we’re seeing is that, particularly for electric lawn mowers, there doesn’t seem to be a lot of ability to repair, with lithium batteries. They seem to be proprietary. You can’t take them in and out.

30 So it might be a category where you would want to start developing that a little bit more, to encourage better practices over time. So they’re kind of the broad areas where – if we were – if it was up to Choice alone, that’s where we would start.

35 COMMISSIONER ABRAMSON: Thank you, Erin. I just have one final question on this, Paul, and then we might turn to some other questions. iFixit does actually have a rating for ease of disassembly and repair. Erin, are you familiar with that, and do you have any comments on that?

40 MS TURNER: We are familiar. We think it’s excellent. And if we were looking at, say, building a ranking and rating system for a smartphone, should iFixit wish to provide that information – and they are really focused on public good – I don’t want to speak for them, but I do think (indistinct) excellent.

45 COMMISSIONER ABRAMSON: They are appearing later today, which is why I’m just asking you now.

MS TURNER: Well, definitely ask them. I think it should be one really important input to ranking and rating this product.

5 COMMISSIONER ABRAMSON: Thank you. Thanks, Erin. Paul back to you.

COMMISSIONER LINDWALL: Yes, all right. We might go back to (indistinct), but if we can now talk about guarantees. And I know that in
10 your ideal world, you would have guarantees only, and not warranties. I guess my point would be that a lot of people would like the warranty, because it's pretty clear. It's a defined period. The manufacturer or retailer will take it in that period fairly clearly. And it's a bit of a hassle, going to the consumer guarantees.

15 So, can we talk a bit about enforcement of consumer guarantees? Now, we have spoken about super complaints. Well, that is good for systemic issues, that – a lot of things. But if I'm the individual consumer, and I want to exercise my guarantee, currently (indistinct) go to the retailer, and they might
20 say, 'Well, stuff off. That does happen.' But – and then I might take them to court. Well, that's pretty expensive, so I'm not likely to do that.

So perhaps you could (indistinct) an alternate dispute resolution schemes. And we did mention it in the draft, the New South Wales and South
25 Australian schemes, but is there a good way of doing that that you can think of?

MS TURNER: Yes. And actually, I thought the thinking in the draft report was really exciting, and we did agree with where the Commission was
30 heading. Kind of a bit more nuance to that; in terms of the South Australian example, in terms of compulsory conciliation, I think that's better than the current state.

35 It's definitely an improvement on just having to go to a tribunal and leaving consumers to kind of go it alone, particularly for lower value goods. But we do have a bit of nervousness around compulsory conciliation. It doesn't quite address the imbalance of information (indistinct) between businesses and consumers.

40 Businesses know more – a lot more – about this. They have legal advisors. And a consumer typically – maybe they know about the consumer law. If they've reached that stage, they probably know a little bit. But they definitely – the difference in firepower is quite extreme. So, compulsory
45 conciliation can still to lead to outcomes where, even if a consumer is happy, is it what the law sets as a standard?

I (indistinct) differences, but I guess I'm nervous that conciliation alone isn't quite right. We think the enforceable directions power in New South Wales is a really clear and strong solution. But like you also flagged in your draft report, we're not sure if it's being used. Anecdotally, we've not heard from
5 any consumers who have engaged with the enforceable direction power in New South Wales.

Typically, that's not a pathway I've actually heard of anyone using before. I would really like more information from Fair Trading New South Wales
10 about, if it's used, how often, and why. Purely from an academic lens, I think tying it directly to the Commissioner might restrict the ability and the instances of when it's used.

It would possibly be better to give it a much broader power for the
15 Commission as a whole to use, rather than restricting it to an individual. But overall, enforceable direction is excellent, and every state and territory should have them.

20 COMMISSIONER LINDWALL: What about the ACCC? What role should the ACCC in enforcing this, if any?

MS TURNER: I mean, I'm always going to say more, but obviously more
25 within resources and limitations. I do think it's the strength of our current system, that people can get direct assistance at the state and territory level, and that the ACCC takes an umbrella view. I'm not sure if it has necessarily a much stronger need for it to play in direct individual conciliation or addressing those problems.

30 But there is a big information gap. Something that we think New South Wales Fair Trading has done incredibly well, and would like to see rolled out to every state and federally, is just letting us know how many complaints are received, on what issue, from what businesses. And that in itself has a strong influence. Businesses that want to do better will see, panic and act.

35 And it also helps other organisations – whether that's regulators or groups like Choice – prioritise their work, as they're starting to (indistinct) better data about the problems that are coming through. I do think there's a role for the ACCC to take a greater position, and to do more work in releasing public
40 information about the nature of the complaints they and other consumer regulators receive, and be really specific; 'I want the New South Wales Fair Trading Register, complaints register all over Australia.'

45 I think that could help us in a range of different ways, and around right to repair as well. You'll start to see those companies that consistently deny people remedies for consumer guarantees really feature strongly, and that starts to really bring some good quality pressure.

COMMISSIONER LINDWALL: So it's sort of like a name-and-shame list, then.

MS TURNER: That's it, a name-and-shame list.

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COMMISSIONER LINDWALL: And is there evidence that that works well, do you know?

MS TURNER: We've seen it practically work really in New South Wales, and in different ways. So we've certainly heard directly from business groups about anxiety about appearing on the list. And sometimes that might be expressed as, 'It's unfair that we're on the list.' But then you do see efforts made around education for staff, and those businesses drift off that list.

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In other cases, you do see more recalcitrant businesses appear consistently. The one I feel very comfortable naming is Bio Go Go. It appears again and again. But that creates a different solution, then. So, New South Wales Fair Trading just announced that they're – it's getting an investigation based on the number of these complaints.

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So you either see this regulatory action path – consumer groups are able to use that information, just like we're able to use it to target our efforts, to know that, if more people are experiencing this problem, and we've got this really good data set, we can do more, in terms of investigation. And then sometimes, businesses just fix it themselves. The shame element works.

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COMMISSIONER ABRAMSON: Of course, Erin, we looked at this, or I looked at this in 2017, when we did that enforcement overview. One of the issues with the list is really around franchises.

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MS TURNER: Yes.

COMMISSIONER ABRAMSON: So, if you're a franchise business, everybody's brand reputation can be tarnished by just one franchisee causing the issues. So, whilst, I think, in that report we were very interested in the name-and-shame list, it's not without some difficulties in how you actually do it, so that it's fair to other players.

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MS TURNER: I don't disagree, and I think the way through that is to find a way to express the information simply, and then with the next level down detail.

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COMMISSIONER ABRAMSON: Yes.

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MS TURNER: Harvey Norman, for example, a large franchise - - -

COMMISSIONER ABRAMSON: Yes.

MS TURNER: It's useful to have next level down to know that, are the problems specifically to certain areas and stores.

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COMMISSIONER ABRAMSON: Could I just ask a question, if that's all right, Paul, about the warranties. You made a very interesting comment – all of your comments are interesting, Erin, but you made a very interesting comment earlier about the manufacturers being obliged to give more information about the warranty, particularly saying that the consumer guarantees could be longer than the warranty.

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And one of the things I think that you were actually talking about there is the curious way – well, it's not curious, but the way our law our works is, it doesn't really ping people for the sins of omission. So if you make a statement, then it can be targeted as a misrepresentation. So I'm just interested in hearing – I mean, I think I understand the reasoning behind this, Erin, so I'm just interested in hearing a little bit more about how you think that would work; whether you're saying the law should be amended in some way.

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MS TURNER: In short, yes. So the first thing I think we could practically do is amend those regulations. And you put forward some really clever amendments to the idea that warranty disclosure that's mandated in the regulations – I think you could add additional information there. Something that's currently missing in that text is any reference to length of time for consumer guarantees. It just says that there are rights under the consumer law.

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And I think what's often missing there is that sense that the warranty number and the consumer law guarantee number: it's often very, very different. So an indication there I think would be helpful. So that, I think, is one very simple amendment. I do think that there's room to amend the law, to make businesses more responsible for what you say is the sin of omission, and it happens so often.

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COMMISSIONER ABRAMSON: Yes.

MS TURNER: And sometimes it's not even a sin of omission. Sometimes we hear from consumers that it's just an outright lie; that you are only able to get this, and you're only able to rely on the warranty. So I'd say there's a spectrum of behaviour, and it's really consistent, and it's a fairly widespread problem.

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Now, I do think, if you're thinking about shaping this, I wouldn't say that one issue is enough to initiate a business penalty. Because I do think there's – if you're thinking about the spectrum of behaviour, on one end, there's

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probably a new staff member, it's their first day, and they've given (indistinct) information. It happens. I don't think it should, but I think it's a relatively low-level issue.

5 On the other end of the spectrum, it's stuff we see where businesses consistently just deny that people rights under the consumer law. They do it consistently, they do it in writing, and they do it to almost everyone who makes a complaint, and sometimes products that are failing again and again. The car market is the obvious one. But I do think that there are other
10 businesses; I'd say particularly tech. We see it a lot with laptops. Businesses are really – they're doing this every day. It's part of their strategy.

15 COMMISSIONER ABRAMSON: Erin, I might be wrong here, but aren't the attorneys looking at something around the penalties that at the moment? Wasn't there something that CANS is looking at?

20 MS TURNER: I'm still getting my head around it myself, because I think there's been some changes with the COAG arrangement. So I'm not sure what the agenda is. I am aware that there's legislation around adding penalties for unfair contract terms.

COMMISSIONER ABRAMSON: Yes, so that's what your – yes.

25 MS TURNER: Which is great, and we would love. But I do think there's something broader here. It's something very specifically – I think it should be a positive – if I could draft it, just today, the way I would draft it is require a positive obligation on manufacturers. When someone says, 'I've got an issue with my product,' you have to proactively say, 'You've got rights under the Australian Consumer Law,' so kind of intervene in that omission point.
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And where you see a repeated failure to do so, that's when there should be fines and penalties attached. I think it's something that the ACCC should have the ability to issue fines immediately, and then there should also be the ability for legal interventions.
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COMMISSIONER ABRAMSON: Erin, just one final thing – thank you for that – on the mandatory warranty checks. Do you know, is there some history here, why it doesn't refer to the consumer guarantees? Because in lots of areas of the law, it has developed now where you've got to tell people certain things.
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MS TURNER: Actually, I went through the regulations, and I was reading through it, and I was surprised that it didn't. Now, my history in the consumer (indistinct) doesn't quite go back far enough to those regulations. I'm not aware of the reason why.
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COMMISSIONER ABRAMSON: We might harass Mr Kirkland, give him a project in lockdown.

5 MS TURNER: I'm happy to make this an Alan Kirkland activity and task. I'm sure he would take it on. But, yes, I'm not sure why; for me, it just feels like it was an oversight at the time of drafting, and it's an obvious inclusion, to put that information in.

10 COMMISSIONER ABRAMSON: Yes. Thank you, Erin. Back to you, Paul.

15 COMMISSIONER LINDWALL: Well, Erin, on that point, if manufacturers were required under – to put in the text of the guarantee, 'Under this consumer guarantee' – it was X years or something, would that obviate what we're talking about in our report, about the ACCC providing guidance on guarantee periods?

20 MS TURNER: I actually think the ACCC work is a starting point. I would say it's the first thing that needs to happen in order for the manufacturers to get more specific. It should be used as a baseline. I think it's actually – it's really important work, and it's work that only the ACCC, which is able to work closely with manufacturers with a consumer interest and with consumer advocates – they're the right organisation, and I think it's the right task. It's then just thinking about, what else do you build on top of that to give people
25 the information they need when a product breaks?

30 COMMISSIONER LINDWALL: Now, I'm going to change tack a little bit here, Erin, and ask you right out: what do you mean by a right to repair? So in terms of what we've now been asked to look at – right to repair – what is the right to repair?

35 MS TURNER: I don't know. My long answer is – actually, right to repair is a shorthand, and it's used to describe a series of connected, complex problems that consumers, and people who want to repair products more broadly, face. I would say it's often around a series of issues where large players are using market dominance, market power to stop people from getting cheaper options or engaging with products in the way that they want.

40 But it's not one thing. It's actually – I really enjoy this debate, and I've enjoyed engaging with it, because it's everything from intellectual property issues to labels on the front of washing machines. So it's very broad. And I actually think the draft report has done a really good job of reflecting the breadth and complexity of the debate.

45 COMMISSIONER LINDWALL: Now, in terms of – you mentioned batteries, and I've had the frustration myself, where you get a bit of a consumer lock-in, obviously, from different brands, because we've invested

in the lithium-ion battery. And that was also a similar one to argue, with chargers for mobile phones. So, for example, (indistinct) move forward to a USB-C type of port, rather than the individual ones, that are quite different.

5 That has happened a lot by just the market evolving, rather than (indistinct) pushing it. So, would any of the things that we've been talking about encourage, say, batteries to become more standardised, or is there something that needs to be pushed in that direction? I would suspect that more and more things will be driven by batteries, obviously, and (indistinct) the
10 forecasts of the electronic, or e-waste, (indistinct).

MS TURNER: If you wanted to hit this issue quickly and aggressively, you could have product design obligations that require interoperability and thought around stewardship and longevity. That would deal with this
15 problem, which I think is still emerging, and in different categories, fast and aggressively. As a consumer advocate, I would say that's the ideal. But I also recognise that there's costs and benefits that you're weighing up.

And kind of – on the other end of the spectrum, information here is going to start to move markets. It's where we – a labelling system does a lot of things really effectively. It's one of the reasons we like it. It's going to deal with a lot of problems that people are facing, just through that soft influence of ranking and rating. So, for example, if you have a category like lawn
20 mowers, and they have batteries that can't be replaced, or that aren't interoperable – so you know it's using a proprietary battery – you could penalise them for that. And some manufacturers are going to respond to that.

It depends on the market; it depends on how much consumers are placing into that in their product decisions. So bringing all that information forward, ranking and rating, it's going to start influencing this market. So there's
30 ways to address it in softer ways, and there's a way to deal with it today; go hard. It depends on overall cost and benefits, and where you sit.

COMMISSIONER LINDWALL: Could I go back to the guarantee point, about, if durability of a product – hypothetical product – is 12 years, say, what do you think a typical guarantee period should be? Now, forget the warranty; it's the guarantee. Should it be – and we're talking about
35 guarantees from different directions, so I want to explore it a bit. One is about the provision of spare parts, or for updates.

40 One is about free servicing; replacing things and repairing things at the manufacturer's cost, rather than the consumer's cost. So, where do you draw the line there? Because I'm not entirely convinced that if a product is likely to last 12 years, and it goes awry in eleven and a half years, that the
45 manufacturer should pay for the entire cost of the repair.

MS TURNER: No, I agree. And I actually think this is where the work the ACCC could do could be quite useful, because it is really untangling product by product how long is a manufacturer responsible for this versus just how long can it run. And we've got examples where - actually one of our Choice members who joined in the first year of Choice who's been a member since, I think, around 1960, still has a washing machine going, and there's a big difference for how long that washing machine's manufacturer should be responsible. Like, the manufacturer should be engaging with that versus just, like, how long can it keep going. I think it's complex; it's product specific, and even within that product category it's price and brand specific. So there's layers to it and I think it needs some deep thought, and the ACCC is the right body to do it.

COMMISSIONER LINDWALL: Yes. Well, that's right. And I think we will have to reflect on that. Now, it's interesting what you say how things last because I was reading the other day that in the United Kingdom - of course, they have a television licence and it's £55 a year for the black and white televisions and £135 for colour televisions. Now, apparently there's still about 15,000 people with black and white televisions which seems rather amazing to me, but that's by the by. Could I go back to super complaints.

MS TURNER: Yes.

COMMISSIONER LINDWALL: Now, we haven't yet had testimony from the ACCC and presumably it will put a submission in in due course and say what it thinks about super complaints. But how do you think the ACCC is likely to react to our proposal for super complaints and when you've spoken to the ACCC, did you get any pushback or do they like the idea?

MS TURNER: Look, I think they recognise it as part of a suite of powers that help make the consumer movement and the consumer outcomes stronger, and I'd hope they'd say that. Obviously we support this and we've supported it for a long time. We see it as one of those protections that just can catch those long-running tricky sticky problems, and that really takes advantage of the grassroots nature of parts of the consumer movement. Now, we have a really strong relationship with the ACCC. I'd say that they regularly pick up issues that we raise as problems. They're really responsive to the consumer movement as a whole, but what super complaints adds is a formality and a weight, particularly where issues have kind of been trucking along, but they need a bit of force to deal with something really sticky.

An example for us actually came up on Friday, so we issued a release because we've been doing portacot testing. We found that these portacots - a number of them failed key safety standards, some mandatory standards, some voluntary standards, but the end result is that a number of these products have strangulation, suffocation or other risks that could seriously harm an infant. Obviously it's that level of order of problem that you want to be dealt with

5 quickly. Now, we keep seeing these issues pop up in the portacot market, and the ACCC takes action as best they can one to one, but if I was thinking what's one thing I would use a super complaints power for tomorrow, it's probably something around safety standards around categories like this. So we see persistent problems year after year.

10 And interestingly, there is - I promise there's a right to repair connection. It's not just about the safety standards. There's often this tricky question around safer portacots. A number of manufacturers haven't initiated a recall, so these people are still using the product. The manufacturer denies there's a problem. Our testing says there's serious suffocation risk; stop using this. But in terms of being able to get a refund or repair or replacement is probably less likely in this scenario, people will struggle in going back to the manufacturer. So there's this interaction between consumer guarantees and product safety that isn't always clear.

20 COMMISSIONER ABRAMSON: Of course. With the product safety, Erin - the product safety - we did try to actually - if I may put in a (indistinct) for the PC, we did actually try to resolve that by putting powers with the ACCC to deal with it, but at the moment, as I understand it, the stakes are still heavily involved and are the ones that issue the banning orders. So I'm just quite interested in getting this link with the right to repair which you started to talk about because, of course, in my mind I think about product safety a bit differently because I think, well, it's different parts of the law; it's even more complex because it involves the states and territories. So the link to right to repair is pretty interesting when you're talking about the super complaint because I don't think - and I'm just speaking quite directly here. We hadn't thought about the super complaint in the world of product safety; we had thought about it in the context of the consumer guarantees, but you're inviting us to look a bit more broadly from what you're saying.

35 MS TURNER: Yes. And actually, I'd say typically when we think about the kind of issues that we'd want to raise, they are going to be the really complex ones.

COMMISSIONER ABRAMSON: Yes.

40 MS TURNER: And that kind of behaviour - usually it touches on several aspects of consumer harm: it will be misleading and deceptive or relate to consumer guarantees, also potentially around product safety. And it kind of goes to what a super complaint is for. It's for those issues that are incredibly harmful and incredibly complex. So only limiting them to consumer guarantees, I would welcome that; there would be great improvement. But actually the issues we see - they often span a series of harms.

45 COMMISSIONER ABRAMSON: Yes.

MS TURNER: So you'd want it to be as broad as possible capturing, I'd say, every aspect of the consumer law in order to bring forward things that are complex and really do need that partnership between consumer advocates and regulators to solve.

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COMMISSIONER ABRAMSON: Erin, what's your experience been with the UK regulator because the financial services regulator over there - a number of their regulators have this power and they've had it for a considerable period of time?

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MS TURNER: So we often work quite closely with our counterpart in the United Kingdom and they don't actually use this power very often. I think that's a really good sign.

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COMMISSIONER ABRAMSON: Yes.

MS TURNER: They use it respectfully and as needed, but when they do use it they really value it. They find it's a way to particularly jump on issues that are emerging and that need to be dealt with quickly, and that it helps them to deal with it properly. I do think - what I really like about the UK regime - it probably goes to our views overall with super complaints - it's multiregulator because quite often the problems that you're catching might be - one regulator might be responsible; another might be involved. It extends to the financial services system and we would definitely value that. We see a lot of problems in financial services that could really use super complaints powers. We did actually issue a 'mega complaint', not a super complaint, just a few months ago on timeshare scheme because we see these protracted - - -

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COMMISSIONER ABRAMSON: Timeshare schemes.

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MS TURNER: I know.

COMMISSIONER ABRAMSON: I think your colleague Gerard probably has a view about that - those issues. I suppose I need to stick to my terms of reference here, Erin.

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MS TURNER: I can take you all over the place on this.

COMMISSIONER ABRAMSON: No, I'm just interested in that broader thing. But what do you think it is about super complaints and your access to information that is not available to the regulators? And I suppose I will be a bit leading here. I would say that sometimes in the regulators, my experience has been there can be a whole lot of complaints, but they don't necessarily join the dots. So is that the type of thing you're thinking about?

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MS TURNER: Yes. Look, I actually think what's great about super complaints is it forces consumer groups to do work in a certain way. And this is a good thing. It helps us go, like, look, if this problem is this big - - -

5 COMMISSIONER ABRAMSON: Yes.

MS TURNER: - - - what effort - we would actually have to go to quite a degree of effort to bring together a super complaint, to get the evidence, to make the case, and then tell a regulator that this is something we need you to deal with in a period of time because of the acute harm or the nature of the problem.

COMMISSIONER ABRAMSON: Yes.

15 MS TURNER: So it actually - it helps guide consumer groups, direct resources and bring together information in a way that we do a little bit of, but actually gives it structure and formality that I think is quite helpful. And then I think the big advantage for regulators is they're getting this information in a prescribed form. They're able to be guided by groups that have
20 connections with consumers in ways that they don't. And obviously Choice has members and supporters and we'd be using a broad network, but I actually think consumer groups that have really deep connections with people who experience vulnerability or in certain areas of Australia - they do really great things with super complaints powers.

25 They bring forward issues that otherwise don't get a look in. And then the timeframe. That's the bit that I think is really exciting and that works really well in the United Kingdom. Sometimes when you raise a problem with a regulator - and I'd say actually the ACCC is very good about this, but some
30 regulators can take a lot of time to just slowly assess an issue, and when an issue has weight and urgency and the harm is ongoing, the timeframe is really important.

COMMISSIONER ABRAMSON: Yes. So you see a real time advantage - -
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MS TURNER: Yes.

COMMISSIONER ABRAMSON: - - - and then it's the ability to join
40 consumers who might not otherwise be - well, I've always thought it's - people don't realise that somebody else has the same problem as them until someone joins the dots for them. So it's your consumer reach that really you're talking about.

45 MS TURNER: Definitely. And another example that might be useful to think about is the work Choice did several years ago with Thermomix. Again, a product safety issue, but also a consumer guarantees issue.

Multipart. Misleading and deceptive as well. We heard from a lot of people who - you know, this product exploded on them.

COMMISSIONER ABRAMSON: Yes.

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MS TURNER: They'd talk to the company and in some cases were required to sign an NDA [non-disclosure agreement] to get any remedy. So these people were deliberately silenced by this company and couldn't connect with others. It was only until Choice started to work with various groups that were affected and uncover it, we saw the breadth of the issue, and the ACCC did act. They took great action against this company. But I think a super complaints power could've helped us do it even quicker.

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COMMISSIONER ABRAMSON: Yes. And the interesting thing, without being particular to Thermomix, is where you don't actually have a direct distribution, if you've got a retail front it's quite - it's easier because you know if you're complaining about a product at a particular store well they can collect that sort of information. But some of the products, like the one you just mentioned, is a party plan type distribution as far as I'm aware.

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MS TURNER: It is, yes.

COMMISSIONER ABRAMSON: Yes, that's been very helpful thank you Erin. Back to you Paul.

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COMMISSIONER LINDWALL: Is it legal to have a nondisclosure agreement if you take a repair that, 'I'm going to give you a repair as long as you don't speak about me'?

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MS TURNER: This is one of my favourite issues, and I'm very glad you raised it. Technically our view is, the law doesn't specifically prevent it, I think it's one of the most incredibly harmful things a company can do. And we've seen it used in ways where someone is just trying to get their consumer guarantee rights and they're required to sign an NDA in order to get a refund, a replacement or a repair and I think it's outrageous, that's a company trying to silence a consumer from talking to other people who have the exact same problem.

COMMISSIONER ABRAMSON: Mind you though if the regulator comes along an NDA doesn't stand against a regulator asking its particular questions.

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MS TURNER: No, exactly and that's what happened in the Thermomix case. I think what it's more likely to do is prevent groups like Choice talking about the remedies that people can get, but the individual can't discuss it, and it prevents people from connecting with each other and even just having those chats say on a Facebook comments thread like, 'I got a refund, you

should be able to get one too'. That's really powerful and the company is squashing that.

5 COMMISSIONER LINDWALL: Now I want to explore a few things, and you may not have much to say about but just in the remaining time. So, before I do that could I encourage you - in your submission to clearly define what you mean by repairability, and durability, and other terms from your perspective so that it can help us.

10 MS TURNER: No problem.

15 COMMISSIONER LINDWALL: Now, as you know in the report we've also talked about things like changes to intellectual property, copyright law and also a positive obligation for the provision of repair manuals and spare parts and so on to third-party repairers. So, is there anything you can talk about in terms of independent repairers versus authorised repairers, is that of interest to Choice?

20 MS TURNER: In terms of kind of the back-end elements, like can they access the information they need, this isn't an area where we have strong expertise. We mostly over that consumer experience and I will say that we've got consumer comments and information from people who have used both authorised and third-party. We'll provide some analysis in our report, but we see issues in both, it's not that third-party is awful or excellent, or authorised is awful or excellent, it really does depend. People have frustrations with both. I think providing more parts, more information, and more repair tools to third party will address a lot of the problems that people are seeing. So I can't see a reason from a consumer lens not to do it, it would actually be incredibly helpful, and could actually deal with some of the frustrations -

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30 we'll bring forward this in our submission - we have got some information from our members about particular frustrations that people experience in regional and rural areas.

35 Because quite often authorised repairers will be very confined to a certain locality. There might be a repairer who can do it in their area but there's not someone who's authorised to do it. So, it leads to delays, and frustration, and it would just be more useful. On the intellectual property matters, again I think that's more an issue that the repair groups would be able to talk about in detail. But broadly, as you'd know from our history talking with you, and

40 working with you, we think the Copyright Act has a lot of room to improve. Moving to a fair use model, more broadly, would really benefit people, and it would stop large companies misusing the Copyright Act. The way that I kind of interpret some of these things that are happening, this is companies

45 throwing their weight around and using the law to do it, and they shouldn't be able to.

COMMISSIONER LINDWALL: And your point that you mentioned, I just want to be quite clear about that, there is no evidence from your point of view that authorised repairers are systematically better than non-authorised repairers?

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MS TURNER: No, or systematically worse, definitely not.

COMMISSIONER LINDWALL: Okay.

10 MS TURNER: They seem to both have challenges, and it really is product specific, area specific - - -

COMMISSIONER LINDWALL: And the skills availability presumably too.

15 MS TURNER: Incredibly, I actually think third-party repairers could be even better if some of the actions you're exploring around information provision and repair manual provision they'd be excellent.

20 COMMISSIONER LINDWALL: Now consumer guarantees of course operate for some businesses too, which is unusual in terms of the rest of the world. Is there anything you can say about the extent of consumer guarantees and who should be considered consumers under a guarantee?

25 MS TURNER: So, this is probably one where we're less able to comment, our remit is very specifically individual consumers, we don't have a lot of expertise when it comes to small businesses. But broadly I do think that small businesses face the same power imbalance that consumers face opposite large businesses. There's a good logic to extend it, but where exactly you draw you the line, and how you draw it I don't have very developed thoughts on.

30 COMMISSIONER ABRAMSON: Could I just ask to go back a point Paul if that's alright because we were just talking about it then. When Paul asked you Erin about independent repairers compared with authorised repairers there is another point in there that we did address in the report. Which was this issue about an independent repairer doing the work and it not being of a satisfactory standard and then the manufacturers say, 'Well, we're not going to actually look at it because you got an independent repairer, and we're really worried that if you opened this up it's a liability issue'. So, it's the sharing of liability issue and that is not a nothing concern, but it's something to think about because actually that repair might generate its own consumer guarantees.

45 But it is not an insubstantial concern to have about who is liable, and you come from the consumer perspective so the worst outcome for a consumer is for one person to be blaming the other, which is how our litigation system works. So, I'm just interested in how we could sort out that particular issue.

5 MS TURNER: Yes, look I do think it's the last place a consumer wants to be with the product that's potentially been ruined, and independent repairer that's not taking responsibility and the authorised party or the manufacturer not taking responsibility either. The consumer is the party that loses in that. I will say we haven't had a lot of cases like that come through, even when we've sought them out, so I'm not sure how much of a problem it is.

10 COMMISSIONER ABRAMSON: How big a problem it is, yes.

MS TURNER: I do think that proactive efforts to get more information in the hands of authorised repairers, so repair manuals, quality parts. If larger manufacturers don't horde, we'll see less of this, that's probably the most I can comment on it, but we can bring some stuff forward in our submissions.

15 COMMISSIONER ABRAMSON: Yes, that would be very helpful. I didn't want to create the impression that I had a view one way or the other about that - who's doing a good job - but it is not a stupid thing to be worries about, so we'd be very grateful for some more information from you on that.

20 MS TURNER: Great.

COMMISSIONER ABRAMSON: Back to you Paul.

25 COMMISSIONER LINDWALL: Alright, I think that's probably a good set, we're pretty much exhausted for Choice, and we've been here for a while now, so I'll just give you and opportunity to now if you wish to provide any final comments before we finish up.

30 MS TURNER: No actually I think we've explored all the nooks and crannies that I hoped to explore, and we'll obviously give you a lot more detail in our submissions. And thank you for the opportunity to appear today, it's a great topic to talk through with you.

35 COMMISSIONER LINDWALL: Thank you very much.

COMMISSIONER ABRAMSON: Thank you very much Erin and thank you Dean. Thank you.

40 COMMISSIONER LINDWALL: Thank you, and now we're going to have Kyle next but that should be in 20 minutes time. So, Kyle if you don't mind, we'll just have a short break, we'll come back just before 11 o'clock Australian eastern standard time, which is in about say 20 minutes time.

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SHORT ADJOURNMENT

[10.38 am]

5 COMMISSIONER LINDWALL: Hello, everyone. We might get shortly going. And I think you're there now, Kyle. Hello.

MR WIENS: Hello.

10 COMMISSIONER LINDWALL: Is it – Max, our transcript person, are you ready to get started now? Thank you. All right, well, welcome, Kyle. And I think Kerrie is there too, is that right?

MR WIENS: It's just me.

15 COMMISSIONER LINDWALL: Just you. Would you like to introduce yourself, and perhaps give an opening statement for the hearings about what you would like to say?

20 MR WIENS: Absolutely. I am Kyle Wiens, CEO and co-founder of iFixit. We're the free repair guys for everything. Our mission is to teach everybody how to fix all of their stuff, and we have an online community of people from all over the world that are teaching each other how to fix their things. I was pulling up some stats, and in the last 12 months, iFixit was used 6.8 million
25 times by Australians to learn how to repair things.

So each of those is a unique repair session, where someone is searching; they have – they've got a toaster or a phone, or something that's broken, and they're looking for a repair solution. And I think – the earlier conversation,
30 about how this is complex: yes, this is complex, because repair is an ecosystem. It requires a system. You pitch a product up in the world; a lot of manufacturers would like it if the relationship ended then. They pitch it over to us, and then everybody else has to deal with it.

35 Crafting that system of – providing an ecosystem to take care of a product afterwards: that's why iFixit has been all about. So we have – our system is centred around three key pieces of the repair system. Information; getting people the repair guides, step-by-step instructions, troubleshooting information to figure out what you need to do. Parts; the actual – most
40 repairs these days are part swapping. And then, the tools that you need to open things up. And don't underestimate the tools. I've got a toolkit here. This is a special screw for the iPhone. There is a different screw for the Apple watch.

45 There is a different screw for the Gameboy. These companies like to manufacture all kinds of different parts – there are very special, unique tools. Also, there are special repair jigs for some products, when they glue things

together. Maybe there will be special suction cups and things like that. So – and to some extent, that technology evolves, and we need to evolve our tools, but some of it is flat out obstructionist.

5 And so that’s what the iFixit community does. We’re kind of a backstop. We said, ‘All right, the manufacturers have completely abrogated their responsibility, so we’re going to step up, and we’ll fill in the gaps.’ And we’ve been reasonably successful at that, but there are limits to what we can do. I really appreciate the thorough report. I thought it was fabulous.

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One thing that – a tactic that we’ve seen come up recently that wasn’t discussed in the report, probably because I didn’t submit much information on it for you to build on, but we’ve seen manufacturers restrict our ability to buy parts. So, for example, there is a German battery manufacturer named Varta, that sells batteries to a wide variety of companies, and Samsung happens to use these batteries in the Galaxy earbuds.

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It’s a commodity part. They’re in lots and lots of products. But when we go to Varta and say, ‘Can we please buy that part as a repair part?’ they’ll say, ‘No. Our contract with Samsung will not allow us to sell that piece.’ And we’re seeing that increasingly. Apple is notorious for doing this with the chips in their computers.

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So there’s a particular charging chip on Macbook Pro that is made by a company that – there is a standard version of the part, and then there is the Apple version of the part. It’s just very, very slightly tweaked. But it’s tweaked enough that it only – it’s required to work in this computer, and that company, again, is under contractual requirement with Apple.

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So you have these sole dealing in contracts where, by virtue of controlling the supply chain – and of course, if Apple says, ‘We’ll buy 10 million or something from you, but you have to agree not to sell 10s or 1000s to someone else,’ of course a supplier is going to agree to that kind of restriction. I can talk – and I want to kind of get into the conversation, but just to give you a kind of a broad thrust of topics I’m available to traverse on, I have a broad familiarity with what’s happening in Europe with various regulatory regimes around right to repair.

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The European Commission has passed some right to repair around appliances. Also, of course, we’ve seen the French reparability index, and they have a lot of in-depth information on that. One thing I thought that I would share, because I think this is kind of exciting: Samsung commissioned an opinion survey company – this data just came out recently, so we haven’t submitted it to you yet, but this survey company, OpinionWay, looked into what the impact of France’s reparability rating system was on the public.

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And of the French populace, 71 per cent of the population has heard about the scoring index. That index is a little bit more toward older folks. It's 80 per cent of people over 50, but only 52 per cent of people in the 18 to 25 age range. That may be people that go to stores. Because the index – the labels
5 have to be visible right next to the price at a retail store. They also have to be available online.

But it's interesting that older – maybe older folks read newspapers, I don't know. Eighty-six per cent of citizens say that the index impacts their
10 purchasing behaviour. Eighty per cent of people would give up their favourite brand for a more repairable product. So this is really substantially driving consumer behaviour. Also, external from the index, it just asked, 'Have you tried to repair things?' and 83 per cent of French people say that they try to repair or have repaired faulty devices instead of replacing them.

15 I have no idea how that compares to Australia. It's very interesting to see. So the French index I think – and we're only seven months into this – and, by the way, it's optional. There is no fines whatsoever for not complying with this repairability index so far. They said they're not going to start enforcing
20 any kind of penalties until January 1 of next year.

But the adoption has been pretty universal across the board, in the five product categories that it's relevant for, which is washing machines, smartphones, TVs, laptops, and, especially relevant to our previous
25 discussion, electric lawn mowers, which, I totally agree that the lithium – proprietary lithium batteries schemes on these are a challenge.

And so the French index is pretty much regarded as an unequivocal success. Spain has already agreed that they're going to implement France's system.
30 We've seen interest – I think New Zealand has expressed interest in using the French system as part of their scoring. And the European Joint Research Centre is working on a Europe-wide repairability score.

I have a feeling some of the more Europe-centric folks are a little bit annoyed
35 that France jumped the gun, because everybody wants to do a broad scoring system. France did it first; they're getting the credit. But also, they're kind of a laboratory of how it's going. It's voluntary, and we can talk about (indistinct).

40 Other things, just to give you a quick overview, and then I'll stop talking. What's happening in the US, there has been a huge amount of momentum on right to repair in the United States over the last week. I have been on the phone, talking to policymakers and reporters pretty much non-stop. President Biden signed an executive order asking the US Federal Trade Commission to
45 institute a rule-making process for right to repair, and the US Federal Trade Commission has broad rule-making authority.

Also, in May, the Federal Trade Commission released a report on repair restrictions, and found – and they systematically analysed – because I know – a recurring theme in your report was requesting more data. The FTC may have gotten some more data than you did, and has – was able to come to some pretty broad sweeping conclusions.

They went through and detailed manufacturers’ objections to various – or rationale for restrictions on the repair market, and found them overwhelmingly (indistinct). We can dive into any of that detail. But what we expect to happen next is, the FTC is coming up – this next week on Wednesday it’s going to have a vote to adopt a formal policy in favour of implementing more repair-friendly policies. And then they will be instituting formal rule-making, which we expect will take at least a year, but they’ve already got the framework in that report.

So I can provide lots of (indistinct), but I want to – I’ll stop talking and let you guys ask questions, what you’re interested in.

COMMISSIONER LINDWALL: Thank you very much, Kyle, for that. You mentioned six and a half [million] users (sic) in Australia, of iFixit, and – well, certainly I’m one of those users, so I have used iFixit a few times. Now – and thank you for the information. But when I – you’ve covered a number of issues there, so could I ask right at the beginning: what do you mean by right to repair?

MR WIENS: Absolutely. Great question. I would say that it’s the ability to fix the things that you have. So, for me, that means the consumers’ ability to do the repair, but I would say, if a consumer can do it, a professional also can. That means that the system needs to be in place to allow that. And it could be an obstacle as simple as the price of parts is too dang high.

Samsung actually does make certain spare parts available for their phones, but the prices are so high that anyone will look at it and say, ‘Am I going to spend \$400 on a screen for a \$500 phone?’ So, economic realities play a factor here, and that’s unique to repair. In recycling, the term ‘recyclability’ is fundamentally an economic definition. Is there more value in the things that I’m trying to recycle?

If it’s metal, the answer is probably yes. If it’s a lead CRT [cathode-ray tube], the answer is probably no. So, it’s an economic factor, and then it’s also practicality. If you have to buy some fancy \$500 tool to do a repair on a \$300 device, you’re not going to do it, even if the tool was available. You have to provide that full system, and it’s got to be a system that is working.

COMMISSIONER LINDWALL: All right. Yes, that was good. Thank you. Now, on your first point, about refusal to supply, obviously there’s issues around intellectual property law, which is about you copying things like

repair manuals, and getting through diagnostic information and so forth, which, iFixit of course uses that too.

5 You could use 3D printing, I suppose, to produce spare parts, some type of spare parts. I would be interested to hear about that. So is there – how do you solve that issue of a major manufacturer refusing to allow suppliers to deal with parts and things like that? Intellectual property won't help you there terribly much, will it?

10 MR WIENS: Sure. I mean, I would defer to your legal expertise (indistinct). I mean, this is unfair trade practices, this is exclusive dealing, it's the kind of thing that I think competition agencies should be able to step in and enforce pretty quickly. And where it starts to blur the line with intellectual property we've seen Apple will put their logo on parts inside the products for the sole
15 purpose of preventing people from moving these parts across borders because you have to have permission from the trademark holder, and that's incredibly infuriating. We've been in a situation where we're having to use solvents to remove logos from genuine parts so we can just engage in trade so I can get them from the US to Australia.

20 So, this is - it's frustrating. 3D printing is a wonderful - we like this idea, it would be really cool, we do have some 3D printed models on iFixit where you can go and get an impeller for a coffee grinder and you can buy it and it's \$20 print on demand. Unfortunately, in our analysis of parts about 2 per cent
25 of all parts can be 3D printed with current technologies,

COMMISSIONER LINDWALL: Is that all, 2 per cent?

30 MR WIENS: And particularly I don't think there's a single off part in this phone that can be 3D printed in a reasonable way. There are other parts - where 3D printing is more compelling and interesting is in whitegoods where you have nobs and switches and - I had a switch in my washing machine fail, potentially I could have fixed that with a 3D printed part. Or if you design
35 the product from the beginning with intent the product should be 3D printable.

COMMISSIONER LINDWALL: Okay, now could I explore - and I think 3D printing is going to be interesting, and I think I agree on whitegoods because they're obviously - they're not technology as such most of the
40 products we're talking, they could be made of plastic or metal. The link between a right to repair, as in repairing products which could make less profits if it's implemented well for a manufacturer, and the likelihood of manufacturers then increasing the price in the primary market of the original sales, have you observed that and have you got any comments on that?

45 MR WIENS: We certainly haven't seen any changes in France. The only - if you think about right to repair requirements really saying hey in terms of

5 very lucrative markets for selling spare parts, if you look at the agriculture companies or heavy equipment companies, even automotive manufacturers, they make a large portion of their profits from selling spare parts. So, I would argue that this is a market opportunity these manufacturers are losing out on. And in the case, particularly with the smart phone manufacturers they're so focused on high volume and high margins that if there's a business that comes along that has say a 15 per cent margin they sort of turn their nose up to it, and they don't want to deal with it because they have much higher margin opportunities.

10 So, are we saying, 'Hey, you should participate in a different market.' Yes, but I don't think it's a money losing proposition. Really the biggest economic loss for them would be if they purchased a whole bunch of spare parts that they ended up not needing. But I can tell you, I was in a recycler in California and I saw them, these recycler are under contract from 15 manufacturers, in this case they were under contract with Apple and they had service parts - in California Apple stops providing service after seven years. So this was at seven years and Apple had warehouses full of spare parts and rather than selling out in the market place, so that someone like me who 20 would eagerly have brought them, they were paying the recycler to destroy them and they had millions of dollars of parts they were literally taking out of the cardboard boxes and pitching them into the shredder.

25 So, I don't have a whole of lot of sympathy, because their monopoly control is costing them money in this practical way as well.

30 COMMISSIONER LINDWALL: Do you see a trade-off between the durability of a product and the repairability of a product or do they go in the same direction, or is there an offset perhaps?

35 MR WIENS: It depends. And it depends on how you're constructing the product. The easy short-term path that we've seen for a lot of the product designers, what I think is kind of a lazy path, is that you just glue everything together. Imagine if you have a phone, a laptop, whatever you have the bottom case you glue the battery in, you glue the top on. Actually, the glue on the battery provides part of that structural rigidity, or they call it torsional rigidity in the mechanical design space, and it can help you achieve durability in the very short term. But of course, then you've coupled the product to a battery that has an 18 month or two-year design lifespan.

40 So, it's really, really durable until it's guaranteed to break and then be totally toast. And we've seen this with the Apple AirPods, it's an example of a product that is totally glued together, anyone with the first generation 45 AirPods has generally seen that product fail and yes, they're durable, they're still physically intact but you can't access the batteries. So, I would challenge - and I've run design workshops for industrial designers from leading electronic manufacturers and other industries, and we work on this problem

of training people; how do you design a product to be both durable and repairable? And there's a wide variety of strategies that we employ, and I can go down the rabbit hole with you on that.

5 But I would point as an example Microsoft had a surface laptop, we rated it on our repairability score, normally we rate products from 1 to 10, the surface laptop got a zero. It had a glued in battery exactly the design I'm talking about where the whole thing is glued together, we actually had to cut our way inside the product and destroy it in the process of trying to get inside. So, very poor product. In response to market conditions, perhaps the French repairability index, Microsoft decided to redesign that product and they kept the exact same external form factor, same durability, same thickness, thinness, it's a really sexy form factor for this laptop. And the current Microsoft surface laptop gets a five out of ten on our score card.

15 So, they went back to the drawing table but they told their designers we're going to innovate our way out of this, and I think that's the solution is that this isn't the defeatist, 'Oh if we make it repairable it will be less durable', no we can have both, we just might have to try a little harder.

20 COMMISSIONER LINDWALL: That's a good point, yes. Now I've got some questions, but I should throw to Julie to see if she's got some that she'd like to ask.

25 COMMISSIONER ABRAMSON: Thanks very much Paul and thank you Kyle I feel that we've been in your loungeroom or your living room a lot lately so thank you very much. I just wanted to ask a little bit more about the repairability rating, and I think you were online before when we were talking to Choice about that. So, I'm just interested in what are the - and I have read your submission, but just for the transcript - what are the factor that you take into account? And how are you objective about that so it's not just your view that, 'Oh you can't undo this because of this, this and this.' So, where's there's an objective view outside of it, so if I make myself clear, it's about having some key things that we could look at.

35 MR WIENS: Sure, absolutely. And of course, it goes product by product, and when we look at the French index, they have a different spreadsheet for each type of product. I think the score card generally lines up reasonably consistently with the French index. So, before I tell you what we factored into it I'll tell you a few things that are not factored into our score that are factored into the French system. We don't factor the availability of software updates in, we don't factor in price of parts, and that's because we rate products usually on day one when they come out, and we don't know what the parts pricing is going to be. Whereas the French system does factor in pricing of parts and timeline of availability which I think is a wonderful thing.

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5 So, I think the scoring system is more similar to, there's a kind of mechanical
subset of the French system which is really just focussed on how easy or hard
it is to take a product apart, as well as is there information available. That's
the first thing, one point out of our ten is is there a service manual publicly
available? Now Samsung has started posting their service manuals in French
in order to score better on the French index, but they are not yet posting them
in American or Australian, we'll see, hoping it will come soon. So, what does
our scoring system factor in, the first thing that we're looking is whether what
we call critical components, so if you have a product what are the things that
10 are most likely to fail first.

COMMISSIONER ABRAMSON: I'm sorry Kyle I just missed the word
after critical?

15 MR WIENS: Critical component or critical part.

COMMISSIONER ABRAMSON: Thank you.

20 MR WIENS: Yes. So, in a given product, with a cell phone - a smart phone
the two critical components for us are the screen and the battery. Other
products may fail, actually everything in it will fail eventually, but the screen
and the battery are normal service components. And so, we'll look, and we'll
analyse a product based on how many steps, how difficult is it to hey to the
screen or the battery. This particular phone, I don't have to tell you who
25 made it, but the screen on it - you have to take the screen off in order to get to
the battery and the screen is very, very thin and in the process of ungluing the
screen it's easy to break the screen. And so, you might be trying to get to the
battery and break the screen in the process, so that's the kind of things that
we'll factor in.

30 Number of fasteners are they using proprietary fasteners, so like the Apple
watch has a brand-new screw. Sometimes we're sitting there trying to take a
product apart for the first time and we have to make a screwdriver on the fly
to be able to get inside it. So that's kind of it in broads, we'll provide more
35 technical - - -

40 COMMISSIONER ABRAMSON: Yes. I'm very interested in this idea of
critical components because that seems to me that that would be quite a key
part of any scheme. As you said, we've got to differentiate between products,
so I would be interested in some more information on that. And from what
you said, it's actually quite transparent what you rate against, so we're quite
interested, which went to my point about, you know, how objective it is.
Well, it's quite transparent. You're looking at the screen and you're looking at
the battery. So, thank you. Back to you, Paul.

45 COMMISSIONER LINDWALL: Yes. Okay. Is there any appetite, do you
think, Kyle, for the French labelling scheme in the United States?

MR WIENS: Great question. Our advocacy - so this probably is more on the repair advocates and what we've been asking regulators for, and we have not asked for that in the US, but I think the time may be coming. We have been
5 focused on access to the parts, tools and information and kind of regulating a minimum level of access; that's what the US state laws - like the one that passed the New York Senate the other day. That's what those have been focusing on. And honestly, naively we had hoped that the US marine environmental optional standards - things like EP is an optional standard.
10 We had hoped to get some of these kind of labellings in there, but the manufacturers have co-opted that process and made it so that - we've been trying for a decade to get some kind of (indistinct) manufacturers, but I will specifically call out Apple, have completely stymied forward progress.

15 COMMISSIONER LINDWALL: It has been put to us at various times that the US and Europe have taken different approaches for different purposes. So if you look at the motor vehicle scheme, for example, in the United States, it's often about allowing competition in the repair market and also the ease of repair for the purposes of independent repairers and so forth, whereas the
20 European Union is probably more from an environmental perspective. Is that a broad generalisation? Does it make sense or - and how do you amalgamate those two different perspectives?

MR WIENS: Yes, I think that's reasonable. The United States does not have
25 a whole lot of appetite for environment legislation. We haven't passed a whole lot in the last 20 to 30 years, where the European Commission has. And I mean, the European Commission has made like - we don't have lead in our electronics, and that's not because of any laws that the United States passed; that's because Europe (indistinct) and it has been very effective at
30 eliminating lead and toxics from electronics globally. This phone might be many things, but it's not particularly toxic, and you can - we can all thank the European Commission for that.

COMMISSIONER LINDWALL: Okay. Yes, yes. And what other
35 legislative responses are following in the United States and - so the Magnusson-Moss Warranty Act - how effective has that been and could you explore a bit about that, Kyle.

MR WIENS: Absolutely. So the Magnusson-Moss Warranty Act does a few
40 things: (1) it says you cannot tie a purchase of service to a warranty, and then it explicitly bans manufacturers from voiding warranties if after-market service has been engaged in as long as that service has not damaged the product, and the burden of proof is on the manufacturer to prove that the consumer (indistinct) damaged the product in the process of repair. The
45 agency in charge of enforcing the Magnusson-Moss Warranty Act is the US Federal Trade Commissioner, FTC, and they have been asleep at the job. I think they would admit that they have been asleep on the job. And so, for

example, we have pervasive evidence that consumers are unwilling to try to fix their own things because they're afraid of the warranty.

5 Even if it's well out of the warranty period, they're still afraid of opening it up. And when we've done kind of research to understand why, these 'warranty void if removed' stickers and clauses in user manuals really have a stifling impact on consumer behaviour, to the point where it sometimes is like pulling teeth to get someone just to remove the screws. And so the FTC has started weighing in on this. They've sent letters to five game console
10 manufacturers. I know that you know that one of the game console manufacturers in Europe - some of them have shaped up their act. We still haven't seen it. And we haven't seen systematic enforcement. Of course, U.S. PIRG [Public Interest Research Group] has released a report, you know, where they surveyed white goods manufacturers and found that almost all of
15 them were infringing Magnusson-Moss in some way or another.

So when you get to a point where the default is everyone in the market is, you know, ignoring a law, then the regulatory agencies need to step in. And with the new administration and the new tone that we're seeing from the FTC,
20 I would expect that. The FTC in their report that they issued in May told consumers if you ever see a 'warranty void if removed' sticker, take a picture of it and post it to reportfraud.ftc.gov. So they're flat out calling it fraud and we're excited to see what comes of that.

25 COMMISSIONER LINDWALL: Yes. Has it had any effect upon the warranty duration?

MR WIENS: No, I don't think so.

30 COMMISSIONER LINDWALL: No. Don't think so. Okay. Could you - do you have any idea why warranties vary in duration so much? A lot of warranties for many products are a year, say. I think that's true in America, whereas in some motor vehicle they're now talking about 10 years or something. So is there competition in that particular market for the warranty
35 duration, do you think?

MR WIENS: I think so. I think - I can speak as a businessperson.

40 COMMISSIONER LINDWALL: Yes.

MR WIENS: We sell products; we have warranties on our products and we've experimented with different warranty lengths and how can we, you know - but I would say it generally is kind of manufacturer by manufacturer. I just bought a welder; it came with a three-year warranty.

45 COMMISSIONER LINDWALL: Yes.

MR WIENS: I was pleasantly surprised at that.

COMMISSIONER LINDWALL: Yes. Is that normally available at point of sale?o that - do you think that's - - -

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MR WIENS: Yes.

COMMISSIONER LINDWALL: Yes.

10 MR WIENS: Yes, and that's - Magnusson-Moss requires very clear language. It explicitly defines what a warranty is, and you'll often see the difference between a limited warranty and a full warranty. The requirements to be a full warranty are so extreme that I've never seen a product with a full warranty. Everyone has a limited warranty and a limited warranty is a very
15 specific definition under Magnusson-Moss of what it can be.

COMMISSIONER LINDWALL: Yes.

COMMISSIONER ABRAMSON: Paul, could I ask some questions about - -

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COMMISSIONER LINDWALL: Please.

COMMISSIONER ABRAMSON: Thanks, Paul. Some intellectual property. Kyle, you will have seen that we put on the table some issues that
25 we see with Australian Copyright Law and we have talked about fair use and fair dealing. One of the arguments that's being put to us is that fair use would not solve the problem because the US has fair use and that doesn't seem to solve the issue. Now, I have some views about that, but it would be helpful if perhaps you could address that for us.

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MR WIENS: Sure. Fair use is very helpful. It is a really critical underpinning of US copyright law. When the pandemic started, a big project that iFixit initiated was to help connect the repair technicians at hospitals with the service information that they needed for medical equipment. It
35 turned out that the state of affairs - and I have friends in the medical industry around the world - the state of affairs for exchange of information in hospitals around how to repair equipment is USB thumb drives exchanged between biomed technicians with PDFs on it, and this sneakernet is how almost all medical equipment around the world is serviced, and so a
40 biomedical technician is only as good as their thumb drive. And it's not just repair information; it's also preventative maintenance.

Things like changing the air filter on your ventilator regularly, and that is essential information that hospitals have. Increasingly they had been locked
45 out, and so we decided at the beginning of the pandemic that we were going to collect all of these thumb drives, organise them in one central place and post a biomedical service manual. And the legal theory underpinning that

from our legal counsel and some legal NGOs [non-government organisations] that assisted us with the project predicated that whole project on fair use. So I would not have felt comfortable launching that project in Australia like we did in the US.

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COMMISSIONER ABRAMSON: It would be very helpful for us, Kyle - I know you addressed it in your earlier submission - if you could address some of those issues in a submission which I'm assuming that you've put in to the draft report.

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MR WIENS: Okay.

COMMISSIONER ABRAMSON: Thank you.

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MR WIENS: Yes, we can work on that. The other (indistinct) we do get copyright to take down those for manufacturers. We've gotten them from Apple on schematics and we removed the schematics, and then we've gotten them from medical device manufacturers and have responded to them saying no, we believe what we're doing is very useful (indistinct).

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COMMISSIONER ABRAMSON: Thank you. Back to you, Paul.

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COMMISSIONER LINDWALL: I'm not going to question you about the view of the benefits of making technological protection measures easier to obtain. You publish breaks on TPMs [technological protection measures] on your website. But are they becoming like a cat and mouse game, that you show one way of getting around it and then they think of a more sophisticated way of locking it down and then you might get a break and so on? I mean, where does it all end up, I suppose?

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MR WIENS: It certainly is always that way. Sometimes, you know, circumventions are easier. I would say - I mean, in some cases the TPM is just highly good, and we have trouble; we just can't break it. Or, in many cases, it's relatively trivial, but it acts as an overall impediment.

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We've seen wheelchairs – powered wheelchairs are an area where I cannot believe there are service passwords on these things. And there are common settings that you might want to make to your wheelchair. For example, there is a setting called traction, where you might want to change exactly what the traction parameters are on your wheelchair, depending on the time of year.

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Maybe it's snowing outside, and you want to tweak it. No, schedule a service appointment and have someone come out and enter the service password, to be able to make a change. And I very offended by this particular password, because this is someone's mobility. This is someone's life. This is really important. And I think this sort of shows this systematic removal of (indistinct) that we have across the board. (Indistinct) like to say,

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if someone else puts a lock on something that you own, and doesn't give you the key, they're not doing it for your benefit.

5 COMMISSIONER LINDWALL: No, that's exactly right. All right, well, I think we're probably out of time - - -

10 COMMISSIONER ABRAMSON: Just one more question, very quickly, Paul, if I may. Kyle, you mentioned some survey work that had been done, and the percentages of people that thought certain things. So, anything that you could put in your submission will be most welcome.

MR WIENS: Sure, absolutely.

15 COMMISSIONER ABRAMSON: Thank you. Sorry, Paul.

COMMISSIONER LINDWALL: Kyle, you've been very helpful to this inquiry, and thank you very much for your patience, and what you've provided to us today. It's been fantastic.

20 COMMISSIONER ABRAMSON: Thanks so much, Kyle.

MR WIENS: Thank you to you, and all of your hardworking staff.

25 COMMISSIONER LINDWALL: Thank you, Kyle.

COMMISSIONER ABRAMSON: Thank you.

30 COMMISSIONER LINDWALL: All right. Our next guest is Leanne Wiseman from Griffith University. Leanne, are you there?

35 PROF WISEMAN: Yes, I am. Can you hear me?

COMMISSIONER LINDWALL: Good morning. How are you today?

40 PROF WISEMAN: I'm very well, thank you. How are you?

COMMISSIONER LINDWALL: I'm very well, thank you. So, if you could just state your name and give us an opening statement, that would be fantastic.

45 PROF WISEMAN: Thank you, Paul. My name is Professor Leanne Wiseman. I'm a professor of intellectual property law at Griffith University. This morning we've heard intellectual property being mentioned a few times this morning, and I thought I would seek to go to IP more generally, but I've put forward three bullet points, really, to concentrate on.

And the first is improved manufacturer responsibility. And that's an overarching comment, and I'll just give you some insights into my thinking as to how we can improve point-of-sale information, so that we can rebalance this relationship that we're seeing between individual consumers, and, in some cases, small and medium businesses, and the global technology and manufacturing companies that we're actually dealing with.

Secondly, I'll talk about intellectual property, and also about TPMs and the ability or the need to prevent contracting out of repairability; and thirdly, this discussion around fair use and fair dealing in Australia, and whether there's a need for a specific fair dealing defence. So, I would like to pick up on some of the things that Erin from Choice spoke about this morning, and that is just to recognise and reinforce the power imbalance that we do see here in Australia, and in many other countries, between individuals and the global technology providers and manufacturers in the digital space.

This was particularly highlighted by the recent ACCC digital platforms inquiry, and we see similar issues present here. We're talking about individuals buying everyday items. There is no ability for those individuals to negotiate with the big global brands that manufacture those goods, whether it be your toaster, your kettle, your whitegoods, your appliances, your motor vehicle, or your farm machinery. It is just not the case.

So this power imbalance: we need to look at that and keep that in mind. And in terms of our regulatory responses, empowering consumers by giving them defences under copyright law, or giving them more information about their consumer warranties really I don't think helps very much. It is the manufacturers and their teams of in-house and external lawyers who advise them, who write their contracts, their licences, whether they be software licence or data licenses, who know what those contracts contain, and who draft them in a way that basically makes them very, very difficult for an individual to understand.

So that power imbalance – and part of the work that I've done for many years is actually just sit down and read the licence agreements that come with new technology. I've specifically had experience in the agricultural space, and I can tell you, from reading those licence agreements, they are very long, they are very detailed, and for an intellectual property trained lawyer like myself, they're very, very difficult to understand.

And any suggestion by manufacturers that, for example, farmers who run large farms, or who are even on corporate farms, are somehow on an equal footing with global manufacturers of agricultural machinery is really just a nonsense. Individuals do not take lawyers with them when they go to buy appliances, and nor do farmers take a team of lawyers to go and investigate a particular licence agreement when they turn their combine harvester on, or their tractor.

5 So that mere suggestion that there is some equal footing between the players is something that we really need to address. Put simply, I really suggest that manufacturers need to take more responsibility to provide information for the smart goods that they're providing at point of sale, as Erin has said this morning. This can be relative to the complexity of the product at hand.

10 We know ourselves, if we buy an expensive ballpoint pen, perhaps we would like to know whether we could replace the ink within that pen. And that is information, as a consumer, that we should be able to find out at point of sale. This whole notion of 'caveat emptor', buyer beware, that it's the buyer's responsibility to ask all the questions that they can possibly think of, make a positive obligation in that sense really does not apply in these everyday transactions that we have in this digital world that we're living in now.

15 Most consumers are not even aware of the range of limitations that are imposed on buying physical goods these days that are embedded in software. So, how could they even begin to ask the questions that the caveat emptor principle really applies? So if you sell a ballpoint pen, why shouldn't you tell the consumer that that particular pen will have to be thrown away and replaced if the ink runs out, and that you can't replace that?

20 That's a very simple thing. If you translate that into a very complex transaction, where you're buying a car, or perhaps a washing machine or a fridge, that you know that you can never get that spare part for, and that fridge will need to be replaced, even if a (indistinct) goes, or a simple part breaks, why should not a manufacturer be obliged to tell you that at point of sale? That would give the consumer the power to make a decision about whether to buy that particular good or not.

25 The whole operation of Australian Consumer Law, particularly section 18, in terms of misleading and deceptive conduct, it recognises, as you've already pointed out, this notion of omissions. There's no positive obligation in our Australian Consumer Law for manufacturers to make positive statements about what their product will do and what it won't do, and what you can't do with your product. And I think that there is scope within our Australian consumer law to place more responsibility on manufacturers.

30 As I said, manufacturers produce these goods. They know them best, and they know the terms of the licences upon which they sell these goods. So why not make that available at point of sale? In terms of how that would look, a simple one-page document. We see fabric care labels on a T-shirt that is often in several languages, explaining how to wash it, how to dry it, whether you can iron it, whether you need to dry-clean it, for example. And these are on fabric labels that are a couple of inches tall.

They're a very, very simple point of information at the point of sale. They are also in several languages. This whole idea about having basic information about whether you will have a certain lifespan expected of your product, or the ability to repair those products, is simple. But as I said, who is best to provide that information? It is the manufacturers and their lawyers.

To have – to suggest a voluntary or self-regulated scheme, I think, as Erin has already suggested, that is probably not the best way forward. Manufacturers have the opportunity at present to provide this simple information at point of sale, and they're not doing so now. So it is necessary that we impose some regulation upon them.

Similarly, in these contracts that I've looked at, this issue of IP is often raised as one of the concerns of manufacturers, that there are – intellectual property will be taken, or stolen, or copied. Interestingly, in most of the contracts I have seen, intellectual property has been defined in such a broad way that it actually goes well beyond what the law recognises as intellectual property to be.

Professor Matthew Rimmer will follow, and he also is an intellectual property professor, and he will probably speak more about this as well. But we really need to understand that intellectual property is not this broad all-encompassing right that manufacturers have. It is a series of regimes. It involves patent law. It involves trademark law. It involves design law. It involves copyright law and confidential information. And not everything is covered by intellectual property.

And so these broad claims about, 'My intellectual property will be stolen,' are really something that I think that we have to pay close attention to. And most of the time when we're looking at opening a device that we own, there is no infringement, no threat of infringement of intellectual property law in those instances. So I think, essentially, positive obligations on manufacturers to provide simple – whether it be a one-page document – about their warranty, the relationship with the Australian Consumer Law and repairability.

And increasingly – I know that I've made this point in the earlier submission, but increasingly we are seeing the misuse of individuals' and consumers' data that is being collected by this machine. Consumers are becoming more and more aware of the misuse, or the potential for misuse of their data. Each and every device that has software embedded, that has data collection: why shouldn't the manufacturer disclose what those data management practices are?

Particularly in the agricultural machinery, motor vehicle industry, the issue of data collection – and we see the rollout of consumer data rights here in Australia – that is an area that I think that the Productivity Commission really

could pay some more attention to, perhaps. Similarly, our unfair contract terms provisions in our ACL, they don't get a lot of mention.

5 We have a scheme of unfair contract terms, and that's essentially addressing the power imbalance where you have manufacturers or corporations who use pre-printed, standard form contracts that are not negotiated. There's very clear criteria set out in unfair contract term provisions of the Australian Consumer Law. And we would find that many of the terms that we see in these software licences that accompany our everyday products would
10 potentially fall within those remits of unfair contract terms.

That scheme has been introduced into the ACL, and again, that places the onus on the consumer to bring an action under the ACL. And, again, what consumer has the funds or the legal access to lawyers to do that? There's –
15 as far as I know – I've looked at the UCT provision of the ACL – I'm not aware of any actions that have actually been brought under those.

But we know, in particular in very – a number of industries, and we've seen only recently, with COVID and the travel industry, of some of the unfair
20 terms that we see in people's contracts. But it really needs a spotlight to be shone upon them regulators, rather than placing the onus on individuals to bring those actions.

So the unfair contract terms schemes is sitting there. We have it, but the mechanism is difficult for individual consumers to bring these terms, when
25 (a) they often can't even access these licence agreements themselves, to understand what's actually happening. I will just say a couple of points about IP more generally, about the protection (indistinct) – and remember that as intellectual property academics, perhaps Matthew and myself – I don't want
30 to speak on behalf of Matthew, but we are aware of the strengths and weaknesses of intellectual property and the laws.

And we are very familiar with each of the schemes, and how those laws operate. Be mindful of people who talk about their IP as if it is only a good
35 thing, because we know that intellectual property can both hinder as well as enable repair in certain instances. So when we're looking at – the Commission has already identified that you're thinking about preventing a contracting out of copyright exceptions, for example, whether it be a fair dealing or a fair use.

40 We've seen that in previous copyright reviews, and it's been put forward that this is necessary. We see it already in existence in the Copyright Act, with respect to backup computer programs. It's a simple, straightforward section. Fair dealing and fair use provisions should not be able to be contracted out of
45 by manufacturers, and that is a fairly straightforward process, I would argue.

5 Again, the discussion around repair – a specific fair dealing defence for repair, or the defence of fair use: the fair dealing defences have been the subject of a lot of litigation and a lot of academic commentary. What’s really important to underscore is, these are defences, and they are defences that individuals – can be raised in response to a copyright action of infringement.

10 So, to start with – and we heard from Tim Hicks, who was pursued by Toshiba at the Repair Summit – do we want a situation where we have to rely up on a defence, and engage lawyers, and go to all of that expense when we get a takedown notice or a threat of copyright infringement? Again, this power imbalance is really evident. A global manufacturer can get a lawyer to write a letter very simply to an individual.

15 And even if you have a fair dealing defence of repair, would you be in a position to mount that defence, engage lawyers, and argue that? And that is not a position I would suggest enhances the consumer’s right at all. It really places an onus on the consumer or the individual to spend a lot of money. And we’ve seen that in both of the cases that have been in our courts; in GM Global, in the (indistinct) infringement case, looking at the repair defence, and we also saw it in Calidad which went to the High Court.

20 Both of those decisions involved a huge amount of money, essentially to come to the conclusion that what was being done was all right. So I think we really have to think about, it’s great to have a fair use defence in Australia. There’s many, many reviews that have recommended that. Obviously it’s not particularly palatable to the Federal Government at the moment, because it’s continually being recommended.

25 It would service a whole lot of needs, rather than just the repair industry. But remembering at the same time that this is merely a defence, and it is not a right; it won’t empower consumers in the way that some might think that it would. So I think at the heart of my concern is the practice that we’re seeing more and more as we see more sophisticated machinery, devices being made available to consumers.

30 The idea that anyone should be expected to read the terms of service, and know or ask about the terms of service that are being presented to them, or even not being presented to them, is something – it’s really – I think it was the New York Times that said it’s basically preposterous. They’re written in a way to discourage people from reading them, so that we don’t understand.

35 And as Erin highlighted, there’s this general kind of reluctance or reticence to take up any of these rights, essentially, under the ACL. So, basic access to information; copyright law does not protect mere ideas or basic raw facts or information. So, how to open a device is not protected by copyright law or intellectual property law.

5 So I think it's really important that we kind of recognise what IP covers, but also, this basic right of individuals to access information about the products that they own is something that's fundamentally important in the society that we live in today. So, I've just touched on a couple of things, and I'm happy to respond to your questions.

10 COMMISSIONER LINDWALL: Thank you. Thank you very much Leanne. Could I just ask, on our recommendation order our thoughts on fair use versus fair dealing, and I've noticed their defences, by what you're saying you would prefer fair use rather than fair dealing if we were to go that way?

15 PROF WISEMAN: Very much so, fair use would be a much more useful defence than a specific fair dealing defence. When you think about fair dealing defences and they way that they work the fair dealing defence for, for example, research and study has within it a very specific in section 10 you look at what's a reasonable portion, there's very specific rules about how many words on a page, how many pages in an article, or how many chapters in a book you can use so there is. Fair dealing has both a quantitative and qualitative test, so you're looking at what information is taken, how much is taken - so there's a limit - and fair dealing only will assist an individual, it's a private defence.

25 So, it's an individual who can make use of certain information, but only for very limited purposes. So, the fair dealing defence in Australia are very, very narrow and I suspect that if we had a fair dealing defence for repair it would similarly be very, very narrow, and again what guidance would be needed? I mean obviously a lot more research would need to be provided around copyright defences and how that could work. But really, looking at it simply you can't just add a fair dealing defence for repair without explanation as to what does that mean, does it mean schematics? All of the schematics, 100 per cent of the documentation, or the instrumentation, or whatever.

30 COMMISSIONER LINDWALL: Now, on your point about a positive obligation which of you've said about a simple one-page document of some sort, and in our report, we've spoken about positive obligation as providing spare parts and user manuals and ways around the TPMs for example, they're different obviously. Would your idea of a positive obligation in terms of further information being exercised through a change to the Australian consumer law? And if so, how would it benefit people that buy agricultural machinery for example who are not consumers under the ACL?

45 PROF WISEMAN: Well I think it would, with respect to individual consumers, I think yes you can have it in the consumer guarantees. In contract law, for example, when we look at exclusion clauses and we say for example there's a body of law that says if you try to exclude your liability - and that's in a particular set of circumstances - there's positive steps that you have to take to bring that to the attention of the other contracting party.

5 There's a series of cases around that, and that is if you're going to - or have you taken all reasonable steps to bring that to the attention of the other party? That is something at we could easily import into the Australian Consumer Law – that manufactures who have something unusual in their terms of service around a digitally enabled good that would be in contrast to what people's general understanding of that physical good would involve, should be set out clearly.

10 So, I think we see precedent for this in contract law with respect to the operation of exclusion clauses in contracts, and that's not a problem. With respect to agricultural machinery, I would suggest that we take a leaf out of Canada's book and look at their agricultural implement legislation that they have in the provinces. I think Scott Smith's initial submission talked about this, but they have specific - because of the high cost and value of
15 agricultural machinery there are specific legislation that sets out manufacturers obligations with respect to that machinery. At the heart of that we're talking food security.

20 COMMISSIONER LINDWALL: Okay, do you want to ask some questions Julie?

25 COMMISSIONER ABRAMSON: I was just thinking, you sent me back to second year university Leanne, I have to say contract law was not one of my most favorited subjects. I just wanted to ask, when you talked about repairability disclosure, did you have that in mind for all products or were there a range of products where you think that would be most useful for?

30 PROF WISEMAN: Well as I said Julie, I think it really would depend on, for example, the level of information depending on the complexity of the product. For example, I've always worn Swatch watches for many years. I've got a draw full of them because if the buckle breaks or the winder breaks, I can't get those spare parts to fix it. So that's one simple example but as we go up the scale of appliances to fridges, whitegoods, iPads, iPhones for
35 example. I think certainly the more complex a good is perhaps the more information should be provided by the manufacturer about what it is that you can't do with those goods that we would normally expect to be able to do.

40 There's a reasonable expectation when you buy something that you own it, that you can deal with it in a physical way, and not infringe intellectual property rights, but that is no longer the case. So I think there is an obligation; if there is a disconnect between what most people understand physical ownership to entail that the manufacturers would say, 'You think you own this' - and we've heard John Deere say this about agricultural tractors - 'You think you own your tractor, well actually you don't, you just
45 licence it for use.' If that's the case, if we're buying products that we can't touch, we can't open, we can't fix the manufacturer needs to tell us that so we can decide whether to buy that product or something different.

5 COMMISSIONER ABRAMSON: Of course, section 58 goes part of the way there already, doesn't it, because if you're not able to provide spare parts of repairability I think that's the section that says that you have to tell a consumer that?

10 PROF WISEMAN: Yes, that's exactly right. And so, I think that that is the type of provision that could easily be expanded to make sure that manufacturers take a positive step. As I say, manufacturers have all the information here, they know what their product can do, they know the terms upon which they're selling their products, they should make the consumer aware of those so that the consumer can make informed choices.

15 COMMISSIONER ABRAMSON: Leanne I was just going to ask one final thing, Paul, that argument that you spoke about, about the exclusion clauses in contract apart from my shudder at contract law that's actually a really interesting idea, so I'm assuming that you're giving us another submissions so it would be interesting to have you explore a bit in the submission.

20 PROF WISEMAN: Thank you, yes, I will.

COMMISSIONER ABRAMSON: Thank you. Thanks Paul.

25 COMMISSIONER LINDWALL: I'm not a lawyer so I can ask a question like this, I agree with what you're saying about providing further information to consumers, but how would you do it in law so you don't have to be so prescriptive in the law to say that this is the form in which that disclosure must be made, or I mean then you'd have to get to the type of product that that disclosure would be in, it would be a very complicated law I'd imagine.
30 So how can you do that, give flexibility to the manufacturer to provide that information without trying to avoid that information as many manufacturers might well try to do?

35 PROF WISEMAN: So, just to put it simple, how - - -

40 COMMISSIONER LINDWALL: Well not precisely, but how would the government even legislate such a thing so that we got more information from the manufacturers, but provided flexibility to the manufacturers to provide it in a form that useful for the product it's selling, which as you say is depending on its complexity, without getting all tied up in the legislative nuance of being very prescriptive in the law about how it should be disclosed. I can see conflict there, that's all.

45 PROF WISEMAN: Sure, look I appreciate that, and to be honest I haven't actually - that is my job for this week to get my report to this team. But I mean in some senses I think you could probably begin by identifying two or three key areas that need to be disclosed around and if that's the product

lifespan if that's the spare parts information or repairs - repair information or ability to be repaired. I would add to that data management, data policies, particularly as we see with the increasing use of the collection of individual data, and the potential for misuse of that, I think a lot of the tech that's going
5 into new products there's really a side benefit with that collection of that data as well.

So, I think that sits along side that, and particularly when we're talking about interoperability of products and as we see in agriculture that the data side of
10 things is very important. So, I would say start with three. Start with product lifespan; how long should you expect it to last? Perhaps look at access to repair information, spare parts, or physical ability to repair the product. And I would include in that some information about, do you collect data, do you share that data, (indistinct) control of that - - -

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COMMISSIONER LINDWALL: And how it's done, yes, exactly. That data inside, of course, as the (indistinct) has written previously about a lot about data (indistinct) product.

20 PROF WISEMAN: Yes.

COMMISSIONER LINDWALL: Final thing, then – I mean, you're right about complexity of all these disclosures. As a non-lawyer, that's a good
25 treatment for insomnia, actually. Do you have any comments about our view of positive obligation – not that we proposed it, but we asked about it – about a manufacturer being required to provide spare parts to a third-party repairer, repair information and so on, which is beyond copyright, obviously?

30 PROF WISEMAN: Yes. I think Kyle mentioned this. I think there's opportunity for manufacturers, in terms of – there's a very healthy repair market out there. Repairing – breaking that authorised network I think is something that's really important, and I would be really interested to see how this plays out in the automotive industry. Provision of spare parts to
35 independent repairers doesn't dilute the IP of the manufacturers. It potentially will increase the sales in those instances.

40 But in terms of providing information around schematics, as I said, a lot of the time this will not involve information about copyright, that's protected by copyright. So, I think what you're proposing is something that's positive, and it's not infringing – it's not going to cause any problems for manufacturers, and should be brought willingly. And some – I must stress, some manufacturers do do well in this space. So I think it's just bringing everybody along.

45 COMMISSIONER LINDWALL: All right. Thanks, Leanne. Julie, any final questions?

COMMISSIONER ABRAMSON: I was just going to say, thank you, Leanne. As Paul has said previously to one of the others, your help with this inquiry has been very much appreciated.

5 COMMISSIONER LINDWALL: And it was great that you were able to do the Repair Summit in person.

COMMISSIONER ABRAMSON: Absolutely.

10 PROF WISEMAN: Thank you very much again for your participation as well, and thanks for the opportunity today.

COMMISSIONER ABRAMSON: Thank you.

15 COMMISSIONER LINDWALL: Thank you, Leanne. Take care.

PROF WISEMAN: Thank you.

20 COMMISSIONER LINDWALL: Well, Matthew Rimmer now – Matthew, if you're around - - -

DR RIMMER: Good day. How are you going?

25 COMMISSIONER LINDWALL: Very well. Welcome again. If you could just introduce yourself and give us a statement, that would be perfect.

30 DR RIMMER: Sure. I would like to acknowledge the Turrbal and Yuggara as the First Nations owners of the land where QUT now stands, and we recognise that these lands have always been places of teaching, research and learning. Even for a topic like the right to repair, I think there's an Indigenous intellectual property angle to the topic. I think about the great show, Bush Mechanics, which has now become a staple of the National Film & Sound Archive, which was all about ingenious fixes for broken - - -

35 COMMISSIONER ABRAMSON: Matthew. I saw that. I think it was great.

40 DR RIMMER: And historically, Australians have always been very reliant upon the ability to repair and fix their technologies. Thinking back to colonial Australia, there were companies like Furphy's, which was a blacksmithery, which would not only make new things, like water carts and agricultural machinery, but it would also fix broken down technology of one kind or another.

45 So, in some ways, there's a very kind of long history to the discussion about repair in Australia, because of the (indistinct) difference. Once upon a time, we very much depended upon the ability to engage in local repair. In terms of engaging with the submission of the Productivity Commissioner, I recall

having a chat to Shane Rattenbury, who is now the ACT Attorney General, back in 2020, about the topic of the right to repair.

5 And he was kind of relating his desire for the Productivity Commission to engage in an inquiry on the topic, because he thought there needed to be some sort of fact-finding process, but there also needed to be a comprehensive analysis of the topic. So I'm very pleased that the Productivity Commission was given a referral to investigate the complex and tangled topic of the right to repair.

10 In some ways, I'm very envious of the draft report, in terms of that it provides a great deal of clarity in terms of the topic. It very neatly breaks down the different dimensions of the topic of right to repair, and untangles it in thinking about how consumer law works, and how competition policy works, the relevance of intellectual property, and the larger questions about private stewardship and environmental law.

15 I think this kind of approach, this holistic approach has been very helpful, in terms of understanding the topic. I think there were a lot of problems with the Treasury investigation of the topic of repair information in relation to motor vehicles, because they had such a narrow, limited perspective. I think that really affected how they approach that particular topic.

20 So I think that's a kind of a great strength of the draft report, that it is so multidimensional, and it takes on board the relevance of all those different disciplines. I think the report is also really useful in terms of showing a great comparative awareness of what is happening in other jurisdictions. In many ways, it has been a very dynamic topic.

25 Joe Biden has pressed ahead with executive orders on the right to repair. He has installed Lina Khan as the head of the Federal Trade Commission, and she has been promising to break up various different monopolies. In Canada, the Parliament has been discussing a right to repair in relation to copyright and technological measures, particularly during the coronavirus pandemic.

30 We've heard about some of the developments in the European Union and the United Kingdom. Other jurisdictions at the moment, like South Africa, are debating the merits of the right to repair. So I think the report does a really good job at capturing those dynamic developments. But I think it also kind of emphasises the need for a bold approach to the topic by the Productivity Commission.

35 We don't want to be left behind, necessarily, by Joe Biden pressing ahead with pretty strong reforms in relation to right to repair, and not going as hard as Joe Biden might do, in terms of his administration. I think there's also important other international dimensions of the right to repair, particularly in

light of the UN [United Nations] Sustainable Development Goals, and I think that dimension is important as well.

5 And I do think, as with any other topic in this area, you have to kind of
navigate around some of the various international regimes that impact upon
intellectual property exceptions. So there are, no doubt, issue in relation to
the TRIPS agreement [The Agreement on Trade-Related Aspects of
Intellectual Property Rights], and the Trans-Pacific Partnership, and the
10 Australia-United State Free Trade Agreement. But there are flexibilities that
can be used in those areas.

15 Unfortunately, I didn't put in a submission to the initial issues paper. There's
been a bit of hectic restructuring going on in the higher education sector, and
that took up a lot of my time earlier this year. But I have been writing a
larger submission this week, and I will submit it at the end of the week.

COMMISSIONER LINDWALL: Thank you.

20 DR RIMMER: In terms of my recommendations, I do have a kind of a focus
upon intellectual property. And then I also have some other
recommendations in relation to consumer law and competition policy, and
environmental matters. I guess the one area where I think there might need
to be a little bit more attention in the final report is really the topic of
25 healthcare and the coronavirus.

It's very striking that in both the consultations that I've had with you
previously, and now, that Australia has been suffering various lockdowns as
we try to grapple with the coronavirus. Certainly for me, I think that that
particular context is a really important one. Ron Wyden, the very influential
30 Oregon senator, had a very interesting bill in the US Congress, trying to push
for right to repair in relation to medical infrastructure, covering a whole wide
range of different forms of IP; copyright law, designs, patents.

35 And it's been interesting to see proposals of a similar nature in South Africa
around the right to repair as well, in the health context. And I know my
colleague Dr Abbas is very interested in that context. So I think perhaps the
one kind of context that might need a little bit more attention is that area of
healthcare. And perhaps that has been highlighted by the pandemic, but also
with new technologies being developed, the ability to repair various different
40 technologies becomes quite important, particularly with hip replacements and
implants. We have various different robotics researchers working on ways in
which robotics could be used. So, I think that's another important context
that might need a little bit more attention, I think.

45 COMMISSIONER ABRAMSON: I should say just one thing, Matthew, if I
may is that the medical equipment devices inside people's bodies was not an
area that we actually spoke in for, I think that was right Paul Lindwall? But

we are interested in some of the conversation that you have been having about particular products, you know like the respirators and the US response to it. So, one of the reasons you didn't see that from us Matthew was because how big was the ocean for us? So, we looked at specific things, and we
5 certainly were very interested in consumer experiences with things like wheelchairs, but it's fair to say we haven't actually had many submissions or comments on that.

DR RIMMER: Well I do think it's worth attention, I mean it is I think really
10 topical at the moment, you know there is debates going on around the TRIPS waiver in relation to intellectual property and COVID-related technologies. So, India and South Africa have argued there should be a TRIPS waiver for all COVID technologies. Joe Biden has said that he's willing to support a TRIPS waiver for vaccines, Angela Merkel is resisting any form of TRIPS
15 waiver. But I think the TRIPS waiver would actually also relate to questions around repair, if you had a TRIPS waiver in relation to COVID technologies that could conceivably relate to repairs in relation to intellectual property relating to COVID technologies.

I mean just having a look at my largest submission here, I kind of note that
20 Cory Doctorow kind of noted there was this controversy in Italy over whether or not a local 3D printing of replacement parts for ventilators raised larger questions about intellectual property. You know a range of civil society organisations in the US, including iFixit who you've heard from today
25 already, and repair.org and US PIRG were really concerned about US hospitals not having enough ventilators in 2020 - - -

COMMISSIONER ABRAMSON: Matthew, I must say, I might be wrong
30 about this but I had an idea that, in Australia at least, I did see a report about this that there had been information sharing between the people who made respirators to enable - I think Paul will like this - 3D printing to be made to make parts.

DR RIMMER: There were quite a few 3D printing projects underway, so
35 you know the ANU the MakerSpace there turned into a place to make particular products and various other institutions were involved in different projects. Some of them relied upon open licensed IPs, so Prosper who is from the Czech Republic, but I haven't come across any particular IP disputes yet in Australia. But certainly, in the European Union there's been a bit of a
40 debate about them, and as we've heard from iFixit they've certainly had issues. And I think the bill put forward by Ron Wyden and Yvette Clarke was really designed to ensure that there would be the opportunity to fix a whole wide range of things during the public health emergency.

45 And those situations have shifted of course in the United States, but it did cover critical medical infrastructure, it dealt with copyright law, it dealt with technological protection measures, it dealt with design patents, and there was

5 a particular clause around contracts - stopping contracting out - it focussed on manufacturer requirements and also asked for further investigations of that particular topic. But, yes, it's an interesting kind of context, and I've certainly seen in some of the more general debates about right to repair in the United States sometimes some of the medical manufacturers try to make arguments that they should keep medical equipment out of the general right to repair proposals, they sometimes argue there are special considerations involved in relation to product safety, and quality and other concerns.

10 I just think it's a very interesting context to explore the right to repair. But anyways, in my longer submission I will have a more extended discussion of that topic.

15 COMMISSIONER LINDWALL: Thank you.

20 DR RIMMER: In terms of my recommendations in relation to intellectual property, I guess I kind of encourage the Productivity Commission to not only make some recommendations in relation to a form of copyright law and technological protections and contracting out, but also think about ways in which some of the other fields of intellectual property could also be dealt with in terms of designs, and patents, and trade secrets. I think reading the report, I think the draft report took the view that some of the evidence around IP restrictions were either anecdotal or patchy. I guess I'd try to make a stronger argument that really we've had disputes that have reached the High Court and the Federal Court around repair, that kind of indicates to me that perhaps they have reached the next level of being a critical issue if you need judges to try to work out how to interpret those divisions.

30 And I was very taken by the comments from Steve Wozniak the co-founder of Apple recently about how he's purported a right to repair and how he was very upset about Apple shifting from an open platform to a closed walled garden. And he was very distressed that Apple had been making various different threats over the right to repair. I'm very conscious, thinking about the example of Apple, that they rely upon all the different species of intellectual property in relation to their products, they rely upon copyright, and designs, and trademarks, and patents and trade secrets, and I'm just a little bit concerned if we only have reforms in relation to copyright, an entity like Apple conceivably could rely upon some of those secondary forms of intellectual property like designs and like trademarks.

40 COMMISSIONER ABRAMSON: And Mathew could I just ask you there because you've given us the entre into it, we certainly though copyright was probably the lead issue. What, in terms of trademarks and design law, and the things that you've just mentioned, what would be the priorities there?

45 DR RIMMER: So, I mean as you kind of note in your report, we do have a new precedent around the operation of spare parts and feeling like an old man

here I remember when I was taught about that provision back in the 1990s. That used to be the focal point of the discussion around repair was all around the designs defence. I just think that if you're arguing for a defence of fair use, or defence of fair dealing in relation to copyright perhaps you need some
5 sort of equivalent defence in relation to design flaw. And I think looking at that defence, even as someone whose kind of worked on intellectual property for heading towards three decades now, I find that current spare parts defence really hard to comprehend, and articulate, and understand.

10 And as Professor Wiseman was noting before, there are sometimes some dangers in terms of complicated defences or narrow defences. And I think the judge tried really hard in that particular decision but I just think there could be scope there for some sort of equivalent defence to the one that
15 you're putting up in relation to copyright law because I think it would be useful to have some sort of equivalence there. And I'm very conscious from the work of Mitchell Adams from Swinburne University that Apple do extensively use their design regime, and indeed some of the mega disputes between Apple and Samsung have been over designs.

20 So I guess I would, you know in some ways Australian design law has been quite anachronistic, and there have been some halting efforts to reform it, but I just wonder whether we can construct a better defence in relation to spare parts than what we have at the moment.

25 COMMISSIONER ABRAMSON: We'd be very interested in your thoughts in that Matthew, especially in your submission.

DR RIMMER: All right. Well, I will certainly elaborate upon that. And I
30 also note the Productivity Commission kind of do deal with the question around trademark disputes in relation to repair matters, and quite rightly looks at the Norwegian trademark dispute between Huseby and Apple. But I've been kind of digging away, and there are some other disputes in other jurisdictions around trademarks and replacement parts, and advertising.

35 There's a very interesting South African dispute, involving BMW replacement parts, in which BMW try to make arguments that that was a trademark infringement. And essentially, the court said, 'This is a functional part. You can't really protect it in that way.' But there's also been some interesting disputes over in the United States, over advertising Toyota cars.
40 In that particular dispute, it's very interesting.

United States trademark law has been influenced by the doctrine of fair use. So they talk about nominative fair uses under trademark law. And I just kind
45 of wonder, reading the report of the Productivity Commission, the position taken would be, it might be quite difficult to run the Apple-style action in Australia. I think, if that's your position, would it be helpful to have some sort of explicit defence under trademark law in relation to repairs or

replacements, to ensure that these technology developers can't run these secondary arguments of one kind or another?

5 COMMISSIONER LINDWALL: Matthew, could I ask, in our report we've spoken about trademark and design— specifically about copyright, but also the others. We asked about fair dealing and fair use. Do you have a preference for one versus the other?

10 DR RIMMER: Well, I've been making submissions on the topic for decade now, because there's been so many law reforms (indistinct) investigating whether or not Australia should have a defence of fair use. The Copyright Law Review Committee, the Harper Review, the Productivity Commission previously, the Australian Law Reform Commission have all made
15 recommendations that Australia should adopt a general broad-based defence of fair use, particularly to take into account the wide array of different purposes, in terms of uses that are made in relation to copyrighted works, but also to deal with changes in respect of technology.

20 And I would certainly support a more general defence of fair use. I think copyright law has become increasingly important in relation to repair, particularly as it kind of started to cover computer software as well. So (indistinct) from Berkeley Law School was thinking about reverse engineering and software, and mentioning repair in that context.

25 Really, there has been a kind of a political issue in terms of getting support for a general defence of fair use in the Australian Parliament. So what has happened is that various copyright industries have lobbied against the introduction of such a general defence. We have seen some new purposes created in relation to the defence of fair dealing. So, parody and satire was
30 introduced as a new purpose by Philip Ruddock as Attorney General in 2006.

More recently, we've had a new purpose in relation to the topic of disability rights. As Professor Wiseman has noted, we've had some new cases dealing with the defence of fair dealing of late. So, Clive Palmer, as one of his
35 contributions to the Australian jurisprudence, was involved in a battle with Twisted Sister. In that particular case, Justice Katzman had a good discussion about the history and the nature of the defence of fair dealing, but also kind of talked about its scope and its limitations.

40 We've also had the *AGL v Greenpeace* case, which was a really interesting case. And in that case, the court in most cases found that Greenpeace could raise arguments about the defence of fair dealing, but there were certain uses that were outside the scope of the purposes related to parody and satire (indistinct) review. But I think that case in particular really shows how
45 pernicky the Australian defence of fair dealing is, and we've certainly seen that in previous litigation - - -

COMMISSIONER ABRAMSON: Matthew, sorry to interrupt you – one thing we could say, though, is that a fair dealing defence could be very – could be drawn very carefully. So it was clear to the courts that it was all about repair.

5

DR RIMMER: Yes. I mean, I think that would be helpful in terms of the way it's framed. But I guess my point is that if you're going to have a defence of fair dealing for repair, you should ensure that it is broadly framed. I think your proposal in relation to technology or protection measures is also really useful and helpful. I remember watching in person the High Court of Australia of *Stevens v Sony*. The High Court of Australia was very concerned about the dangers of an over-broad construction of technological protection measures and digital locks.

10

15 Justice Kirby in that case was very concerned about the competition aspects of technological protection measures, and some of the consumer implications of a very broad construction of technological protection measures. So I think that proposal is really important, and I note that the Parliament of Canada has got agreement from four of the largest political parties at the moment to support a proposal on repair, dealing with technological protection measures at the moment.

20

And I would certainly agree with the points made by Professor Wiseman about, you need to stop companies from contracting out of any exceptions, but maybe you need to ensure that other regimes of intellectual property don't allow for contracting out. I always find it kind of quite interesting – in terms of the history of fair use in the United States, Justice Dori came out with both the defence of fair use under copyright law and the defence of experimental use under patent law.

25

30

And I kind of remember being involved in the push a decade ago in which we got a statutory defence in relation to experimental use under patent law. And thinking about the complex patent exhaustion dispute before the High Court of Australia, I just wonder, if we're going to have a defence of fair use of defence of fair dealing for repairs under copyright law, would it be helpful to have such a defence in relation to patent law, to have some sort of defence in relation to repair, particularly - - -

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COMMISSIONER ABRAMSON: Just on that, Matthew, one of the difficulties might be – I don't have a view, by the way, but one of the difficulties might be that of course the ratings all target different things, and it would be very hard to cause a hierarchy, to say that if you've got the protection under copyright law, then you can't use the other acts as a way of doing it. Now, I know you're talking about (indistinct) defences in all of them, but I am sort of thinking, well, how would that work?

45

DR RIMMER: Well, I guess my point is that there needs to be some sort of harmony between the different intellectual property regimes, in terms of the defences that are available, particularly because many technologies and many products involve a combination of different (indistinct) intellectual property.
5 So, I mean, I certainly understand your point. Certain regimes have rules about overlap, like copyright law and design, but others do not. I guess in my submission I'm really kind of making the point that we need to ensure that there is a similar position in relation to repair across the different regimes.

10 COMMISSIONER ABRAMSON: Well, we do start with one benefit, in that it's all federal legislation.

DR RIMMER: I guess I'm just trying to nudge you a little bit further.

15 COMMISSIONER ABRAMSON: Take it that we understood the nudge. Thank you, Matthew.

COMMISSIONER LINDWALL: Could I ask, Matthew, about the application of the Therapeutic Goods Administration's federal principles for medical equipment, and how you would see that interfacing with repair rights.
20

DR RIMMER: That's a really complex area. I've had to kind of grapple a little bit with the TGA at times in relation to 3D printing and bioprinting. But I think that's one of the most kind of complex areas of interface between the IP regime and the TGA system. Historically, some very particular provisions were put in place in the Hatch-Waxman Act in the United States, to try to have some sort of balance between pharmaceutical drug makers and generic drug makers.
25

30 And that involved there being rules around data, some very specific rule around data. And as a result of the Australia-United States Free Trade Agreement, we kind of got a version of that. But I find it a really difficult area to deal with, because you have general rules around confidential information and trade secrets.
35

40 And then, there's some very particular rules about data protection in relation to pharmaceutical drugs and agricultural chemicals. And then there's this raging debate over biologics. And I find it really difficult to navigate between those areas. I remember Julia Gillard was the Shadow Minister for Health at the time, and I remember having complex discussions with her advisors about how those provisions would operate.

45 But I do think that that raises really interesting questions, in terms of, how do we deal with repair in terms of the general rules around confidential information? Australia's exceptions are not well-constructed, and there's still

this kind of ongoing common law debate between Kirby and Gummow about whether or not you should have broad or narrow exceptions to trade secrets.

5 I know some technology companies, like Tesla, have asserted trade protection in relation to (indistinct) information. You raised before the question of non-disclosure agreements. I guess that's another context for confidential information. Should technology developers be able to say that the information about their technology needed for repair is confidential?

10 COMMISSIONER ABRAMSON: Matthew, I thought confidential information was, at least in Australia – and I might be wrong here – quite narrowly construed. Or have I misunderstood that?

15 DR RIMMER: Well, I think there has been a massive expansion of trade secrets and confidential information. In the US they had the Defend Trade Secrets Act, passed under Obama. But they've also had criminal remedies in relation to trade secrets, which have become much more commonplace. So there was a big dispute between Waymo – Google's self-driving company – and Uber.

20 But in Australia, we've also, under the Turnbull administration, have got new criminal offences for trade secrets theft directed at a foreign principal, or directed by a foreign principal. So it's one of those areas that cuts across a number of different sectors. But I guess a really important theme coming from your inquiry is that it's often about data and information associated with repair.

COMMISSIONER ABRAMSON: Yes.

30 DR RIMMER: I just wonder whether you need to kind of contemplate that. I mean, I think that was my bugbear when I made submissions a couple of years ago to Treasury, who was very focused upon sharing repair information, and I was busy making submissions that they need to really think about whether that information is subject to intellectual property protection, particularly trade secrets or confidential information. How are they going to interface with one another?

35 COMMISSIONER ABRAMSON: Well, we certainly thought about that in the context of copyright, because you'll see there's an information request, that we actually ask quite specifically about other agreements which might blunt that. And you would want, if you went that way, to say that that provision trumps other things, like you can't contract out of it.

45 DR RIMMER: Yes. I think that would be important to think about. If you had an unpublished copyright work, it might also be protected by confidential information as well. So, I've been kind of digging around this particular

topic of trade secrets a bit more, and hopefully over the next week I'll try to find a bit more.

5 But as I read in some of the American right to repair submissions, I came across a number of technology developer companies kind of arguing that they shouldn't be forced to share their repair information if that was confidential information of one kind or another. So I think it's kind of those secondary areas of intellectual property that might need a little bit more attention, I think.

10 COMMISSIONER ABRAMSON: Well, it matters, that's why we were quite deliberate in the draft report, because if you fix one point, it's no benefit to anybody if then all of the use of confidentiality agreements and other agreements trumps the provision. That's why it's kind of couched in that way. So your thoughts on that, Matthew, would be most welcome.

DR RIMMER: Yes. But I think it's an area that's undergone great expansion recently.

20 COMMISSIONER LINDWALL: It's likely to continue that way.

DR RIMMER: Yes.

25 COMMISSIONER LINDWALL: Matthew, given the time, we might have to call for a lunch break now.

DR RIMMER: Sure.

30 COMMISSIONER LINDWALL: So, thank you. But it sounds like you're going to put a lot of what you've just articulated to us in your submission, and so we'll welcome that, and we'll explore any questions that come from that separately. So, thank you very much for appearing today, and we much appreciate it.

35 COMMISSIONER ABRAMSON: Thank you, Matthew. Much appreciated.

DR RIMMER: Thank you kindly. All the best with the rest of your inquiry. It's been fascinating to listen in.

40 COMMISSIONER LINDWALL: It's a fascinating inquiry. Thank you, Matthew. We'll now break, and resume at 1.30 Australian Eastern Standard Time, so one hour away, or just less than an hour now. Thank you.

45 **LUNCHEON ADJOURNMENT** **[12.35 pm]**

RESUMED

[1.29 pm]

5 COMMISSIONER LINDWALL: Have we got Gayle and Jacqueline there?

COMMISSIONER ABRAMSON: I can't see them on our screen. Yes, I can. I can see one of our participants.

10 COMMISSIONER LINDWALL: Hello, Gayle.

COMMISSIONER ABRAMSON: Gayle, you're on mute.

15 MS SLOAN: If I hear those words again, I think I'll top myself. Sorry about that. It logged in on mute.

COMMISSIONER ABRAMSON: I remember last time when we spoke with you – you've got children, so I assumed that you've got the home schooling happening as well.

20 MS SLOAN: Yes, I have all that joyful stuff happening right now, in COVID interpretation as well.

25 COMMISSIONER ABRAMSON: Well, thank you for making time to appear today. I'll hand back to Paul.

MS SLOAN: Thanks, Julie. Thanks, Paul.

COMMISSIONER LINDWALL: Is Jacqueline there as well, Gayle?

30 MS SLOAN: Yes, Jacqueline is listening.

MS ONG: Yes, I am. Hello.

35 COMMISSIONER LINDWALL: Hello. Would you like to just introduce yourselves for the transcript, and then make a bit of a statement, please?

40 MS SLOAN: Yes. Thanks for having me. I'm Gayle Sloan. I'm the CEO of the Waste Management and Resource Recovery Association of Australia. We're the national peak body for the waste and resource recovery industry. Jacqueline Ong, who is with me today, is my Policy and Communications Manager for the Association.

45 We are here today – I guess there's a little bit of a different (indistinct), and it was great to see the report when it came out, because we have met before. Our interest in this report is obviously the impact of material, and waste management and resource recovery. I note the report has covered off the

actual points within the report, about the impact that particularly e-waste has on waste management and the importance of repair.

5 I guess I come at it from a point of view that this is about creating a circular economy in Australia, which is, I would say, the policy of this current government and also the opposition, and how we manage the materials sustainably in order to I guess increase the lifecycle, and how we manage end of life, and how repair and durability is key to that, and how we move away potentially from a consumption-driven replacement model within our
10 Australian economy towards one that looks at how we expand life, give informed knowledge to consumers around what they're buying, and the true cost and impact of it.

15 So I guess probably I'm not necessarily going to address all the clauses or queries you've got about the depth of consumers and impacts, but very interested in the comments from the report about agricultural machinery and how businesses take into account true lifecycle of products, and how we potentially give consumers that knowledge, so that they also understand genuine lifecycle impacts, costs, and how we can address that.

20 I do have a couple of concerns about some of the comments about landfill; as if the report says it's all right that 50 per cent goes to landfill, because we had good landfill. We do have good landfill; it's not all right in any way, shape or form that 50 per cent of even just the materials you're looking at with e-
25 waste go to landfill, when we've got a government policy of 80 per cent diversion of landfill – to landfill by 2030. So, from the material management point of view, I think we can do definitely more.

30 COMMISSIONER LINDWALL: All right. Is there anything else you wanted to say, then, Gayle?

MS SLOAN: Isn't that enough?

35 COMMISSIONER LINDWALL: I mean, I don't think we said – (indistinct) recall that we said that it's good that these go to landfill. I just – I think - - -

MS SLOAN: It's not bad.

40 COMMISSIONER LINDWALL: No, we just said that it's well managed, that's all.

MS SLOAN: Well, landfill is well managed, but - - -

45 COMMISSIONER LINDWALL: I was going to say, and that if you have bans on landfill, it can cause it to be dumped elsewhere. I guess it's something we would - - -

MS SLOAN: Well, I think that's a common misconception with landfill bans. We've got three states already that have landfill bans for e-waste, in whole or in part. And I think we've got to – it's very easy to say, with the levies and bans, that people (indistinct) landfill. I think if we start talking
5 about material from the start of the supply chain, and talking to people about the value of the material that they're using in these products, and how we're doing things like reducing reliance on virgin material, and how we can start to move towards a low-carbon society, which I think is very much front-of-mind for a lot of people. They don't just want plastic eliminated. They want
10 waste eliminated, and that's what we want as a society and an economy as well.

COMMISSIONER LINDWALL: All right. Now, could I talk a bit about e-waste generally, and the hazardous material composition of e-waste.
15

MS SLOAN: Yes, and I hope I can give you an informed answer.

COMMISSIONER LINDWALL: Yes. Obviously government policies have changed, in terms of what's allowed to be used in the manufacture of
20 products. We don't use fluorocarbons, for example, and other products change. I mean, my prior would be that these policies which are aimed at reducing the amount of hazardous waste should have ultimately an impact upon the waste stream altogether, and that the composition of e-waste would be proportionally less hazardous over time. Is that fair to say?
25

MS SLOAN: I think that, on a general level, potentially, but we don't have anywhere near enough design guidelines, restrictions on material, than what can go into materials in Australia at all. So if you think about products such as PFAS [Per- and polyfluoroalkyl substances], and other POPs [Persistent organic pollutants], the organic pollutants that we have, these are still within
30 so many products that do end up in landfill, because there's no – there was actually no requirement to design those sort of products out, or even give labels to consumers to say that it contains it.

35 So we're not letting people know that they're continuing to buy those products. So I would say the labelling and the design scheme that Europe has is the one we need, and we don't have anywhere close to that in Australia. So, we should be - - -

40 COMMISSIONER LINDWALL: The French labelling scheme, you're referring to?

MS SLOAN: The French labelling scheme is good in relation to durability and repairability, but there's a broader scheme – I think it's called CLAP or
45 something – that actually talks about labelling of chemicals and other products that consumers have both to register – sorry, so manufacturers both have to register, but also publicly state that the material is contained within

those products. So, separate to the durability, the French scheme, more the labelling generally about what's within it.

5 COMMISSIONER LINDWALL: All right. Could you tell us a bit about that scheme?

10 MS SLOAN: The scheme for the labelling of the chemicals and – well, we'll include it in our submission, but the European Union, they do have a scheme around, and we looked at it obviously recently a lot, for PFAS and a few other things we've been doing. So it actually gives the consumers knowledge about what they're buying upfront, and they have to register the chemicals within it. So, PFAS is a very big issue for (indistinct) industries, but also as a society, and people don't actually know they're consuming it.

15 COMMISSIONER LINDWALL: That's true. There is some evidence that we're read during the course of this inquiry that labelling can be confusing, and that there is a cost to labelling. So, how do you do it in such a way that illuminates, rather than confuses a consumer?

20 MS SLOAN: I think that there needs to be a standard label that gives the information they require. And do – Paul, you mentioned the French scheme. So, from the little bit that I know about that, I think there's always a cost, but there's also value. And we have to get away from finding reasons to not do it. So, label upfront; that gives the consumer the informed choice to buy products knowing how long it's going to last, and whether repair and spare parts are available, which is what the French scheme is trying to do, to try and encourage people to repair rather than replace, is a good thing.

25
30 We have a very linear approach – and I know that sounds like jargon – in the sense that we have, for a very long time, encouraged people to keep buying. We look at retail sales figures; we focus on consuming, rather than thinking about what we're consuming, how long it's going to last, and the impact at end of life. Because we don't generally have – other than product stewardship schemes, which don't go far enough, I'd argue, we don't have the true cost of end of life within those products.

35
40 So if we had proper costing around some of the end of life, and labelling, for people to know that what they're buying is going to last 10 years for sure, and there's spare parts available, it would inform decision-making at the front. There was a really good piece, I thought, in the report, about how the agriculture industries tend to look at that because they're businesses.

45 We've got to help consumers do those things, too, right? Because if you know you're replacing every two years and creating waste along the way, you might not be concerned about the waste, but you'd be concerned about continuing to replace the product.

5 COMMISSIONER LINDWALL: Could we talk, then, about the product stewardship schemes in Australia. You just said that you don't think they go far enough. So, in what way are they flawed, and how would you improve them? And perhaps talk about the difference in the voluntary scheme, such as MobileMuster, versus, say the NTCRS, which is a co-regulatory scheme.

10 MS SLOAN: There's a third scheme, that's missing, which is a mandated scheme. So we don't have any of those in Australia. So I think, while they're voluntary and well-intended, the challenge is, both in a voluntary and a co-regulatory, there's no strong emphasis or requirement to do it. So there's a lot of coercing under both. Whether they end up being fully funded and comprehensive is very challenging.

15 There is no genuine obligation on generators to manage end of life under either. And there's still a big emphasis on – and you've captured it in the report – on recycling, potentially, as opposed to, say, managing lifespan and impact of that lifespan. So the Packaging Covenant is an example where it's supposed to mitigate the impact of packaging on the environment and the community. Questionable whether that has been achieved in the year that it's
20 in, and that's the co-regulatory.

25 If you are responsible for end of life, which we're saying with a lot stronger requirements and emphasis on eco design like we see in Europe, you would think a lot longer and harder around how you would design that product so it lasts and you can repair it so that you don't have to make the full costs of managing that end of life. And that is definitely lacking in Australia. And we've just seen one of the major operators under the NTCRS, MRI, no longer operating.

30 COMMISSIONER LINDWALL: That's right.

35 MS SLOAN: So that's probably because in part because it's not fully funded in the cost, and there is no emphasis or requirements on how we get those generators who make that material to purchase it back, for example. So if they designed for disaggregation and reuse of their own parts and brought them back in - because one of the big challenges we face in all parts of our sector is that market demands for that recycled product that we make at the end of that current supply chain, to bring it back into market and reuse it and reduce the reliance on the virgin.

40 COMMISSIONER LINDWALL: Well should the consumer be fully funding this then? So, the manufacturer takes the responsibility in this type of scenario from go to whoa if you like, and then would it be responsible for the recycling of it or the reuse of it, or whatever, that would then be passed
45 onto the consumer for a higher price presumably?

MS SLOAN: Well we've seen through schemes like the Container Deposit Scheme that when you do it, and you actually put the cost into the market, and yes it ends up on the consumer but it ends up on the household at present when we think about the cost going into, generally, what is a curb side
5 collection system. So, the consumer is currently picking it, what you're doing is you're actually transparently putting it in the purchase price at first instance arguably. And then once you've got that financial impost you think as a manufacturer you'd think longer and harder around how that total cost is going to be because it's going to have an impact on the cost of my product,
10 the same of my product, the sales of my product, you know.

And if I start to have to have a genuine responsibility for that I might look at how I de-risk those costs through other things such as purchasing it back, setting up facilities that I can actually have some control over the cost and
15 management of to bring it back into the supply chain. So, ultimately the consumer is paying now be it at the retail shelf or its been in a curb side bin or their alternative disposal that they have to actually manage now.

COMMISSIONER LINDWALL: What percentage of consumers, do you think, are aware of the lifetime costs - or what percentage of consumers would ever be aware of it - I mean I assume like any people there's a spectrum, there'll be people who are very committed to reusing and getting
20 the best out of their products and not causing waste, and then there's another group that won't care a dime I guess.

25 MS SLOAN: Yes.

COMMISSIONER LINDWALL: And there's a whole lot in between, and how do you move people from the latter end - in other words the ones that don't really care - to start appreciating the negative externalities as an
30 economists speak.

MS SLOAN: Look, I think that again you're spot on. You've got that highly engaged, highly evolved 5 or 10 per cent out there, but as certain issues
35 become higher in the public conscience, as we've seen with plastic, I'm sure that export bans from Australian contexts, about reducing waste and creating manufacturing onshore. And these issues have gone on really since 2018; China and the impact on the national - of the global economy - people are getting more and more engaged and involved around this. You know the
40 right to repair is an active conversations, I guess, on social media because people are more and more aware of it.

But also, it's the multiplication and the jobs aspect too that gets sometimes lost in this. You know, creating a circular economy - the Ellen MacArthur
45 model - a regenerative or repair model is about trying to stop waste being create in the first instance by creating those systems, and those create jobs.

COMMISSIONER LINDWALL: Okay, I should give Julie a chance to ask some questions.

5 COMMISSIONER ABRAMSON: Thanks very much Paul. Gayle I just wanted to ask if you'd seen out proposals in relation to reforming the NTCRS where we'd actually recommended that it should enable reuse not just the recycling, and this was a disincentive in the scheme, and I just wondered if you had any views about that?

10 MS SLOAN: Yes, I did see that Julie and I thought that was a really good thought process to be able to capture the reuse and repair aspect, because I think if we step back and think about what we're trying to do here, we're trying to elongate the life of an item. So, I think that the ability to capture what are higher order steps in the waste management hierarchy of avoidance is a good thing, yes.

20 COMMISSIONER ABRAMSON: Thank you. One of the things Gayle, one of the things that was said to us though was that the products when they come to the recycling scheme are often older products, they're at the end of their life scheme, so there was sort of an implication really that they couldn't be refurbished. Do you have any views on that? Or any information you could share with us?

25 MS SLOAN: No, I haven't got data around that. I guess I would point to the other parts of your report though that talk about the software and other IP updates that are not available which they're designed to make them almost obsolete. But as far as data goes, I couldn't support or contradict.

30 COMMISSIONER ABRAMSON: No that's fine, because the other thing was, we also had a proposal regarding GPS tracking and that was in relation to the waste, I wondered if you had any views on that?

35 MS SLOAN: Look, I think it's really important that whatever we do - and I saw that in relation to exporting as well - I think that it's really important that we make sure we're not dumping. So, I think that anything that gives us certainty as to where the material is going in the supply chain is really important. I think my preference again would be like anything else that we could actually try and keep as much of that product onshore and be actually putting it through the circular economy, metrics, and systems in Australia, and creating those jobs here. I'm not sure about the - you know when you look at the data and you say I think it's estimated as 45 million e-appliances in hour holds with about 2.5 million dumped each year, or discarded each year, I think there's a fair amount out there that if we could how we disaggregate and repair, reuse, and then consolidate them we could actually find some good economies of scale.

And I think that's what Victoria and others have tried to do with having clear e-waste policies that make it really clear about not going to landfill to try and drive some of that market development pace as well.

5 COMMISSIONER ABRAMSON: Thank you Gayle, thanks Paul.

COMMISSIONER LINDWALL: Could I talk Gayle about what type of products you're most concerned in terms of excessive turn in them, in terms of waste and circular economy. Are there particular types of products that
10 you're mostly concerned about?

MS SLOAN: I think the challenge is with a lot of the genuine e-waste, the PCs and the phones. I also have a concern about whitegoods, like I say a lot about if we think about the volume of white goods, and we've not actually got
15 great data on that from a weight point of view. So I did see the figures in the report about the half a million of e-waste appeared to come from a global report, we do need better granularity around how much e-waste, but also whitegoods specifically is out there, because that is a phenomenal amount of scrap metal and material that is being discarded. I think that there's a - and I
20 think I've got some data around that - that was closer to 700,000 tonnes annually when it came to whitegoods specifically.

I think it's great that we're seeing increasingly sort of these being taken away by retailers, but following that supply chain when you get new ones - which
25 is a great service - but then what's happening to those products? You know there's a bit of transparency around refrigeration, absolutely, because of certain requirements for refrigeration mechanics, but there is an awful lot of these larger bulky goods items that are not necessarily being recycled transparently. The last data I saw from some work down was as little as 12
30 per cent of those products were being recovered or recycled and they're large items taking up lots of resources that arguably could be designed for disrepair and scrap arguably better, or even better looking at how we can increase their lifespan to larger longer lifespans through the repair piece and spare parts.

35 Which is what, if you look at the European model - and I guess I am a fan of that - they're moving much more in a feels like everything old is new again to that service type model, so that Radio Rentals lease hire type model, guarantee a part. We had those as kids, suddenly we've got to own
40 everything. So more a leasing type model, which is for me where the circular economy piece is about sharing.

COMMISSIONER LINDWALL: But on the other hand with leasing, you as a consumer if you have something that you lease you often don't have the same incentive to maintain it as well as if you own it, I mean that's the
45 tragedy of the commons that we were hearing, where there's a lot of ownership of products and there tends to be an abuse of them rather than well maintained products. So, it's not entirely clear to me that products that are

leased are going to be kept for as long as products owned, but I would like evidence on that. Yes.

5 MS SLOAN: Yes. It comes back to the fundamental, and I guess it's the transition that hopefully (indistinct) society, that this is valuable material. Whether you own it or lease it, we need to stop depleting the planet and thinking about the carbon impact we're having. So, you know, if we start - if it's about ownership and that drives your approach to materials, I guess we've still got a way to go in the behavioural change to say we should actually be
10 respecting our planet. And I know that sounds very green and a bit hippy-ish, but that's really what we're trying to talk about because, you know, if you think about the fact that 70 per cent of carbon emissions is related to material management, we have a big role to play in these areas.

15 COMMISSIONER ABRAMSON: Paul, I wonder if I might ask a question if that's okay.

COMMISSIONER LINDWALL: Please.

20 COMMISSIONER ABRAMSON: Gayle, what do you think about the proliferation of product stewardship schemes? Like, we've got one now for - you know, for the televisions; we've got one for phone; got one for batteries. I'm not quite sure how you would actually (indistinct) for it unless you had, like, one single mandatory scheme with parts to it. But just interested in your
25 views on that.

MS SLOAN: Well, I think product stewardship seems to come about when we're not necessarily managing a product as best as we could, right? So - you know, and you don't have necessarily an obvious home for it because we
30 can't keep putting everything in the kerbside bin for the household and externalising that cost. So I think if we have potentially legislation such as we're saying with the circular economy package in Europe that actually puts greater emphasis on things like economic - environmental design and puts obligations on producers about how they manage end of life, you might not
35 need to have individual schemes because there would be far more (indistinct) about how you manage your products and services when you come to market.

COMMISSIONER ABRAMSON: Thank you, Gayle. The other thing I wouldn't mind asking about is have you got any experience with the scale of
40 stockpiling in waste, particular e-waste, and is it a growing problem? There certainly was an incident recently in Melbourne where I live.

MS SLOAN: I think - and look, I have members within my remit who work in that area.

45 COMMISSIONER ABRAMSON: Yes.

MS SLOAN: I think there's a real challenge with sectors of having markets developed sufficiently enough to be able to make the products into the next stage of the supply chain. So if, for example, you're heavily reliant on someone buying back your product and you have challenges with them
5 operating, like in the global market at the moment, there might be instances of stockpiling, but I'm not made aware of large amounts at this time.

COMMISSIONER ABRAMSON: Thank you, Gayle. Thanks, Paul.

10 COMMISSIONER LINDWALL: Could you comment perhaps, Gayle, on - well, in our report we talk about forecasts from e-waste going forward, obviously solar panels and batteries, and taking batteries in particular which, of course, if we're going to move to electric vehicles and so forth, the European Union is talking about 2035 for Europe for electric vehicles. How
15 do you see the recycling and reuse of batteries going since it's a particular technology obviously and it could be a bigger problem than we think given if we're suddenly all going to go to electric vehicles, there could be a huge amount of e-waste there which is hard to recycle.

20 MS SLOAN: I come back to my response to Julie about would we need all these product stewardship schemes if we had greater emphasis on design and legislation about how you create design and manage products through its life cycle. You know, again we've still got way too much linear thinking in Australia in the sense of 'I can bring it to market and someone else can solve
25 my recycling challenge'. We've got to have way more emphasis on being really clear about when you bring a product to market, where its end of life home and purpose is. And ideally it should be designed to be able to be refurbished, repaired, reused long before we're focusing on recycling because these are larger issues, you know.

30 Solar panels are going to be a real challenge for us, and we're already seeing it now. They're made of very many different parts. We need to aggregate them and bring them together in a place arguably adjacent to resource recovery precincts that we can then turn into other products and people buy
35 that, you know. So unless - generators have got responsibility, and I've seen examples of contracts that have been let by governments that are saying not only have you got a supplier, you've got to manage its end of life and give detail of that. And we need to see more of that. It can't be all care and no responsibility.

40 COMMISSIONER ABRAMSON: One final thing, Gayle, and it's not necessarily within your purview of experience, but (indistinct) consumer guarantees because you will see that we made a number of recommendations about that, and one of the big ones was around what's acceptable quality and
45 also that it can be very difficult for consumers go get things repaired because they're not actually aware of the rights that they do have under Australian law. So just interested in your general views.

MS SLOAN: I think the one in particular about using independent repairers would not void your warranty is really important because I think there's a lot of misconception, and I do think that the vast majority of the
5 recommendations were good in relation to the label and knowledge, because for me it was all about trying to give that consumer that informed consent to be able to know what their rights and - you know, rights were in relation to getting them repaired, aligning warranties. I'd love to see more aligning of
10 warranty with the genuine lifespan of a product. I believe that that's what's happening with France, and also the requirement to also be able to have parts available and knowing that true cost at the upfront. So I thought the recommendations were strong. I would've gone further.

15 COMMISSIONER LINDWALL: Thank you.

MS SLOAN: But you know that.

COMMISSIONER ABRAMSON: Thank you, Paul.

20 COMMISSIONER LINDWALL: Anything else you would like to add, Gayle, while you're here?

MS SLOAN: No. I just, you know, say thank you to Julie and Paul again. We have met before and, you know, I wasn't so sure we'd get that much
25 (indistinct) but I'm very pleased that we definitely got to the table on this one and keep fighting the fight of creating that circular economy for us in Australia.

30 COMMISSIONER ABRAMSON: Thanks very much, Gayle.

COMMISSIONER LINDWALL: That's all right. Thanks very much, then, Gayle.

35 COMMISSIONER ABRAMSON: Thank you.

MS SLOAN: Thanks for having me.

COMMISSIONER LINDWALL: Thank you.

40 MS SLOAN: All right.

COMMISSIONER LINDWALL: Now I would like to invite Muhammad Zaheer Abbas. Are you here, Muhammad? He's not due until 1 o'clock, so we've got a few more minutes (indistinct) there you are. Hello, Muhammad.
45 Can you hear me? I can't hear you.

COMMISSIONER ABRAMSON: Muhammad, we can see you, but we can't hear you. That looks like big progress.

5 COMMISSIONER LINDWALL: No. Can't hear you still, no. No. Can you hear us? Connecting audio.

COMMISSIONER ABRAMSON: We're connecting.

10 COMMISSIONER LINDWALL: Something is happening now, yes.

COMMISSIONER ABRAMSON: You're on mute.

COMMISSIONER LINDWALL: Now you're on mute.

15 DR ABBAS: Okay. We are finally sorted out.

20 COMMISSIONER LINDWALL: Welcome to the hearing, Muhammad. I would like to say that my wife is over in Islamabad at the moment for the High Commissioner and I was there earlier this year, and I will be going back later on. So I read that you studied there as well as in Australia, of course. And so welcome, and would you mind introducing yourself and perhaps giving a statement.

25 DR ABBAS: Yes. Thank you so much. My name is Muhammad Zaheer Abbas. I'm a post-doctoral research fellow at Queensland University of Technology. I completed my PhD with Professor Matthew Rimmer and he is my supervisor in my post-doc as well. So I submitted this submission to the Productivity Commission and I'm presenting the same submission with some changes, and my key focus is on the intellectual property restrictions on the right to repair. And it's my pleasure to appear before this public (indistinct) inquiry on the right to repair, and this inquiry (indistinct) Australian Government's recognition of the problem. I really appreciate the Productivity Commission's ongoing work to address this problem and I'm grateful to the Commission for providing me this opportunity to put forward my (indistinct) and to share my thoughts. First of all, why we need more clarity on the right to repair. Time delays in assessing repair information and repair services may result in preventable loss of human lives. The right to repair is not merely a legal concept, but is a matter of life or death when it comes to fixing critical medical devices in a health emergency like COVID-19.

40 Hospitals cannot wait for days, or even weeks, for an authorised technician, because patients cannot be made to wait if a ventilator or a defibrillator goes down. In such a situation, healthcare providers facing life-threatening logistical problems cannot and should not rely on optional goodwill and benevolence of profit-driven manufacturing corporations.

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5 The COVID-19 crisis also exposed vulnerabilities of supply chains, and put global healthcare systems under critical strain. It highlighted the importance of the right to repair medical devices to combat those shortages, because you need to make the best use of the existing resources you have when the new supplies are disrupted because of the emergency situation.

10 I think government policy and legislative response is required to address the imbalance between the corporate interest and the public interest in the context of the right to repair. There are substantial barriers to competition in the repair market and after-sales market. We need to really think about corporations' socially irresponsible behaviour, and the existing gaps or imbalances in our laws and policies.

15 There is need for more regulation and more clarity on positive obligations of corporations with regard to right to repair. Corporations are expected to pursue profit-maximising strategies, because they are corporations. Their purpose is to make profit. They don't like competition; they like to dominate markets. They love to have monopolies, and they love to extend their monopolies.

20 It is the duty of the Australian Government to intervene through policy and legislative layers when the public interest is actually or potentially undermined. There is definitely a need to restore competition in the repair market and after-sales market, in order to ensure consumer welfare and to have a sustainable future for planet Earth.

30 Now I will focus on the intellectual property restrictions on the right to repair. Patent protection potentially conflicts with the reverse engineering and 3D printing of medical parts if such activities are carried out without the right holder's consent. Most of the modern medical equipment is protected under patents, as the medical equipment industry relies on a closed innovation model, and grants relatively higher importance to patents.

35 As compared to other industries, the medical equipment industry relies on patent protection, more than other industries. There are certain exemptions and limitations to the patent holder's exclusive rights. Exceptions to patent rights cleared safe harbours for users to use a protected product in ways that are otherwise considered as infringement of patentees' exclusive rights.

40 The right to repair is one of the plausible differences available to third parties who engage in repairing patent-protected medical devices without authorisation from the patent holders. The problem is, the notion of the right to repair is not a well-defined, free-standing concept in patent law. Not in Australia, not in other countries; it's a very grey area in patent law.

45 This lack of clarity is highly problematic, especially in a health emergency like COVID-19. There's no clearly defined standard or test to assess whether

or not a repairer of a patented product engaged in infringing conduct or permissible conduct. The broad test is that the repairer's activities do not deprive the patentee of their exclusive rights. The right to make a patented article is one of the exclusive rights of the patentee.

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So when you are repairing a product, you should not conflict with the exclusive rights of the patentee, and the right to make or manufacture a protected product is the exclusive right of the patent holder. So there are conflicts. The right to repair is not an established concept under the Australian patent laws. Schedule 1 of the Patents Act does not impugn the right to repair a patented product.

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There is a lack of clarity regarding the distinction between infringing manufacturing and permissible repair. Courts and tribunals evaluate subjectively what constitutes the right to repair in Australia. In the absence of a Brightline test, courts and tribunals rely on subjective assessments, and a consumer may be liable for infringement if a manufacturer is able to prove that the consumer, instead of repairing an object, reconstructed it.

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If the rights holder is able to prove, in a court of law, that instead of repairing, the consumer reconstructed or re-manufactured the article, it can be held liable. Consumers have to carefully consider whether their repair activities potentially infringe the rights of manufacturers. In the absence of clear guidelines, it is hard to predict the litigation outcomes in suits against consumers who engage in controversial repair activity.

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3D printing further complicates matters. I will discuss how 3D printing further complicates matters. First, I will provide a brief introduction to 3D printing, and what's (indistinct) in a health emergency. (Indistinct) manufacturing, which allows the rapid conversion of information from digital 3D models into physical objects, is uniquely well-positioned to address the shortage of critical medical devices, by enabling the fabrication and repair of medical devices in a timely and cost-effective manner.

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3D printing technology can be an enabler of quick and cost-effective repair work. 3D printing of replacement parts of medical devices should be specifically allowed in a health emergency. Unlike any other manufacturing technology, this advanced fabrication method manufactures three-dimensional, tangible products from a pre-designed computer-driven two-dimensional (indistinct words) computer-aided design – or CAD – file of the required shape.

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This unique manufacturing method suits time-sensitive innovation, manufacturing and repair, as it does away with time-consuming and costly tooling and machining requirements. In Italy, there was a critical shortage of (indistinct). Within three hours of studying the (indistinct), two gentlemen –

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Christian and Alessandro – were able to create a (indistinct) prototype. Within three hours, they were able to create a prototype.

5 The (indistinct) used a desktop 3D printer to fabricate these replacement (indistinct). In less than 24 hours, they were able to apply (indistinct) to more 120 (indistinct) to a local hospital in Italy. You can imagine the amount of time traditional manufacturers would have taken to make these (indistinct) available to the hospitals.

10 From a legal perspective, 3D printing further complicates matters and creates new challenges for the repair/reconstruction doctrine, because it increases the scope of possibilities in the context of right to repair. With its unique capabilities, 3D printing empowers consumers with broken objects around the house to create many parts by simply downloading, scanning, creating the
15 CAD file, and printing it in plastic, metal, or other materials.

20 3D printing even enables consumers to engage in the reconstruction of patented products, by reducing costs and infrastructure needs for creation processes, and by making these processes simple to carry out, without specialised knowledge and skills. These processes were once cost-prohibitive and technically too cumbersome to be carried out by consumers. Those tasks were specifically performed by the corporations, or by
25 specialised – by people having specialised knowledge and tools. Now these are in the hands of consumers, with the power of 3D printing.

30 3D printing is rapidly growing. It is increasingly becoming important to define clearer standards to distinguish permissible repair of a patented article from the impermissible reconstruction. There is a need for a Brightline test to determine whether a consumer infringed upon patent rights; for instance, when they replace several parts on one occasion, with the high probability of such a repair activity in the future.

35 Because of the enabling (indistinct) of 3D printing, such clarity is critical to provide consistent and predicable applications of the law. The (indistinct) distinction between repair reconstruction is too ambiguous to provide legal certainty to potential infringers of patent rights. This murkiness negatively impacts their ability to predetermine the validity of their conduct, the freedom to operate, and their ability to make more informed legal decisions.

40 There can be people who are willing to help out the hospitals and the medical sector in a health emergency, but they may feel hesitant, because they're not clear whether their conduct is going to be legitimate, to be covered within the domain of right to repair. Are they going to indulge in some infringing activity? So there's a lack of clarity, which causes this hesitation.

45 Recommendations: Australia needs to provide a clear distinction between permissible repair and infringing reconstruction so that consumers have more certainty about the legality of their actions while deciding the extent and

character of repair work. The legal doctrine of exhaustion of patent privacy the right to repair - I'm focussing my attention to another policy tool. That is the views of the legal doctrine of exhaustion of patent privacy, because it offers for the right to repair as well.

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Under this doctrine the rights holders right to control or restrict further distribution exhausts upon the first sale. You have the patent, the product is patents protected, once you sell it the first time you exhaust your rights to make further profit on that product. Purchasers who lawfully acquired patented products cannot be prohibited from engaging in repairing activities if patent owners have already exhausted their exclusive rights upon the first sale. Patent owners, once they have received their full profit from the first sale, should not be able to control the aftermarket, secondary market for repair and service. This legal doctrine can be used as an effective advocacy tool to prevent patent owners from having control over the property of others.

Until very recently this doctrine of exhaustion was not applicable in Australia. The High Court of Australia finally endorsed the doctrine of exhaustion in 2020 in the Seiko Corporation case. Australia's current position is still not clear on whether the doctrine of exhaustion applies on a national or international basis, there are two concepts under this legal doctrine of exhaustion. It can be either national exhaustion or international exhaustion. International exhaustion is better, and it would see the consumer welfare because it provides more possibilities like valid importation. If you have national exhaustion it applies only with Australia, but if you have international exhaustion you can use the option of valid importation of medical devices of patented products.

So, it's still not clear whether Australia has national exhaustion or international exhaustion - there's scope for more clarity. And this is up to WTO [World Trade Organisation] member states to decide whether they're going to adopt national exhaustion or international exhaustion, it's not predetermined in the TRIPS agreement, there's policy space in this regard. Making use of this flexibility is in line with the objective and purpose of the object and purpose of the WTO TRIPS agreement, Article 7 of the TRIPS agreement is a balancing provisions which states that intellectual property rights should be protected and enforced to the mutual advantage of producers and users of technological knowledge, and in a manner conducive to social and economic benefit, and to a balance of the rights and obligations.

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So, TRIPS argument is it's still possible to balance out rights and obligations. Article 8 of the TRIPS agreement further illustrates why these public policy objectives of enforcing intellectual property rights, it allows WTO member states to,

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'Adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development.'

Article 9 of the Doha Declaration 2001 reaffirmed that,
'The TRIPS Council shall be guided by the objectives and principles set out in Articles 7 and 8 of the TRIPS agreement.'

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The proposed right to repair exemption, trade implemented medical devices and the use of the flexibility of exhaustion of rights, it mirrors the objectives and principles enshrined in Article 7 and Article 8 of the TRIPS agreement. There is scope for further balancing of rights and obligations. Article 30 of the TRIPS agreement says that,

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'Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner.'

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If you read the wording of this provision, I would read it again, it is more inclined to - - -

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COMMISSIONER ABRAMSON: Muhammad, I'm sorry to interrupt you but perhaps if I could just answer a specific question on that. So, what you're saying is that if you have an exception it may not fall foul of TRIPS which is what you're taking us though at the moment, is that the argument you're making to us?

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DR ABBAS: Yes, I am making the argument that if we use the flexibilities provided within the TRIPS agreement to protect the public interest in health emergency like COVID-19, it falls within the provisions of the TRIPS act itself, Articles 7 and 8 of the TRIPS agreement and Article 19 of the Doha Declaration which are consented by all the members of the WTO.

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COMMISSIONER ABRAMSON: Is that - sorry to interrupt you, the point is quite important - but you're making that argument only on respect of medical devices, is that correct?

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DR ABBAS: Yes, I'm making this argument in the case of health emergencies, to deal with the shortage of medical devices.

COMMISSIONER ABRAMSON: I understand.

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COMMISSIONER LINDWALL: Okay, Muhammad did you have much more to say or shall we move on to questions?

DR ABBAS: Yes, we can move on to questions.

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COMMISSIONER LINDWALL: Okay. Well thanks very much for that. Can I ask, why do you think medical devices in particular have relied more on patents, where as other products it's more on copyright?

5 DR ABBAS: Because of the technical nature of the medical devices; they rely more on design patents and the patent law because they are technological devices. Copyright mainly covers the expression and the artistic expression, the medical devices they are not artistic they are scientific technological devices which are more likely to be covered under patents and designs.

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COMMISSIONER LINDWALL: So too are smart phones, which is a highly technological device?

DR ABBAS: Yes.

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COMMISSIONER LINDWALL: So, you're arguing that we haven't gone far enough in our report. Because where we spoke in our report about whether copyright should have a fair dealing or a fair use exception then you think something similar should be given in terms of patents - - -

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DR ABBAS: Yes, the copyright and - sorry to interrupt, you can complete first.

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COMMISSIONER LINDWALL: I was going to ask, in terms of medical devices what role does the TGA play? Because that's something we're a bit uncertain about. And what type of medical devices would you argue there should be a greater flexibility for repair, and certainly for consumers to repair them rather than having to go through the manufacturer? I mean, I'm sure that a lot of the manufacturers would argue there's a lot of safety issues and that's what - a pace maker I could understand is something you wouldn't want self-repair for, but maybe a wheelchair is something quite different obviously. So where do you draw the line, I suppose, for this flexibility in repair?

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DR ABBAS: Yes, if we can categorise medical devices into more complicated and more complex devices and less complicated devices. The more complicated devices if you try to fix them, and if you are not a qualified repairer and if you don't have the background knowledge and the qualifications means that you can do more harm than good. But there are some straightforward repairs, like when you go to hospitals it's not too complicated or too scientific that you need formal qualifications to treat that. There are certain other medical devices like hospital beds and other devices that are more straight forward to repair. But still I think that COVID-19 highlighted the importance of putting the safety mechanisms in place, and to prepare ourselves for the next emergency the government needs to work on these safety issues and equality issues.

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5 And even for the straightforward repairs there should be guidelines available, and there should be mechanisms in place, and we should learn from other jurisdictions as well. Like in the US they have a mechanism to verify and approve the CAD files on the government level. And the national institute of health, it has a website and a repository of approved CAD file designs.

10 Other countries, like Australia and (indistinct), they can follow suit, they can learn from the US model. And they can make a repository of CAD files at a national level, and it should be approved on a fast-track basis in a health emergency, to provide verified and approved CAD files to fix the medical devices. We should learn from the COVID experience, because there are certain areas that need more attention, like safety and quality control measures in relation to 3D printed medical devices.

15 If we make proper use of 3D printing and its capabilities, it can be a go-to technology in the next health emergency, and we can make a more optimal use of this technology.

20 COMMISSIONER LINDWALL: One of our earlier participants – we talked about 3D printing, and – I think it was Kyle, actually – he thought that they were quite useful for certain type of products, but not everything, obviously. So where do you think that 3D printing would be most propitious in most of the future of repair, and in particular replacing spare parts, for example?

25 DR ABBAS: As I said earlier, there are certain technologies that are more scientific and more complicated, and 3D printing may not be much helpful in fixing those devices. But for less complicated devices, which need only hardware – fabrication of hardware pieces, 3D printing is a real help, because it enhances the scope of possibilities, and you can do things very quickly.
30 Time is very sensitive in a health emergency.

I provided an example of ventilator (indistinct). Within three hours, they were able to create a prototype, and within 24 hours they were able to provide the finished product to the hospital.

35 COMMISSIONER LINDWALL: Was that made of plastic or metal?

40 DR ABBAS: Plastic. If you can (indistinct) for 3D printing for instance to provide (indistinct) more scientific things, it may not be helpful, because it is helpful in producing the hardware.

COMMISSIONER ABRAMSON: Could I - - -

45 COMMISSIONER LINDWALL: Sorry, one more question, Julie. I did ask about TGA, the Therapeutic Goods Administration. Does it have a role in restricting third-party repair, do you know? So, apart from patents and that

type of thing, is there some role – is the Therapeutic Goods Administration potentially a blocker?

5 DR ABBAS: I haven't looked into it. I won't make a comment on it.

COMMISSIONER LINDWALL: That's all right. Julie, please.

10 COMMISSIONER ABRAMSON: Thanks. Muhammad, I just wanted to ask, this morning, when we spoke to Matthew, he made the point to us that one of the difficulties with copyright law that it interacts with trade secrets and confidential information. So we could resolve a copyright issue with a defence of fair use, for example, but things would still be prevented by confidential information and trade secret laws. We made the point in our report. Does the same issue arise with patents?

15 DR ABBAS: No. To get a patent, you have to disclose your invention. That's a prerequisite. Because it's a bargain between the patent applicant and society. The patent owner has to give his invention to society, and in return, he actually gets 20 years' monopoly. So, if you are withholding any
20 information, you can't get a patent. You have to disclose your invention to get a patent.

25 So when we talk about only in the case of patent protection, the information is in public domain. It is disclosed. But corporations make choices. They have a choice. Either go for patent protection, I keep your invention, your innovation secret. We can't force them. If they choose to keep it secret, we can't force them to share it. But if they are going for patent, they can't keep it secret. They can't have two bites of the cherry.

30 COMMISSIONER ABRAMSON: That's very helpful. Thank you.

35 COMMISSIONER LINDWALL: You were talking about clarifying it for consumers about, what's a repair versus what's a change and improvement, if you like. How would you, in practice, do that, do you think? If the government was minded to do so, to make it very clear about – what you call international exhaustion, I suppose, with (indistinct), to make it very clear, what is allowable and what is not allowable. How would it do that, and where would you draw the line, I suppose?

40 DR ABBAS: As I pointed out, in Australia, the right to repair is not defined in the patent law. There is no provision, there's no class that defines the right to repair. It should provide a proper definition of right to repair in the patent law. It makes things easier for the consumer and for the people who want to use it as a defence. If there is (indistinct), and the consumer has to read
45 multiple court judgments to draw what are his entitlements, what are his rights, it makes things difficult for the consumer.

5 So I want it to provide a clearly defined right to repair in the patent law, that informs the consumer, what you are doing, it is going to be permissible, or this is going to be prohibited. So if we have no definition at all, the consumer is confused. No one will bother to go to the court judgments, to read the court judgments, to interpret what are their legal entitlements and what is their permissible scope of the right to repair. So it's very important to provide a well-defined definition of the right to repair in the patent law, in the Australian patent act.

10 COMMISSIONER LINDWALL: Is there a good example overseas which does have a very good definition of what a right to repair is?

15 DR ABBAS: No. Normally, the US is the leader in making these legislative changes (indistinct). But even in the US, there is no clearly defined right to repair. There are court judgments, and the court judgments are also confusing. They provide a list of activities, but they don't provide the definition of the right to repair.

20 COMMISSIONER LINDWALL: Because if I'm not mistaken, some of the repairs – well, in the case where sleep apnoea machines were into ventilators, is that right?

DR ABBAS: Pardon?

25 COMMISSIONER LINDWALL: Sometimes – I heard that during the pandemic, at the worst parts of it, when there were shortages of ventilator machines, that some people had managed to turn sleep apnoea machines into ventilator machines. Is that right?

30 DR ABBAS: Yes. They were – these things were reported (indistinct).

COMMISSIONER LINDWALL: And would you consider that to be a repair, what should be a right to repair, rather than a remodification?

35 DR ABBAS: That's a remodification, obviously. But we – in a case of health emergency like COVID-19, we need to create exceptions.

COMMISSIONER LINDWALL: Yes.

40 DR ABBAS: We can create these exceptions, we can provide these exceptions beforehand, instead of allowing people to do things, and then asking the question, whether it is permissible or not. We need to make these exceptions within patent laws, and which should guide people, that, if you do it in a health emergency, that's permissible; if it you do it otherwise, it's going to be prohibited. So, instead of making a guess whether what they are doing is wrong or right, they should have proper information, proper exceptions provided in the laws.

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5 COMMISSIONER LINDWALL: So, could you – if I have a product which is subject to a patent, and currently in Australian law, and use either – some sort of scanner to – let’s say a part was broken, and I scanned the part that’s broken, and then used a CAD design from that – so I basically reverse engineered it, if you like, and then used a 3D printer, what you’re saying is – I’m putting it in a blunt form, I suppose – that that is uncertain, whether that is violating the patents rights or not, as it stands in the current law?

10 DR ABBAS: In the current law, we don’t have any provision. But what I draw from the court judgments, if you are doing it just to prolong the life of the product, and you are fixing it, you are not reconstructing it, you are not making it all over again, it’s permissible. But if you are making – because to make a product is the exclusive right of the patent owner, of the patent
15 holder. If you make a product, if you reconstruct it, you are messing up with the domain of the patent owner, their exclusive right.

20 COMMISSIONER LINDWALL: I see what you mean. I mean, to put it in another very crude way, I suppose, an axe has two parts: the handle and the axe itself, if you like, and if I have - the handle broke and I used a patent - and it was patented, I could reconstruct that because I'm then re-building the - I'm maintaining it; I'm not actually building a new - - -

25 DR ABBAS: Yes, maintaining is permissible; rebuilding is not permissible.

COMMISSIONER LINDWALL: Yes, yes. Okay.

30 DR ABBAS: But what (indistinct) even rebuilding in a health emergency, as an exception.

COMMISSIONER LINDWALL: Yes. Exactly. I get you. And you would also prefer the international exhaustion - - -

35 DR ABBAS: Yes.

COMMISSIONER LINDWALL: - - - because then you could have parallel importation - - -

40 DR ABBAS: Yes.

COMMISSIONER LINDWALL: - - - which the Productivity Commission has previously supported in the case of books and various other things. Parallel importation has a very good competitive device. Julie, did you have any final - - -
45

COMMISSIONER ABRAMSON: No, no. That would really welcome a written submission which I think you're in the process of providing. Thank you.

5 DR ABBAS: Yes.

COMMISSIONER LINDWALL: Thank you very much, Muhammad.

10 DR ABBAS: It's my pleasure, and I really appreciate your efforts in this inquiry and I appreciate the efforts of your team. You are doing a very good job.

COMMISSIONER LINDWALL: And thank you very much for your help today and take care.

15 COMMISSIONER ABRAMSON: Thank you.

20 COMMISSIONER LINDWALL: Well, everyone, our next is Jesse Adams Stein at 3 o'clock, so we will just have a bit of a break for about 25 minutes now to keep everything on time, and then we will resume just before 3 o'clock, if that's all right, Julie?

COMMISSIONER ABRAMSON: Yes, perfect. Thanks, Paul.

25 **SHORT ADJOURNMENT** **[2.31 pm]**

30 **RESUMED** **[2.58 pm]**

COMMISSIONER LINDWALL: For some reason, I can't start my video, because the host has stopped it. There you are. All right, start my video. There you are. That's better.

35 COMMISSIONER ABRAMSON: Yes, I know. It's a bit of a long day, Paul.

40 COMMISSIONER LINDWALL: Yes.

COMMISSIONER ABRAMSON: From our prison cells at home, Jesse, like you, no doubt.

45 DR STEIN: Yes, that's right.

COMMISSIONER LINDWALL: Well, let's get started, then. Welcome, Jesse. Did you want to give us a bit of – introduce yourself, and say – give us a bit of an opening statement?

5 DR STEIN: Sure. I'm Jesse Adams Stein. I'm a senior lecturer and
DECRA fellow at the UTS School of Design. And I'm co-CI of a research
project called Repair Design, which is led with Associate Professor
Alexander Crosby at UTS. The project was mostly active in 2019. I was on
maternity leave in 2020. And then, we are just sort of starting to write in this
10 area again now.

So, most of our observations and research was to do with the relationship
between repair and design, with a particular interest in the Australian
perspective and in community responses. So I would really like to thank you
15 both for having me speak, and also for the issues paper and the draft report,
which have been really, really comprehensive, and it's fantastic to see these
sorts of discussions in the Australian context, finally. Thank you. I also
wanted to acknowledge that I wrote the first submission when I was on
maternity leave, and I'm now working on this material with a one-year-old
20 and a five-year-old, and home schooling. So it's been a bit mad, and I don't
feel I have been able to be as technical as I would have liked.

COMMISSIONER ABRAMSON: Jesse, you're amongst friends. We have a
variety of new babies and home schooling, so we share your pain.

25 DR ADAMS STEIN: Yes, I don't think I'm alone in any way. All right, I'll
just jump straight in, then.

COMMISSIONER LINDWALL: Please, yes.

30 DR ADAMS STEIN: So there's about four things I wanted to speak to. The
first one relates to consumer attitudes to repair, which I think are changing,
and I think we need to be quite fair about thinking that, at the moment,
Australian attitudes to repair are probably in their early days, and we
35 shouldn't be too quick to make assumptions about what people might do in
the future, because this is a rapidly changing space.

And we have seen Australian consumers change quite quickly in their habits;
for example, in relation to green bags in the supermarkets. So once you have
40 a combination of awareness and regulation, then you can actually get fairly
quick consumer uptake, at least a fair percentage. So I think we need to –
when we make assessments about what consumers might do, be aware that
they change.

45 There were parts in the report that referred to consumers making decisions to
prematurely discard their technologies. So, being participants in premature
obsolescence; the lure of the new, of course, and that's something we think

about a lot in design. However, I want to look at little bit more at the relationship between consumption and discard here, because I don't think it's that straightforward.

5 And it is, of course, difficult to generalise across different technologies, and
in the absence of full statistical data about something as complex as the
lifecycles of everyone's products, which we don't have. But we did uncover
a fair bit of qualitative evidence that when consumers do decide to upgrade a
device, then, if the old model is still working, generally speaking, it doesn't
10 get discarded into waste stream straight away.

So, we don't have a system where a large number of people are buying new
things and chucking out the old ones, unless they are broken or
malfunctioning in some way. So, generally speaking, at least in our research,
15 we found that if consumers have an old model that's still working, they tend
to give it to somebody else: family member, friends, charity; give it away for
free online, or try and sell it second hand.

So there's vibrant second-hand markets going on. People are using second-
20 hand devices. All that sort of thing is happening. So, people don't like
throwing out fully operational technology. The problem is that the stuff
that's getting thrown out is the broken stuff; stuff that is technically
repairable in a lot of cases. So I think that suggesting that consumers
contribute to premature product obsolescence probably doesn't give the full
25 picture, and is probably a fairly minor part of the problem.

Of course, there will always be irresponsible consumption and discard. That
does occur, but I thought, just because some people do do stupid things
doesn't mean that we shouldn't improve the situation for large numbers of
30 people who genuinely do want to find better avenues for repairing broken
devices before they send them over to the (indistinct words).

COMMISSIONER LINDWALL: A lot of people I think would – I'm sure
some of us have working devices that sit in a drawer, unused, too.

35 DR ADAMS STEIN: Yes, there is a lot of that. But it's very hard to
quantify. There is a little bit of data about what we know about boxes of e-
waste in people's attics and things like that. There is a bit of information
about that. There's a fair bit of it around. I did want to also talk about
40 encouraging the longer use of products.

One of the sort of backbone understanding that our research team conducted
– had, as a sort of a back of a backbone of what we were looking at, was that
we wanted to encourage longer use of technological devices for
45 environmental reasons. So we were interested in the consumer rights side of
things, but that wasn't really our motivating force.

Of course, the most obvious reason you would want to extend product lifetimes is addressing e-waste, and that's been dealt with extensively, so I'm not going to go there at the moment. But the second consideration of why you might want to extend product lifetime actually relates to the beginning of the product cycle, not the end; production, and the sheer amount that is being produced.

So, slower consumption means less production, which means less drain on the earth's finite resources, which means less need for mining of rare minerals, less requirement for oil-based plastics, less emissions-generating production, less emissions-generating long-distance transport of products and so on.

So we have to start thinking about the climate impacts of production. There's a recent report from the European Environmental Bureau, which just – they had so many stats in there, but one example is that if you extend the lifetime of all smartphones in the EU by just one year, you could prevent 2.1 metric tonnes of CO2 emissions per year, which is the equivalent of taking over a million cars off the road.

So we have to think about, if you extrapolate from there and imagine the carbon reduction benefits, if you applied that to a broad swathe of products, even just extending product lifetimes by a year, so the benefits would obviously be greater, the longer you can keep products.

So, I guess by way of saying, yes, let's consider the end of the product lifetime, but also, we have to get to a point where we think, all right, when we have such unsustainable resource demands on the environment, and threats to the climate balance, we can't go on, business as usual, just assuming that high growth at all costs is the way things operate.

Of course, some of that would be outside the terms of reference of this particular inquiry, but I did want to keep that in perspective. The other thing I wanted to address is the somewhat vexed issue of planned premature product obsolescence, which was dealt with quite extensively in the draft report. And I did want to reiterate something I said in the submission, and that is that planned premature obsolescence is not – I wouldn't see it as – it's not like a conspiracy.

It's not like there's manufacturers rubbing their hands together and saying, 'This bit here: I'm going to make that break in two years.' I don't think – generally speaking – I'm sure there are a couple of examples of that, and some of them we'll never find out about, but generally speaking, I think the issue is much more structural.

So, product obsolescence is effectively business as usual when you have a neoliberal globalised capitalist model, when you have whole sets of device

manufacturers, generally overseas, whose entire business model is based on a high throughput of short-term devices, with an assumption that the products they make need only last a few years. So that becomes the entire basis of the system.

5

So the system then expects a constant cycle of software updates, new models always flowing through, and in turn, retailers and consumers come to expect this, too. And it follows, then, that they need only design something that will last two or three years, because that has become the expectation. But we certainly have the capacity to do otherwise, and indeed, should encourage as much as possible manufacturers to provide other options. They won't like it, but we need to start pushing back on that.

10

In many cases also – and this is from an industrial design perspective – I've spoken to industrial designers who say, 'I would love to use better quality materials. I would love to design something that I know won't break as quickly, or that just makes more sense for the functional object. But I've been told that this is my price point I have to keep the design in, and I am limited to these plastics. This is the supplier that I have to use for these plastics. I can't choose any old material. I'm bound by what my boss tells me.'

15

20

So you have product designers and engineers who are frustrated by their inability to actually design sustainably, particularly if they work for a very large manufacturer. And over time, what happens is, everybody's standard seems lower about what they expect from their devices. So that includes manufacturers, designers, and consumers.

25

We've found respondents saying that they only expected a kettle to reasonably work for three years. And it only takes common sense to compare that situation to, for example, how we thought about kitchen appliances in most of the 20th century. So, things – I think to say that things are becoming more durable or long-lived over time, when we actually even just use common sense and think back in the past, that proves not to be the case.

30

35

On top of that, we know that particular companies, with Apple being probably the most egregious offender, do engage in strategies that deliberately discourage consumers from seeking independent repair, and all of the rest of it that goes along with that. I won't elaborate; you've heard it many times. But those strategies do affect product obsolescence. And so I think we need to think more broadly about product obsolescence in this broader structural sense, rather than as a (indistinct) conspiracy.

40

The final thing I wanted to address was to voice my support for a repair ratings labelling system. I, unfortunately this morning was home schooling, and I couldn't hear what Choice had to say on that matter. I have read some of their other material on that though. Did they address that?

45

COMMISSIONER ABRAMSON: Yes, they did and we're happy to do times tables if that's what you were doing with the 5-year-old, Jesse.

5 DR ADAMS STEIN: He's pretty good with his times tables actually. So, I did want to speak to a couple of issues with that. Look, we haven't done a lot of work in our own research group on this but, I felt the need to sort of have my two-cents anyway. And my first point to make is that I do believe that there is a strong consumer desire for better information about repairability and durability at the point of purchase and that, Choice may have already shared their results but, one of their survey's found that 85% of respondents said that buying products that would last a long time was important to them and 73% said that repairability was important in their decision to buy a product. And we also know that high price point does not necessarily mean that a product is more durable or repairable, even though consumers commonly assume that this is the case.

20 So, there are huge differences in repair experiences for consumers, depending on which manufacturers they're dealing with. So, I think, if there was to be a repair ratings or labelling system, there would be a couple of key principles that it would need to have. Of course it would need to be consistent and have a really standard visual labelling scheme which perhaps offered more detailed repair relevant information online, as an extension for those who wanted to look into it further. I think it should be mandatory for certain classes of products rather than sort of an opt-in system. You could start with white goods and expand from there. I think it should include some of the key offender products, for example, smart phones, printers, tablets and so forth.

30 I think if the system was going well you could expand it to other key offender products, for example, heaters or small kitchen appliances. I think the labelling system needs to have really clear visual communication. It would need to be run independently, potentially by a government-funded body, not industry run and run with quite a wide set of repair criteria assessment consideration, including product design. So not just being about information and service factors and I think the labelling system should appear both in store and online because a lot of these devices are now being bought online, particularly in this environment.

40 So, as I'm sure you've heard, we already have an independent energy efficiency product grading system. So, you could argue, and I know John Gertsakis has preferenced this possibility that we do have a regulator, we have an existing infrastructure for this sort of thing. You could modify the existing infrastructure by having a cross-disciplinary repair specific advisory team and a repair specific review committee. I would caution against much industry involvement in the assessment process so as to retain the credibility of the scheme, so that it wouldn't be called into question, for instance, in the way that the health star rating system is sometimes criticised. I also think the

5 repair labelling system should be a separate differently coloured sticker, rather than cluttering out the existing energy efficiency star rating system. I think combining the two would just be too confusing to consumers. I think it needs to appear visually separate, even if it's administered through the same body potentially.

10 I think also thinking about getting the settings right as to who it's influencing, is an important consideration. So, the energy efficiency system, as it is now, targets manufacturers, although it does also provide some extra information for consumers. I have no problem with targeting manufacturers for a repair specific labelling system. I think manufacturers do need to be nudged in this way. But, I think also there is a consumer demand for information, and I didn't want to give you a long list of potential criteria, but I perhaps might mention design criteria that could be considered in this kind of labelling system. I won't go into all the other potential criteria. I don't want to take up too much of your time and it's beyond, in some cases, beyond my particular expertise.

20 COMMISSIONER ABRAMSON: We're very interested in the design aspect that you just want to talk about in the sense that iFixit spoke to us this morning about repairability and what they look for in repairability to do their ratings. So, what you would say, from a design perspective, aligns with a rating system, we'd be interested in you expanding Jesse.

25 DR ADAMS STEIN: Sure, okay. So, some of the most obvious criteria factors would be the openability of the product. So, can the product be easily opened without damaging it? For example, does it have a screw panel or is it sealed or soldered shut? When you ask repairers what they need most, they need access and they need access to hardware, not just software.

30 Spare parts availability, I guess that goes beyond just design consideration, but it is also a design consideration. Within that, modularity is an important factor. So, does the product tend to require fairly standard parts that are easily sourced from other models or is this particular product a very rare and specific and obscure model that has parts that are hard to source, particularly in Australia? So, questions of where you can get those parts and are they standard or not.

40 The ease of disassembly where relevant. So, those are related considerations. When I say 'ease of disassembly' it is slightly different to just being able to open an item. I mean that do you have two materials that are sealed together such that when you actually decide to bring the product to a discard stage, is it really difficult to recycle those materials because they're welded together, for example, or is it actually fairly easy to separate the materials for the purpose of recycling? So, I think those things are aligned. You want to be able to repair the products as much as possible but there is a point the product is beyond that. It doesn't make any sense to repair it, therefore, you want to

be able to bring it into a waste stream in the most sustainable way you can. So, those things are related.

5 Durability of material choices and also of product formed. So, material choice and the shape of a product, these are different considerations but related considerations. That would obviously include assessment of weak points and assessment of what is reasonable for that particular product type. So, it has to be fairly specific in terms of what is the product used for? How is it used?

10 Replaceability of batteries, if that's a relevant consideration? The simplicity or the complexity of the object and the question of whether or not product complexity is actually necessary. So, in some cases, actually product complexity improved chances of a repair because it gives the repairer lots of options but, in other cases, product complexity is totally unnecessary. For 15 instance, adding a microchip to something that doesn't really need a microchip.

20 Compatibility with commonly used ports or peripherals and other accessories. So, simple stuff like does it use the USB or does it use something really obscure? Compatibility with common tools for opening the product, for example, can you use a standard screwdriver or an Allen key or do you have to use a proprietary specialist tool to open it.

25 Ease of maintenance by the user. So, does the design of the object affect easy maintenance or is it quite difficult? Does the design encourage things like dust build-up or overheating or does the design, is it easily cleaned in a way that the consumer doesn't even really think about very much? And 30 incorporating user feedback about faults and breakages which may not be immediately apparent from just an examination of the object alone.

I could probably go on but those are the key ones I think.

35 COMMISSIONER LINDWALL: Are these demanded by the rating scheme or are you talking about actual design standards?

40 DR ADAMS STEIN: I would say to start off with a rating scheme. I think applying design standards is a pretty ambitious step and is difficult because products are so diverse and so, when you start regulating that, you may end up accidentally making lots of problems that you weren't trying to do. So, I think, in general, I am a fan of government regulation of, for environmental purposes, but I think if you were to introduce design regulation you have to do it very cautiously.

45 I think if you were going to introduce any form of design regulation, then it should apply to the openability, the ability to open the object for the purposes

of repair or maintenance. Beyond that I think it gets quite difficult because products are so diverse.

5 COMMISSIONER LINDWALL: Sorry, they were your four points, I think. Is that right?

DR ADAMS STEIN: Yes, yes.

10 COMMISSIONER LINDWALL: In terms of a French scheme, a French ratings scheme, how do you see it or how well do you know it? How does it rate according to those criteria you just listed here that I've written down?

15 DR ADAMS STEIN: I'm not an expert on the French scheme. I have read a bit about it, but I haven't seen how it works in practice or anything like that. I think it is definitely worth close consideration to see how it's going, but I think we still need to think about it within our own system, particularly in relation to whether or not the E3 energy efficiency regulator could be involved in that; whether we have the infrastructure already for something slightly different.

20 COMMISSIONER LINDWALL: Then, going back to the lifecycle, I think there are consumers – maybe I'm a bit of an economist here, but often, manufacturers will make things consumers want, according to the designs and the price point that people are willing to pay, I suppose. I'm also not – we shouldn't neglect the people who live in developing countries, in terms of making products too expensive, that they won't be able to afford to buy them.

25 I lived in Pakistan for a number of months, and they had old phones, most of them, and driving around in very old cars. Whenever you make policy changes, you have to be cognisant that it can impact the (indistinct), obviously. And it's very well for us to – so you have to be aware of implications on that. So, is there a way, perhaps, of incorporating some of these ideas that are of benefit to poorer people, as well as the – makes us all a bit more aware about our consumption patterns.

35 And following on from that, to what extent are the products that are shorter lifespan than they should be due to technological change? I mean, I've got the same lounge chair in our dining room that we've had for a very, very long time, mainly because of inertia, rather than any other reason I don't get rid of it, but it's fine. Whereas I've probably replaced quite a lot of technological things, because the change in the technology has been quite noticeable over the last – (indistinct) the power of the (indistinct) doubled every 10 years or so.

45 DR ADAMS STEIN: Yes, there's a lot of questions in there. I think one of the things that I wanted to respond to was that you were talking about ways in which, if you were to make changes, how can you make changes that have

– that are helpful for lower – for working-class people, or for lower income people. I think, remembering that repair is an employer, a massive potential employer, and a potential employer for skilled work, or for the training towards skilled work, I think there’s a lot of scope there for jobs in Australia that is not being made good use of.

We also have a lot of ex-manufacturing workers with fantastic repair skills. And so, thinking about how changes that encourage repair might also be extrapolated in ways that helps people economically, you’ve got to look on the job side of things. I think – I have particular understandings and views about technological change that are probably not so mainstream. I don’t believe technological change is this sort of rapidly hurtling thing that we have no control over; that it somehow just sort of runs ahead of us.

Technological change is made by people. It’s made by companies. It’s made by decisions. It’s not just separate from us. And we have some degree of power to make regulatory and consumption decisions in relation to it. And if enough people make those decisions, then manufacturers do respond, and also can be regulated in particular contexts as well. So I don’t believe that we just have to kind of keep catching up with technology.

COMMISSIONER LINDWALL: Fair enough, yes. What about – are you aware of that phone that’s in the European Union, called Fairphone?

DR ADAMS STEIN: Yes. I was going to mention - - -

COMMISSIONER LINDWALL: Yes, please.

DR ADAMS STEIN: It would be fantastic if Fairphone was something accessible in Australia, or if there were other equivalents in Australia. It’s pretty difficult right now to have a Fairphone working in Australia, unless you’re a real tech expert that really works at it. It would be great if there were more options along those lines. What I do see a lot of fantastic things happening in Australia is a lot of reuse. Have you heard of The Reconnect Project?

COMMISSIONER LINDWALL: I believe I have, yes.

DR ADAMS STEIN: So, options like that, where people’s working or not quite working phones are given to The Reconnect Project, reconfigured, fixed up, and then handed on to people in need. So there’s a lot of really fantastic community systems like that going on. Again, there’s jobs in those sorts of initiatives as well, particular if they were actually funded in a much more fuller way, rather than sort of working off an oily rag, as they currently do.

COMMISSIONER LINDWALL: When you said earlier, Jesse, that higher price products are not necessarily more durable, compared to lower price

products, is that just a general observation, or there any types of products that this is more likely to be observed? Because I would have thought that, normally, the more expensive products you would expect to last longer than the less expensive products.

5

DR ADAMS STEIN: That is a general consumer assumption. Choice has examined this, and that was their assessment. So I found that from Choice. So it's probably better to ask Choice about how they came to that conclusion. But if you were to going to go there and ask questions, I think – appliances –
10 for instance, dishwashers and things like that – we had good examples of where a high price point does not necessarily mean that something works better.

COMMISSIONER LINDWALL: I should give Julie some questions now.
15 Thanks, Jesse.

COMMISSIONER ABRAMSON: Thanks, Jesse. I just wanted to ask you about the Australian Consumer Law. I understand in your submission you proposed elevating repair over replacement, except where that's
20 unreasonable. I'm interested in how this would work, because of course, Choice made the point to us that they don't like a hierarchy of repair or reuse, because they believe that that impacts upon consumer choice. So, I'm just interested in why you think what you do, and what your trigger point of 'unreasonable' is.

25

DR ADAMS STEIN: That's a good question. I'm not sure I'm going to be able to answer it adequately, but I do think that I was coming from an environmental position there, not a consumer rights position, which is probably why my position was different to Choice's on that. I thought that
30 starting from a presumption of repair before replacement where possible meant that, effectively, less stuff is getting produced in the world.

So, starting – and it also was about a cultural change towards making repair the norm. I think throwing that in as – saying that there should be regulatory
35 (indistinct) repair before replacement was probably a bit ambitious, but I thought I'd throw it in as a way to sort of say, let's get really serious about this, and think, well, what if we thought that way? In terms of how it would actually operate legally, I'm not a lawyer, so I'm not going to answer that.

COMMISSIONER ABRAMSON: Because the issue around that really is – one of the issues in the law at the moment is that a lot of the rights, if we can call them that, rely on what a supplier or a manufacturer chooses to do for you. So it's questionable – unless it's a major fault, it can be very difficult
40 for consumers, even if they wanted to get something repaired. But the interesting thing is, the manufacturers say to us, 'Well, a lot of consumers don't want things repaired. They want you to give them a new item.'

45

DR ADAMS STEIN: Yes. I mean, I think if it involves the consumer waiting for long periods of time before a repair can be effected, then that kind of voids the point, or it says, all right, well, depending on the device, can they have a replacement device during that period, while you're waiting on a
5 repair? I think that's a massive factor. And it's also an issue of being a country that doesn't have a big manufacturing industry.

So when spare parts are coming from overseas, in the COVID context, things take months to arrive. So I think this is something to aim for, in the context
10 where more could be produced – spare parts could be produced in Australia. I think when you end up with consumers waiting long periods of time, then you are better off offering the consumer a replacement in that context, yes.

COMMISSIONER ABRAMSON: Thank you. One other question I wanted to ask you is that, I think in your submission, to overcome planned product
15 obsolescence – and I know that's how you phrased that – you've suggested OEMs [Original equipment manufacturers] provide technical support for their products up to seven years. I'm just wondering why you landed on seven years.

DR ADAMS STEIN: Yes. I think I was specifically talking about computer (indistinct). I thought seven was ambitious but achievable for something like a laptop computer, for example. I think beyond that, you start getting to the
20 point that the processing just can't keep up with the available apps and things like that.

I think at the moment OEMs don't want to provide support for things that are that old, and so many people get caught out by approaching an OEM and saying, 'I've got this thing. It's not working,' and they say, 'Sorry, it's too
30 old. We can't do anything.' So I think being really ambitious and saying, 'No. These devices use very valuable earth resources. We should be able to make them last at least seven years' – I think 10 is pushing it too much.

COMMISSIONER ABRAMSON: Thank you. Thanks, Paul.
35

COMMISSIONER LINDWALL: All right. Do you have any final – because I know we're running out of time, but that list that you just gave us, about design criteria, is very good. I think I wrote down everything, but we've got the transcript anyway. You've given us some very good food for
40 thought there. So, thank you very much, Jesse. Did you have any final points you wanted to make?

DR ADAMS STEIN: Only in terms of, if there were questions about, well, how are we going to pay for this? I did want to point out that the Federal
45 Government subsidised the fossil fuel sector by \$10.3 billion last financial year. So there are ways in which money can be found. I think that's all I'll say.

COMMISSIONER LINDWALL: Yes. Some people would say our defence budget is quite high, too. Thank you very much, then, Jesse.

5 COMMISSIONER ABRAMSON: Thank you, Jesse.

COMMISSIONER LINDWALL: And we might move now on to Spyro Kalos from MobileMuster.

10 MR KALOS: Hello. Good afternoon.

COMMISSIONER LINDWALL: Good afternoon, Spyro. How are you today?

15 MR KALOS: Very well, thank you.

COMMISSIONER LINDWALL: Excellent. Would you like to give us a bit of an opening statement or whatever?

20 MR KALOS: Yes, definitely. I've got a bit of an opening statement, and I just want to reference a couple of points in the recommendations, and then I might just open it up to questions, and I'm sure there will be. So just as a way of an introduction, I'm from the Australian Mobile Telecommunications Associations, better known as AMTA, so obviously the industry association
25 for the mobile telecommunications industry, and our members consist of not only the network providers, the network infrastructure companies, and also the handset manufacturers.

30 So my role specifically within AMTA is to head up MobileMuster, which, as you may know, is the industry-led product stewardship scheme, established in 1998 and voluntarily funded by its members since that time. So it does include handset manufacturers, and what makes us quite unique, it also includes the network carriers.

35 We have been operating for over 23 years, and hold accreditation under the Waste Reduction and Recycling Act. And in that time, we've collected and recycled over 1,600 tonnes of product, effectively diverting it from ending up in landfill. And that includes handsets, the batteries, charges, and accessories. So, as an industry, we want and encourage people to think about
40 reusing or repairing their mobile phones. It's an important step in extending the lifecycle of these devices.

45 We know that repair is a complex issue, and it does vary from product to product, especially when acknowledging that there are already established repair frameworks for some of these product streams. So our research indicates that one in three consumers have repaired a mobile phone, with 60

per cent of those individuals utilising the services of an independent repair store.

5 What we're also seeing is, more consumers are going back to the place of purchase to deal with a warranty or a repair issue. I will say, in terms of the independent repair network, it's actually a growth channel for MobileMuster specifically. So we've seen the volume of products collected through this channel increase year on year over the last four years, and we have over 300 independent repair stores currently participating in the program.

10 So there's probably three points that I was going to touch on, in terms of the recommendations out of the draft report, which are software updates, warranties, and I might just finish on the role of product stewardship, which is I guess where my expertise sits. So, from a software updates perspective, I think the recommendation was made that brands would make software updates available for a reasonable period of time.

20 From a mobile phone perspective, we're already seeing this happening within our industry, with most brands supporting updates for a minimum of two years. But we are now seeing brands are using this as a differentiator, or a value-add to their devices, and increasing software updates, or increasing software update support with up to five years in some brands. But ultimately, the flow-on effect here is that consumers are actually holding on to the devices for a longer period of time, and we're seeing the average ownership close to three years – 2.7 years, sorry.

30 The next point is around warranties. Customers who are within their warranty will quite reasonably risk I guess (indistinct) loss of their warranty if they attempt to repair a device themselves, or seek a repair from an independent repairer, and damage (indistinct) caused to the device through that process. So damaged caused by an individual or a third-repairer tends to not be covered by warranties, and we believe that this is a reasonable approach.

35 However, there are brands that will honour their warranty even where a consumer has opted to use an independent repairer, provided genuine parts are actually used in the repair process. And it's these same brands that are also making parts available to independent repairers, either through third-party distributors or directly via the manufacturer themselves.

40 The final comment I want to make is on the role of product stewardship. So, AMTA's view is that product stewardship schemes like MobileMuster can play a greater role beyond collecting and recycling product at the end of its useful life. And we want consumers to think how they can play their part in the circular economy, by either reusing, repairing, or recycling their device.

5 What we are seeing, though, is that a significant volume of product is being stored at home, with one in three consumers telling us that data security and management is stopping them from recycling. And actually, this is not unique to mobile phones. We have received some funding through the National Product Stewardship Investment Fund to look at building a business case to expand the scope of product that's actually being collected currently by MobileMuster.

10 Part of that process is, we've done some independent market research, and we're seeing consumers holding on to a range of products, ranging from modems, landline phones, smart home tech, and wearables. And I guess there could be two reasons – and we're still exploring why this. Data is certainly playing a role, but also not having a scheme that currently accepts that product is probably that storage at home.

15 So, from the MobileMuster perspective, we are taking steps to change consumers' attitudes and behaviours, and we've developed tools and resources to help educate them on how they can manage their data, so they can reuse mobiles by either selling them, passing them on, or, when they reach the end of their useful life, to have them recycled through MobileMuster.

20 So from my perspective, I see product stewardship playing educational (indistinct) in helping us tackle the barriers when it comes to reuse and repair. And I don't think the data issue is going to go away. If anything, with more products starting to be connected to the Internet, there will be an increased concern in the interest of better managing our data.

25 I think product stewardship should complement a healthy commercial market that already offers reuse and repair. Regardless of reuse, repair or recycling, consumers want to know that there are measures in place to ensure their data remains secure and private. And I guess this ties back into the recommendation that schemes like the NTCRS set targets for repair. But it could amplify the data issue, increasing products being stored across the board.

30 And so the missed opportunity here, in terms of storage – I guess the great thing is that this product isn't ending up in the general waste stream or in landfill, but there is a missed opportunity in extending the life of this product, or effectively the missed opportunity to recover the materials that go into making these products. So I might just leave it there. I'm sure there will be questions, and I'm happy to answer any specific questions.

35
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45 COMMISSIONER LINDWALL: That's great. Thanks very much, Spyro. Could I ask, the interaction between MobileMuster and the NTCRS – and given that one could argue that phones are morphing a little bit – I mean, they do similar types of things.

MR KALOS: When you – the interaction – how we work together, or - - -

5 COMMISSIONER LINDWALL: The work together: do you see the
(indistinct) competitive, even – and one’s a self-regulated scheme, and one is
a co-regulated scheme. So I guess the merits and demerits of both, and - - -

10 MR KALOS: Yes, absolutely. So we certainly don’t see them as a
competitor. The product scope for each of these schemes is quite different.
So, from the MobileMuster perspective, it is mobile phones, their batteries,
charges, and accessories. And from the NTCRS, it’s obviously TVs and
computers. So, quite unique on how each of the programs operate.

15 There are synergies, and we work quite closely with some of the retailers that
offer take-back programs for their products. So if you think about
Officeworks, you can drop off your TVs and computers at an Officeworks
store, but you can also drop off your mobile phone. So we don’t work
directly with one another. I think in terms – if you look at the NTCRS,
20 there’s four – or currently two arrangements under the banner of the NTCRS
where we are a single program in terms of how we operate.

25 COMMISSIONER LINDWALL: And would you (indistinct) comment on
yours as an independent scheme that's been around for a long time and
NTCRS is co-regulatory. You know, some of the people who have spoken to
us today are more in favour of regulated schemes and industry-run schemes.
So here is your opportunity to provide some defence for the industry-run
scheme.

30 MR KALOS: Yes, definitely. I mean - and we've been operating for 23
years and we certainly have been advocating for a voluntary approach to
product stewardship. And I guess over the 23 years we've highlighted the
successes of the program, that it's not simply about collecting product, but in
terms of if you look at our metrics, it does also look into recycling and
35 recovery rates, products collected, and I think the advantage that we have - it
does make us agile with a significant amount of energy in marketing the
program and educating consumers on how to, you know, manage their data
and what to do with those devices when they've reached the end of life. It's a
program that is quite unique that goes beyond just to OEMs. In our space we
40 have all the three network providers that also fund the program and help
educate their consumers on how to better manage their product when it
reaches their end of life. And so I think the voluntary approach - and I think
(indistinct) has highlighted how voluntary can actually work and work quite
successfully.

45 COMMISSIONER LINDWALL: Yes. Well, 23 years just speaks for itself,
doesn't it. Obviously mobile phones have grown incredibly rapidly over the
years and reached a form of saturation where basically everyone has a mobile

5 phone, and one of my previous inquiries we looked at telecommunications,
universal service obligation, and looked at a number of surveys. About 95
per cent of homeless people, say, in Sydney have a mobile phone often
without a connection (indistinct words) Wi-Fi, but still - it shows that they're
quite prolific and, of course, as you just mentioned, people may be holding
on to them a little bit longer than they have in the past. And is that due to
technological change being less rapid or is it - what - and where do you see
this? Because if it's reaching saturation and people are holding them for
longer, then one would expect it to flow into the recycling (indistinct words).

10

MR KALOS: I think there's two shifts that we've actually seen. (1) If you
think back a number of years, the way the upgrade cycle was centred around
the length of the contract, so 18 to 24 months is - and there were subsidies
involved through the network providers. Now, those don't exist any longer,
so effectively there are no contracts in place with your provider, although you
can opt to pay your handset off at the recommended retail price, at the cost
price, over a 12/24 month or 36 period. The fact that we're actually now
paying for these devices means that we're putting greater value on them, so
no longer can you receive a free handset when you connect to the particular
plan. So those options don't exist. I think the other thing that we're seeing is
the fact that you can actually upgrade the software on the device without
necessarily having to upgrade the hardware means that we are holding onto
these devices for longer. So you actually still use a handset that's two to three
years old with the latest software without having to update that hardware.

25

COMMISSIONER LINDWALL: Yes. No, that makes a lot of sense. And
in terms of the instructions on them, do you have any comment - in a
previous session we just spoke about Fairphone in Europe. Products that are
more repairable rather than less repairable. I mean, I remember phones not
that long ago where you could just take the back off and take the battery out
and put them in which, of course, you don't really see anymore. Is that
something you would like to comment upon?

30

MR KALOS: I think the comments I would make - I am aware of Fairphone
and I'm aware that it's not actually currently available in Australia at the
moment, but I believe Fairphone also ran up against some challenges with
devices that were a couple of years old where they were unable to get parts
for whatever the reason may be. I think Jesse also previously talked about
the recyclability of devices that - you know, where, you know, you think
back to when mobile phones came into the market and you talk about, you
know, being able to pull the backs of them.

40

COMMISSIONER LINDWALL: Yes.

45

MR KALOS: From our perspective, we haven't seen a difference in terms of
recyclability. So regardless if they use screws or if they're glued in terms of
the material recovery, we're getting the same recovery rates. And from a

Mobile Muster perspective, everything that we collect is actually pulled apart by hand, so we don't use a shredding process, and then we separate products into its various material types. So your casings, your batteries, your screens and the circuit boards, and then they will go further downstream for processing. We believe manually dismantling the phones allows us to recover such high recovery rates through the recycling process.

COMMISSIONER LINDWALL: Julie.

COMMISSIONER ABRAMSON: Thank you. Thanks, Spyro. I wanted to ask some questions about product labelling and also about warranties. Not quite in your area, but it's more with your (indistinct) hat on, and I wondered if you did have any views about product labelling and in the case of mobile phones and devices what that might look like.

MR KALOS: The only comment that I would make on the labelling: I think whatever labelling is established, it can't be subjective, and I think it really needs to be measurable, and I'm not really close to the repairability rate either that's been established in France, but maybe there's opportunities to take some learnings from the French system. But I think with any labelling, I think if it's going to add value to the consumer experience and it's not subjective, then it's something that we would consider.

COMMISSIONER ABRAMSON: Thank you. Can I ask you a bit more about warranties because you did touch on them. We've got - and you might not be in a position to give us a view, but one of the concerns is that when consumers do go to independent repair - and I think you gave us some statistics on that - then they're told that, well, you used an independent repairer, therefore your manufacturer's warranty is void which, of course, is not the Australian consumer law. So we've got some proposals around what we would put into warranties at the very least saying to consumers that you still have your access to consumer guarantees. Do you have any views on that?

MR KALOS: I think there probably is a gap in terms of what consumers are aware of when it comes to their rights under the Australian Consumer Law or the guarantee that you're referring to. I know from a Mobile Muster perspective - you know, I talked a little bit about - recently we've done a number of campaigns on educating consumers on reuse.

COMMISSIONER ABRAMSON: Yes.

MR KALOS: But we're looking at doing something similar in terms of repair. So building some mini campaigns to actually educate consumers on, you know, what options exist to them when it actually comes to repair.

COMMISSIONER ABRAMSON: Thank you. And what's your timing on that, Spyro?

5 MR KALOS: Later on this year. So it's part of our marketing and comms activity for the current financial year.

COMMISSIONER ABRAMSON: Yes. So it would be too late for our report, I think, but we're interested in what you might be doing in that space.

10 MR KALOS: Yes, absolutely. And I'm happy to share some of that material as it becomes available.

COMMISSIONER ABRAMSON: Thank you. Thanks very much. Paul.

15 COMMISSIONER LINDWALL: I should ask you, Spyro, if you have any comments or other recommendations on (indistinct words) that we put in which, I suppose, are less relevant to the very small (indistinct words) mobile phone.

20 MR KALOS: Yes. Look, I think from a Mobile Muster perspective, we have an obligation to our stakeholders to ensure transparency on where that material actually goes and where it's actually processed, and I think that is an important aspect of the integrity of the program. The comment that I would make - from our perspective we use a single recycler, but what we expect as
25 part of our arrangements with that recycler is they are accredited to the Australian standard which is the AS: 5377 which provides some guidelines in terms of the handling, transporting and processing of electronic waste. And our recycler also holds the R2 standard which is a global standard. So I would encourage any scheme in our space to maintain those minimum
30 standards in terms of how the material is transported and processed.

COMMISSIONER ABRAMSON: And could I just a question if that's okay, Paul, about product stewardship.

35 COMMISSIONER LINDWALL: Yes.

COMMISSIONER ABRAMSON: What changes do you think could be made to improve the product stewardship in Australia? And the other thing is, do you see any issues with calls to increase the scope of the NTCRS?
40

MR KALOS: So, two questions. In terms of my views on product stewardship; so, MobileMuster is a voluntary accredited scheme, and obviously you would be aware, the DAWE, so the Department of Ag, Water and Environment, have updated their product stewardship logo. I think there
45 are opportunities there for government to better promote what being a voluntary accredited scheme actually is, and what (indistinct).

5 And we obviously have metrics in place that the program is measured against year on year. In terms of expanding the NTCRS – we are advocates for voluntary. I would love to see more industries step up and set up voluntary schemes. But where there are challenges, then potentially the NTCRS is the solution.

10 COMMISSIONER ABRAMSON: Thank you, Spyro. You also previously – you might be in a position to answer this, but you did have what MobileMuster’s annual collection target is, in terms of weight, I think in previous years, but you don’t report that anymore, apparently.

15 MR KALOS: We do report our yearly target and actual weight. Julie, you might be referring to – so we’ve got – as part of our accreditation, we’ve got – our metrics are set for a five-year period. And they weren’t included in the printed report that we published last year, but we will include that moving forward, just to give some visibility in terms of the program’s performance. But our target is something that we report on. So, last financial year we had a target of 85 tonnes, and we’ve actually achieved 106 tonnes for the last report period.

20 COMMISSIONER ABRAMSON: Thank you, Spyro.

25 COMMISSIONER LINDWALL: The final question from me, Spyro, is about the implications of the new generation of 5G, which is obviously rolling out, and will attract a number of customers, myself included, to buy new handsets. Did you see these – so when 4G came out, there was an increase in the sales of 4G-compatible handsets, and now 5G will be the same.

30 MR KALOS: Not necessarily. I mean, if you think – 5G devices have probably been around a year, and there hasn’t been a significant increase. And that’s probably because we’re now just starting to see more of the brands release 5G devices. And so I think there is a natural tendency for us to move towards 5G, but I don’t think it’s going to be a massive driver for consumers. When you think about functionality of what 3G and 4G devices can do today, it’s a very similar experience to 5G. And I think over time there will be a slow migration to 5G devices, absolutely.

40 COMMISSIONER LINDWALL: And 5G obviously is a bit of a competitor to the NBN, to some extent.

45 MR KALOS: And I think that’s – what we’ll probably see with the rollout of 5G, the expansion of products that actually come into the market, and that’s part of the work that we’re doing in terms of the expansion, especially where it sort of aligns with the mobile telecommunications industry. What can we actively introduce in scope for the product, even though lifecycles of some of these products won’t hit the end of their lifecycles for five to six years?

COMMISSIONER LINDWALL: Yes. Well, Spyro, I don't have any more questions. Did you have any final points that you wanted to make?

5 MR KALOS: No, I think – the only thing I would add is, I think one of the final recommendations was, there's probably more work that needs to be done to analyse the impacts of repair, or what the challenges are with repair. And we welcome the opportunity to work with government or the Commission in terms of providing I guess some analysis specific to the
10 mobile phone industry.

COMMISSIONER ABRAMSON: Thank you, Spyro.

15 COMMISSIONER LINDWALL: Sorry, we do have one more question, and that's about, how can you alleviate consumer concerns around data security? I think you've mentioned that before, and obviously that's a reasonable point. And of course, most of our devices have flash memory and so on, and a lot of people store things in the cloud, I suspect, too.

20 MR KALOS: There is definitely a shift for people storing their data on cloud services. We've done a heap of resources, including how-to videos, one for iOS and one for Android, and a lot of resources on our website. What we're seeing is, younger consumers are more comfortable with managing their data – so, deleting it, transferring it, or storing it on cloud – and they're the ones
25 that are more likely to sell their device. So they're more likely to reuse it through that method.

It's the older consumer, unfortunately, that has a tendency to find it challenging or overwhelming. And instead of actually taking steps to
30 manage that data, will store it. Part of the work that we're doing is - - -

COMMISSIONER ABRAMSON: I need to go on your website, clearly.

35 MR KALOS: We even ran a campaign last year that looked at the personalities when it came to data management. And so you do need to tweak the message to actually encourage people to take action. And I think the longer you leave it, the more likely you're going to forget how to use that device. You're going to forget where your charger is. And rather than
40 actually doing something with it, we end up with this idea that we're storing it.

So it's just this continued education that we need to give consumers on managing the data as soon as they've updated that device, rather than holding
45 on to it.

COMMISSIONER LINDWALL: Well, thank you very much for appearing today, Spyro, and thank you for your submissions and help with the inquiry.

MR KALOS: Pleasure.

COMMISSIONER ABRAMSON: Most appreciated. Thank you.

5

MR KALOS: Pleasure. Thank you for having me.

COMMISSIONER LINDWALL: Now we'll move on to Janet Leslie if Janet is there, please.

10

MS LESLIE: Yes, hi, I'm here. I'll start the video. I can't start my video, because the host has stopped it. All right. There we go. There we are.

COMMISSIONER LINDWALL: Hi, Janet, and welcome to the hearing.

15

MS LESLIE: Thank you.

COMMISSIONER LINDWALL: Now, you don't want to make an opening statement, I understand, that's right?

20

MS LESLIE: Well, I thought I would make a little bit of an opening statement.

COMMISSIONER LINDWALL: Please, yes.

25

MS LESLIE: But the first thing I need to do is mention that I'm accompanied by a colleague, Paul Robinson, who should also unmute his mic on his phone. So, Paul - - -

30

COMMISSIONER LINDWALL: Hello, Paul.

MR P ROBINSON: Hi.

35

MS LESLIE: So I guess the opening is just, I'm here – although I work for Canon, I'm here representing the Australian Information Industry Association. And in particular, I'm the chair of the CSR [Corporate Social Responsibility] Policy Advisory Network, and Paul is the chair of the Product Regulations and Standards Group with AIIA. And he is also – he chairs the Australian National Standards Committee for Safe Developed Electronic

40

Equipment. So we've sort of got our – not presentation, but we thought we would answer in two parts.

So I'm here really to talk about the product stewardship aspects of your recommendation, and Paul is here to talk more about safety issues. So, would you like me to make a few points, or would you like to just - - -

45

COMMISSIONER LINDWALL: No, I'm very happy for you to make
some - - -

5

COMMISSIONER ABRAMSON: That would be very helpful, Janet.

MS LESLIE: All right.

10

COMMISSIONER ABRAMSON: Paul – I need to clarify something with
Paul Robinson. You sent through a slide pack, I think, to us.

MR P ROBINSON: That's right.

15

COMMISSIONER ABRAMSON: Did you want that to be part of the
transcript?

MR P ROBINSON: If you wouldn't mind. I was told that we can't present it
visually on this talk, but I'm happy for that to be (indistinct) transcript if you
can.

20

COMMISSIONER LINDWALL: That would be great.

COMMISSIONER ABRAMSON: Yes, thank you.

25

MR P ROBINSON: And I will be talking to it. That's what I'll be talking to.

COMMISSIONER ABRAMSON: Thank you. Back to you, Janet.

30

COMMISSIONER LINDWALL: By the way, Janet, having Yes, Prime
Minister and Yes, Minister, I know what it's like, having different hats.

MS LESLIE: Yes. Some of you would have heard these comments before,
but I guess - - -

35

COMMISSIONER ABRAMSON: You've frozen, Janet. Is it just Janet?
Paul, I can see you.

MR P ROBINSON: I'm still here.

40

COMMISSIONER LINDWALL: Janet, you've dropped out. Could you
start again, please.

45

MS LESLIE: All right, sure. I should just mention that the OEMs that are
part of our CSR group in the AIIA include mainly the large computer and
printer companies; so, Dell, HP, IBM, Microsoft, Epsom, Brother. So that's
the group of companies that we represent. And all of our companies are very
involved in a whole range of product stewardship schemes.

5 So we're involved with the NTCRS, but also Cartridges 4 Planet Ark, APCO
[Australian Packaging Covenant Organisation], and battery stewardship
scheme. And in relation to the NTCRS, we were major players in the
development of the scheme, so we worked for like a decade, you know, with
the government and sat on government industry working groups in the design
of the scheme, and we're pretty keen to continue to play an active part in the
evolution of the scheme. All of our members have, like, design programs in
place to reduce the environmental impact of our products and also to improve
10 things like repairability and reliability, and we all also have repair programs.

15 So whether it's programs of authorised repairers for local consumers or - we
also - many of our members have programs where products come back to us
and a lot of our products are leased out. So when they come back, they're
repaired or refurbished, and often that's not necessarily in Australia. So a lot
of our companies have global hubs where they repair products or
components, and then those products or components can come back into
products sold in the Australian market or in other markets. And most of our
companies also have avenues to buy second-hand products or refurbished
20 products. So that's a basic statement.

25 The other thing is a lot of our members are also members of Australia and
New Zealand Recycling Platform which is one of the largest co-regulatory
arrangements under the NTCRS. It's a not-for-profit industry-funded
program, and I understand that you'll be hearing from them tomorrow. So a
lot of our members are founding members of ANZRP, and we founded that
organisation specifically so that we could have transparency over health and
safety standards and manage the actual recycling process. So that might not
be information that people are aware of. So in response to the report, I'm just
30 mostly talking about the sections related to product stewardship. But first of
all, I guess, on the premature obsolescence point, we were very glad to see
your finding about the fact that there was little evidence of obsolescence, and
we certainly don't design our products in that way. So do you want me to
carry on with talking about the - - -

35 COMMISSIONER LINDWALL: Please do.

MS LESLIE: Okay. Okay. So in response - - -

40 COMMISSIONER LINDWALL: You can talk about what you think about
our proposals, too.

45 MS LESLIE: Yes, okay. So if I come first of all to the proposal about
labelling for durability or repairability. So we're not opposed to that idea. A
lot of our members do, you know, quite well in some of the published reports
on repairability. But what we would say is that, as Spyro said, it really needs
to be based or harmonised, really, with what's going on in Europe. We don't

want another Australian-specific labelling scheme. All of our products are made overseas. And the important thing about that program obviously is that there are agreed standards and that they're harmonised. So that's our position on the labelling scheme.

5

In terms of the proposal to include repair targets in the NTCRS, one point I should make is that when we developed the NTCRS it was specifically designed to be an end of life recycling program, and that wasn't because we were anti-repair or anything; the idea was that hopefully there would be lots of channels, and we think there are lots of channels, where products that are reusable get into other streams before they end up with a recycler at the NTCRS, and we certainly promote that idea. Following on from that, most of the products that do end up in our scheme are very old and not really reusable.

15

So one of our members is actually doing some work on that at the moment which we will be able to provide in the not too distant future. It's just been held up a little bit with COVID. But that's an important point. We don't see lots of really nice new machines coming through the NTCRS. Having said all of that, like, we're not totally against the idea of repair targets, but we're very unsure about how that would work with the existing targets. I can't see how you could possibly do it without double counting or triple counting which might help us meet the targets a lot easier, but I guess we would want to be very much involved in, you know, working through how that could work.

25

And one of the things - one of the points that we have actually recommended for improvement of the NTCRS is the fact that now it's a mature scheme, we actually question whether the targets should actually change their orientation, and maybe we don't need targets on volume and maybe we do need targets on availability. So if we have a scheme where basically anyone who wanted to dispose of a piece of e-waste had ready access to an avenue where it could be responsibly disposed, then you don't need a volume target because the volume target brings with it not just problems of recounting if you wanted to include reparability in the scheme, but also there's a whole lot of trading of e-waste that goes on, which isn't really of any environmental benefit, but, you know, people are sort of trading ad hoc e-waste. And I guess the other point that we would make is that - and I'm not sure if people really understand this, but the targets for the NTCRS are only for the OEMs that are actually involved in the program. So we have quite a thriving e-waste market or I should say asset management market, including sort of end of life management, where players who are not regulated - and we don't think we understand enough about that market, but I think if you are going to be setting - you know, reviewing the targets, you would be wanting to look at e-waste flows outside of the NTCRS because in Europe what they've found is that it's a very high percentage of the flows that are outside of the formal product stewardship schemes. So we think that's quite an important point.

45

COMMISSIONER ABRAMSON: Janet, can I just ask you - - -

MS LESLIE: Yes.

5

COMMISSIONER ABRAMSON: - - - a few questions on the (indistinct words).

MS LESLIE: Sure, of course.

10

COMMISSIONER ABRAMSON: We didn't actually recommend repair targets; only that repair can count towards the current targets if - - -

MS LESLIE: Right.

15

COMMISSIONER ABRAMSON: - - - the (indistinct words) bodies set them up.

MS LESLIE: Yes.

20

COMMISSIONER LINDWALL: And I wonder, does that change your (indistinct words).

MS LESLIE: No.

25

COMMISSIONER LINDWALL: We do understand the issue about double counting and that.

MS LESLIE: Yes.

30

COMMISSIONER LINDWALL: That would be a risk.

MS LESLIE: Yes. So - well, I think it would be more than a risk; I don't see how you could avoid double counting. So to me, I guess I didn't really see a distinction there. If you're going to count products that have been repaired as part of the 80 per cent of available waste that's been captured under the scheme, then to me that's counting repaired material as part of the target.

35

COMMISSIONER LINDWALL: Well, we did say it would have to be quite a change (indistinct words).

40

MS LESLIE: Yes, that's right. And we would want to be involved in that design, and we were thinking that one way to be involved in it would be, like I said, to refocus the targets not on volume, but on availability or convenience.

45

COMMISSIONER LINDWALL: Okay. Did you have anything - did you want to talk about the GPS tracker idea?

5 MS LESLIE: Sure. Sure. So, you know, it's a very vexed question, keeping track of where the waste goes, and even though we have in ANZRP and amongst our individual OEMs really rigorous standards, it's still hard to keep track of where things go. And so in ANZRP we do already use trackers in devices, and we have actually stopped using a couple of recyclers because of where those trackers ended up. But there are issues. So there's surveillance
10 legislation in Australia which means that you have to advise anybody that you're putting trackers in the device, so that makes it a bit tricky. We've got contracts, obviously, with our recyclers and with our logistics providers. But the other thing, there's also some devices – some things – and you were talking about this to Spyro, but some small laptops as well are too small to
15 put the tracking devices in.

And I guess the other thing is that recyclers at the moment are not captured under the NTCRS. The regulation is at the co-regulatory body level. And so I'm not quite sure how you would actually make that happen. But, yes, those
20 are our thoughts. It's a useful tool.

COMMISSIONER LINDWALL: Was there anything else you wanted to - -
-

25 MS LESLIE: Yes, there's one other point, which is, I think all of this has to be taken into account with the Basel directive – Basel – it's not a directive; it's Basel – whatever it is; agreement, law.

COMMISSIONER LINDWALL: Agreement about the export of hazardous
30 waste.

MS LESLIE: Correct, that's right. So, as I said, a lot of our multinationals have central repair hubs, and they have a legitimate reason for transporting products for repair or refurbishment, and that's an important part of the
35 circular economy. But there is a move internationally from some other players to review the guidelines, so that anything that is not working is counted as e-waste, and can't be transported. So I think that's another important barrier if we're trying to improve the circular economy. It might be a bit of a sideline to this issue.

40 COMMISSIONER LINDWALL: I understand (indistinct).

MS LESLIE: Yes, all right. So that's really – that's the end of my
45 comments. Have you got any questions?

COMMISSIONER LINDWALL: How do you think the co-regulatory approach compares to a voluntary approach?

MS LESLIE: I don't think there's a country in the world that doesn't have regulated e-waste legislation. And when we first started the scheme, and everybody was talking about, 'Wouldn't it be lovely if it's voluntary?'
5 There's a lot of players in the electronics industry, and when we started, we actually ran a pilot program with Sustainability Victoria, and encouraged everybody to join, and there were 50 per cent of the major OEMs that didn't join.

10 Now, that might have changed a little bit in the current environment, but we think there's a lot of improvement, and we've put detailed submissions to the government about how it should be improved. But we think, in terms of capturing most of the players, it's been very effective, and we probably wouldn't support going back to a voluntary scheme for electronic waste.

15 We are involved in other voluntary schemes that work well, like the Cartridges 4 Planet Ark program. That works well. But once again, it's a small number of players.

20 COMMISSIONER LINDWALL: All right.

MS LESLIE: And I would be happy to take that on board and provide them more information. It's not something that we have really contemplated.

25 COMMISSIONER LINDWALL: Well, if you compare it to some overseas schemes – there's one in Ontario, for example. Julie, do you have any questions?

COMMISSIONER ABRAMSON: No. I'm quite keen to hear from Paul Robinson if that's all right.

30 COMMISSIONER LINDWALL: All right. We'll give Paul a go, and then come back if you're happy.

35 MS LESLIE: Sure, yes.

MR P ROBINSON: Thank you. Thanks, Janet. Basically, I have wanted to address the issues of the risks involved in product safety in the third-party repair industry. And while a lot of people are focused on the third-party
40 repair industry as some kind of cohesive industry, in fact it's made up of a large range of different organisations who – some are well set up to do third-party repairs, and many are more opportunistic than that, and try to – I mean, you can look at the smaller shops in shopping centres that work on a walk-by basis.

45 So there's a whole range of third-party repairers out there. Now, in our experience with working with third-party repairers and assessing their ability

to repair products to a suitable standard, we find that in many cases, they're not properly qualified. And almost every time we bring a new repairer on board to work with our companies, we have to go through their entire repair systems, their quality management systems, their training systems, their
5 knowledge base.

And what we're finding is that when we originally engage with them, they have very little training in product safety, specifically. They don't have awareness of the safety-critical parameters in product design. There's
10 mandatory government safety certifications required for all electrical and electronic equipment, and there's safety inspection and test standard (indistinct) repair equipment.

So we're finding that a lack of awareness of these kinds of things can lead to serious problems once a product has been returned to the user. And on top of that, there's very poorly documented, or even no documented quality
15 management systems amongst repairers, so that they can produce a quality repair job every time. Those are the sorts of things that we face, and which is why industry suppliers, manufacturers wish to accredit and evaluate third-party repairers before they bring them on board in a partnership with the
20 suppliers.

Now, if we're finding those kinds of issues in a partnership situation, we can only extrapolate that out to the general third-party repair industry, because
25 this is what we see when people come to us for those kinds of partnerships. So, I talked about lacking awareness of regulatory matters. There are mandatory government approval safety requirements for labelling and approval of electrical and electronic equipment.

There's the Electrical Equipment Safety Scheme, or EESS, which is a national based scheme, but managed by a range of state governments. Not every state government is on board with that, such as, New South Wales has their own scheme, and always have. But in order to products onto the
30 market, suppliers have to go through a rigorous process of testing the products, getting electrical safety certifications, particularly for products that connect to the mains, and then getting electrical approval from these
35 regulatory bodies for certain classes of electrical equipment.

But they're for classes of equipment that don't need mandatory approval. They are required to comply with the safety standards in Australia. And the
40 Australian Communications and Media Authority also have safety and functional standards as a mandatory requirement, for things like mobile telephones and all telecommunications equipment.

And for all these regulations, there is the regulatory compliance mark in Australia. It looks like a triangle with a tick in the middle of it. So there's
45 one label right there, for pretty much all electronic equipment. If you modify

any equipment, it basically potentially invalidates all those certifications. And if that equipment is what you call a declared article, or a level 3 electrical appliance under the EESS, then that invalidates the right to connect that article to the electricity supply mains in Australia.

5

If you modify a product that complies with the Australian Communications and Media Authority – ACMA – standards, which basically is the same technical standards, you can invalidate the right to connect to a public telecommunications network. So violations of compliance is pretty serious business. Many suppliers aren't aware of that. Now, I've given an example in the paper that I submitted, the slides, about a specific case that I had not too long ago, from a supplier who - when I said you can't just substitute parts in a product, especially if it's a safety critical part - and they said, 'well, what if it's just a fuse? Surely we can replace a fuse with any reasonable sort of similar-performing fuse'. And I put my safety engineering hat on and I said, 'well, look, fuses are there to prevent fire in the equipment, and if they don't do that job you can have a building burn down, literally. If there are - the fuses are certified components in a test report, so if you swap it for an uncertified component you don't know what that component is going to do.'

20

You don't know what the performance parameters are, so if you replace a one-amp certified fuse with a one-amp uncertified fuse, you don't know what the operating range for the uncertified fuse is going to be. Will it operate in time; will it operate too soon. If it doesn't operate in time, then you've got a fire risk. If it operates too soon, you've got a serviceability risk because then people are going to keep bringing these parts back to the supplier and saying, 'Please fix.' So the certification for the fuse guarantees its safety parameters for all of production. Now - so then the question was what if we replaced the fuse with the same current rating; maybe use a certified fuse, but the same current rating.

30

Well, there's still a bunch of issues that come out of that. If you replace a fast-blow fuse with a slow-blow fuse, the same current rating, then you're still exposed to a fire risk because it will take longer to blow the fuse. If you replace a slow-blow fuse with a fast-blow fuse, again, you're going to end up with a fuse blowing more quickly than it's intended and the product will come back to repairs more often or you'll get nuisance fusing. And if you replace a high break capacity fuse with a low break capacity fuse you're going to end up with molten volatilised metal being spread throughout the insides of the equipment which could lead to the risk of electric shock by bypassing the insulation within the equipment.

35

40

And if you replace the fuse with a different voltage rating, you also have a risk of electric shock. So even in something as simple as replacing a fuse, it's not so simple from a product safety perspective, and if you use an uncertified part and it's invalidating the safety certificate for that product and essentially disallowing that product from being connected to the electrical mains or in

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5 the case of other things like your mobile phones, if you invalidate the safety certificate by replacing the battery with a non-certified battery, like a battery from a third-party supplier that hasn't been through a rigorous testing process under the safety standard, then that could invalidate the certificate you use for ACMA compliance.

COMMISSIONER ABRAMSON: Can I just ask you something about that, Paul.

10 MR P ROBINSON: Yes.

15 COMMISSIONER ABRAMSON: And it's not that I doubt your evidence, but I just want to understand this. Where is the evidence base for the idea that independent repairers are a risk because some of the evidence that we've been given - of course some people would be; I accept that - is that a lot of independent repairers, especially in white goods, have actually come out of the industry itself. That's how they set them up. And wouldn't they have their own reputations to manage?

20 MR P ROBINSON: They have reputations to manage, but I would have to ask where are their process documents; where's their accreditation; where's their training and quality assistance manuals. If they don't have those, then my attitude for that will be that they're a risk because they don't know - they can't show an auditor, for example, that they're repairing a product to a safe level every time. They can't show an auditor that they have the appropriate skills. They might've come out of industry, but product safety training is a highly specialised skill, and as I said, I've worked with repairers many times and I've helped the repairers that we've gone into partnerships with to develop repair procedures and quality management systems to cover those kinds of issues. So I'm finding in our experience that the repairers - there are some exceptions. There are some that are set up obviously, but when we come across the repairers - and it can even be larger ones - unless they have even a quality management system that shows what they're going to do in the repair process, I have to question whether or not they're able to do that job reliably well.

35 COMMISSIONER LINDWALL: Paul, which types of products are you most concerned about because I would have thought that most computers now - laptop computers and televisions - are DC low voltage, 12 volts or something like that. 24 volts sometimes. Certainly not mains voltage.

40 MR P ROBINSON: Well, the mobile phones and the laptops have power supplies that are rated at 240 volts that plug into the mains. Those power supplies are electrical articles that are required to be approved by the electrical regulators, and the laptops themselves are electrical devices, as are the mobile phones, and they're covered by electrical safety regulations in all states. Like in Victoria, they say even if you don't have to have an electrical

safety approval from a government regulator, you must still comply with Australia New Zealand standard 3260 which is the safety of electrical equipment.

5 So non-compliance with that standard basically means that the electrical
authorities would regard that equipment as unsuitable for use in Australia
even if it's battery operated and low voltage. Victoria has told me point blank
- the regulator there, ESV, has told me that even - anything that uses
10 electricity - doesn't matter what the low voltage is down to zero volts, it's still
covered by their regulations. I'm happy for you to talk to the electrical
regulators as well on that one and the ACMA. So in addition to the safety
standards - the technical standards - we've got other Australian standards that
manage the quality of the repair in testing and inspection of the repair process
15 as well, and this is - again I'm finding many Australian repairers are unaware
of this.

In particular, Australia and New Zealand standard 5762 which is in-service
safety inspection and testing for repaired electrical equipment. And there's
20 another standard that's very similar to that, and it's based on that which
covers second-hand equipment prior to sale, and both of those standards
reference a primary standard of ANZS 3760 which is in-service safety
inspection and testing of electrical equipment. 3760 is implemented in a lot
of occupational health and safety regulations for employers to test and tag.
25 You might know of it as a test and tag standard for electrical equipment in
the workplace. But for repaired electrical equipment, if there's safety
involved - and there usually is - they should be using ANZS 5762 as the basis
for checking and inspecting equipment after it's been repaired. And it doesn't
stop with the fuse.

30 Safety standards do have hundreds of pages of technical requirements. The
safety standard for mobile phones and computers, laptop computers, and even
all the way up to mainframe computers is AS/NZS 62368.1. It's 291 pages in
that standard. So the issues I've talked about with fuses is only a few
35 paragraphs out of that. We've talked about batteries. There's sections on
batteries. There's sections on button batteries which is a big issue for the
ACCC at the moment, and Standards Australia has instituted a new
committee, CS118, for writing a horizontal standard for button battery safety
and products that contain button batteries, and there's a mandatory
40 government standard on that.

And yet, out in the marketplace we're still finding on productsafety.gov.au
that there's regular recalls on products containing button batteries that are not
safe and don't mean the requirements of even the industry code. So there's
45 products getting out there due to a lack of awareness and knowledge of the
safety standards and we basically need to ensure that if third party repairers
are given rights to repair products. They also need to be associated with
obligations and responsibilities to repair the matter well, and we mentioned

5 that in our original submissions to the Productivity Commission where we said that consumer products must be repaired by competent and profession repair technicians. Repair mandates must not unduly restrict technology innovations, because we've heard earlier about technology innovations, a previous speaker was saying if we used off the shelf parts and common components or common assemblies then we'll be well and good with the repair industry.

10 But when you're dealing with leading edge technology products it's not necessarily possible to have common assemblies because you're developing something that's completely new, and you just can't get off the shelf components, and it costs billions of dollars to develop microchips to roll out these new products. New products are getting smaller, and smarter, and faster, lighter. Janet talked about the NTCRS because products are getting
15 lighter, like we've now taken the cathode ray tube TVs off the market place, so the replacement are obviously LED [light-emitting diode] TVs. And the weight of LED TVS is much lower for the same sort of screen size as CRT TVs. So, when you're measuring recycling waste by weight it's starting to get skewed by technology innovations that are making things smaller and lighter.

20 So, we need to be aware that the technology innovations are still happening, and they will continue to happen, chip sizes are doubling every few years - I think it's 3 years according to what they call Moore's law. And when products get repaired, the liability for that repair has to rest on the third-party
25 repairer, it can't be passed back to the original manufacturer or the original importer because we don't know what's been done to that repair. And any consequential forces as a result of a third-party repair also really need to be put back onto the repairer who caused those issues.

30 COMMISSIONER LINDWALL: Well, if they caused the issues, yes.

MR P ROBINSON: If they caused that issue, I'm just saying in that case, where the issues are caused by them.

35 COMMISSIONER LINDWALL: What do you say, Paul, about the US FTC which said there is scant evidence to support manufacturer's claim that there should be restrictions in repair?

40 MR P ROBINSON: Could you repeat that? You're a little bit soft sorry.

COMMISSIONER LINDWALL: Sorry, the US Federal Trade Commission has put out a document recently that said there was scant evidence that manufacturer's complaints about independent repair being dangerous, there was scant evidence for that is what the FTC said anyway.

45 MR P ROBINSON: Well, as I said, this is my experience in Australia with repairers who have wanted to come onboard in partnership with suppliers in

5 Australia. When you do an in-depth, detailed evaluation of those repairers -
because the Australian suppliers of course have their own brand names on the
line when they bring in a partnership like that - want to make sure that they
can repair them to the supplier's expectations. And when you find that there
are gaps in their knowledge, and gaps in their skills, and gaps in their
processes that might expose our products to problems like that, and expose
consumer's to risk, and may even expose our own staff to safety risks, like if
you try to pull a battery out of a product and you do it less than carefully that
battery may explode and catch fire in that process.

10

So, their own staff are exposed as well, and we're finding that they don't have
those processes and procedures in place, and certainly we won't engage with
a supplier that can't do it safely and reliably. And this is our experience in
Australia.

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20 COMMISSIONER LINDWALL: I'm sure there's a normal distribution of
repairers - both authorised repair and third-party repair - like there is with
everything else in society. So, there'll be good repairers and bad repairers,
but surely to authorise repairers - I mean, you'd have to - where is the
evidence that authorised repairers are systematically better than third-party
repairers? I'm sure we could cite examples of poor repairers, but if you can
show us examples where they're systematically better that would be a
different thing, and I'm not sure - I haven't seen any evidence that it's
systematically better. It would justify profoundly changing rules to make it
quite expensive for consumers and reduce competition in the repair market.

25

30 MR P ROBINSON: Well, either way is making things difficult, more
expensive for consumers, if the responsibility for that is put back on
suppliers. Because if suppliers have to recertify repairability of products
that's going to involve a cost, and we talked about labelling, that's going to
flow down to the consumer price for the product. And so, one way or
another the consumer pays, but I prefer the consumer doesn't pay in terms of
accidents and injury.

35

COMMISSIONER LINDWALL: Of course, yes. None of us want that,
that's quite right. Julie did you have any questions?

35

40 COMMISSIONER ABRAMSON: No, all good thanks Paul, I asked my
question before.

40

COMMISSIONER LINDWALL: I think we've done - Paul did you have any
final point you wanted to make or Janet for that matter?

45 MR P ROBINSON: No, I think time is a problem, so I'll have to leave it
there, but thank you very much.

45

COMMISSIONER LINDWALL: Thank you very much Paul.

COMMISSIONER ABRAMSON: Thank you, and Janet.

COMMISSIONER LINDWALL: And Janet did you have anything?

5

MS LESLIE: No, I think just I guess to Paul's point - and this must be covering the whole inquiry - it's horses for courses with different products, isn't it.

10

COMMISSIONER LINDWALL: Exactly.

MS LESLIE: Yes.

COMMISSIONER LINDWALL: Alright, well thank you very much for both appearing today.

15

COMMISSIONER ABRAMSON: Thank you.

MS LESLIE: Thank you for inviting us.

20

COMMISSIONER LINDWALL: That was the last scheduled appearance for today, but as always, we always provide an opportunity if anyone wants to have a short statement or say something that they've agreed with or disagreed with during the day, you can do so now if you wish to.

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COMMISSIONER ABRAMSON: I think they're gone, it's a bit different from our normal.

MR R ROBINSON: Hello, Paul?

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COMMISSIONER LINDWALL: Yes?

MR R ROBINSON: It's Ross Robinson.

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COMMISSIONER LINDWALL: Hello Ross.

MR R ROBINSON: Of the Watch and Clockmakers of Australia.

COMMISSIONER LINDWALL: Right, hello Ross, how are you?

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MR R ROBINSON: I'm well thanks. I wondered whether just - my video can't work because it's been stopped.

COMMISSIONER LINDWALL: Well perhaps if someone could turn Ross' on. There we are.

45

MR R ROBINSON: I've just been listening with interest, and I thank all the people who have contributed to the preparation of the whole report, it's very comprehensive. And of course, for us we're a bit of a minnow in this area but we've got a serious international problem that reflects on our trade in that the watch industry basically is made up of four or five conglomerates in
5 Switzerland, this apart from Seiko in Japan - it's innocent in Japan. But you know, really, it's all the high-end watches are made by these companies in Switzerland. They simply don't supply spare parts at all for any of their brands, and that's something like 50 or 60 brands that we're all familiar with.

10 And I heard someone earlier today say that they couldn't get a brand of battery, and that's a Swatch group product, no surprises to us. So, they won't supply us spare parts for any part of their products. But the issue is one that we feel a bit powerless about because they simply threaten to say, 'Look, you know, we won't supply spare parts anymore to the trade at all in Australia,
15 and we might withdraw from the market.' You know, it represents about 1 per cent of their turnover, so they just threaten us with that sort of thing. And it's the fact that they control everything, they manufacture the watch, they distribute the watch in Australia through their own - you know the brand is represented here by themselves - they have retail shops, not even sellers of
20 watches can market their products anymore.

And then they've set up brand service centres, so the watches go back to the brand service centre and they have everything to do with it, and there's
25 nothing that anybody else can do, but them.

COMMISSIONER ABRAMSON: We did read through carefully the submissions that you made. What would your solution to the issue be? Would it be something around a positive obligation? What would you see as
30 the response?

MR R ROBINSON: Well, we would – obviously for us, we would like to see spare parts just distributed. There used to be a spare parts network all around the world. As a matter of fact, we're putting all of our hopes on the
35 fact that in England, one of the major distributors – Cousins – he has gone to court in Switzerland.

COMMISSIONER LINDWALL: That's right, yes.

40 COMMISSIONER ABRAMSON: Yes. We're interested in that court case. Any details you could send us on that would be great.

MR R ROBINSON: Well, I've checked today, and as of today, Tony Cousins has told us that there's a delay in the findings. I think it's all related
45 to what's happening with COVID and things like that. But the decision was due to be handed in March.

COMMISSIONER ABRAMSON: Would your expectation be, then, if that decision said that these OEMs had to hand to over spare parts, that's going to apply internationally?

5 MR R ROBINSON: Well, in some ways, we wouldn't care, because we got all our bits off Tony Cousins.

COMMISSIONER ABRAMSON: Yes.

10 COMMISSIONER LINDWALL: Yes.

MR R ROBINSON: So we don't really mind how we get to the solution, but it would be much better if we could go straight to Swatch Group in Melbourne, or one of the other groups, and just get the parts here. But that's just not seeing like it's going to be a likelihood. That's the trouble. It's been 15 a situation for a long time, and it really started over a bit of a copyright issue with Rolex.

Rolex were selling spare parts. All during the time of my apprenticeship, I 20 worked on Rolex watches. I was working for Fairfax & Roberts in Sydney. I was servicing all those products. We had not long given up the agency for Omega watches, and how we can't get parts for Omega watches. We were the importers and distributors of the watches. And when it went to Precision Watches, they were bought out by Swatch Group, finally. So we not only 25 can't get what we had before, but they're saying, 'We're not confident.'

COMMISSIONER LINDWALL: I know. This is absurd, given I know watchmakers are very skilled people.

30 COMMISSIONER ABRAMSON: Yes, they're artisans. Yes, I understand that.

MR R ROBINSON: Yes. And that's where I see somewhere – perhaps our case is different to a lot of the other ones that are being spoken of here, where 35 you've got people that – the argument seems to be in favour of individuals being able to source parts for their own products. And that's pretty hard with watches. I mean, I'm not saying it's impossible, and I've got a friend that has nothing to do with the trade – he's a computer person – but he can do anything. 40

And I've seen him repair automatic chronograph wristwatches, and they're very complex. And this bloke can do it. But the average person (indistinct) – I was involved in training for a long time at Sydney college, and a lot of it – at the end of the three years of training, you're still coaxing them along a bit 45 on really complicated watches. They do need to have some level of skills, just to be able to handle fine mechanisms and make adjustments and thing like that.

COMMISSIONER LINDWALL: Thank you, Ross. I think we well understand and sympathise with the issue. The court case will be critical, obviously, but we will reflect upon it in terms of our final report.

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MR R ROBINSON: All right. Thanks, Paul. Thanks for the opportunity to say a few words.

COMMISSIONER ABRAMSON: Thanks, Ross.

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MR R ROBINSON: I think you've got a couple of my colleagues tomorrow.

COMMISSIONER LINDWALL: That's good. I'm looking forward to hearing from them. Anyone else wants to have a say just before we close today?

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MR ELLIS: Yes, hello.

COMMISSIONER LINDWALL: Hello.

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MR ELLIS: It's Danny Ellis from MendIt Australia.

COMMISSIONER LINDWALL: Hello, Danny.

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COMMISSIONER ABRAMSON: We're hearing from you tomorrow, I think, Danny.

MR ELLIS: That's it, Julie, yes. I just want to touch on the competency. I trained as a (indistinct) mechanic at The Age newspaper back in the 70s, and they're a very mechanical machine. And I've developed skills in my life – I'm retired now – and I think from that previous gentleman – not Ross, sorry; the gentleman who was talking about Australian standards and all that sort of stuff: well, I can't access that, unless I want to spend a lot of money on buying the Australian standards.

35

But I really do believe that when we tinker or deal with servicing, whatever you're repairing, that competency is your confidence. And I think we get removed from – we deal with everyone working on this one component, whereas the person who actually got their hands on it, they're the person that deems himself confident to do it. And in our experience with repair cafés and other repair events, there's a lot of people out there that, having got a piece of paper to say they can do whatever, but they are very talented, and got exceptional skills at fixing things.

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COMMISSIONER ABRAMSON: Danny, we – as you might have followed from the line of questioning, we do have a view that in some cases, a number of these claims about safety and ability are overstated.

MR ELLIS: Yes.

5 COMMISSIONER ABRAMSON: It's just not a case – especially when we were talking to Ross about watches; so we were quite clear about that in the report. We do understand that in some areas that that would be quite true, but there are – I think you're a motor vehicle mechanic. There's a whole lot of certifications that go with that if you want to be reputable.

10 MR ELLIS: Of course.

COMMISSIONER ABRAMSON: So, yes, we understand that point.

15 MR ELLIS: And in our submission, Julie, we actually mention about electrical repair.

COMMISSIONER LINDWALL: Yes.

20 MR ELLIS: And there's a quote – the Monash data; in the five years, there had been no one electrocuted in the state of Victoria.

25 COMMISSIONER ABRAMSON: No, I definitely saw that data, because I had the team go back and check something for me. We're very interested to hear from you tomorrow, Danny, and I would welcome if you want to expand on any of the points that you make now.

30 MR ELLIS: Not a problem. But I thought I had to mention about – he was talking about Australian schemes and all that. And that's not something common for the single repairer to go and find out about those standards.

COMMISSIONER ABRAMSON: No, I understand.

MR ELLIS: All right. Thanks, guys.

35 COMMISSIONER ABRAMSON: Thank you.

COMMISSIONER LINDWALL: Thank you, Danny. See you tomorrow.

40 MR ELLIS: See you tomorrow.

COMMISSIONER LINDWALL: Anyone else, before we finish up?

45 MS LESLIE: It's Janet again. I think Australian Standards are available through most libraries. So I mean, I think they are available without having to buy them.

COMMISSIONER LINDWALL: All right, thank you. I think, if there's no one else, we might adjourn today, and we'll commence again, supposedly virtually again, in Melbourne tomorrow, at 9.30 am. So, thank you, everyone, and thanks for our transcriber today, Max, and to the team.

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COMMISSIONER ABRAMSON: And to the team. Thank you. Thanks very much, everyone.

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**MATTER ADJOURNED AT 4.48 pm
UNTIL TUESDAY, 20 JULY 2021 AT 9.30 am**



Australian Government
Productivity Commission

PRODUCTIVITY COMMISSION

RIGHT TO REPAIR - PUBLIC HEARING

MR P LINDWALL, Commissioner
MS J ABRAMSON, Commissioner

TRANSCRIPT OF PROCEEDINGS

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COMMENTS
MR DAVID HARRIS — SONY

247-251

COMMISSIONER LINDWALL: Good morning, welcome to the public hearings for the productivity commission inquiry into a right to repair, on the 52nd anniversary of Neil Armstrong and Buzz Aldrin walking on the moon. My name is Paul Lindwall, I'm the presiding commissioner for the inquiry, and my fellow commissioner is Julie Abramson. Today's hearing was scheduled for Melbourne, so I'd like to welcome any members of the Boonwurrung and Wurundjeri of the Kulin nation and pay our respects. With this being a virtual hearing, my old golden retriever is also participating, you may hear some snoring occasionally. The inquiry started with a reference from the Australian government on 29 October last year, we released an issues paper on 7 December and have talked to a range of organisations and individuals with an interest in the reference.

We released a draft report on 11 June and have been receiving post-draft submissions and welcome further submissions, preferably by 23 July. We are grateful to all of the organisations and individuals that have taken the time to meet with us, prepare submissions and appear at these hearings. I'd also like to thank Ana Markulev who was the team leader who delivered the draft report, and then her first baby. The purpose of these hearings is to provide an opportunity for interested parties to provide comments and feedback on the draft report, which will assist us in preparing our final report to be provided to the government by 29 October. Following this hearing in Melbourne today hearings will also be held in Canberra in person and virtually tomorrow, which will conclude our hearings.

We will then be working towards completing the final report, as I said, which the government has up to 25 sitting days before it has to release the report under our act. Participants and those who have registered their interest in the inquiry will be advised when the final report is released by the government. We like to conduct all hearings in a reasonably informal manner, but I remind all participants that a full transcript is being taken. For this reason, comments from the floor, or the virtual floor if you like, cannot be allowed but at the end of the day's proceedings I will provide an opportunity for anyone who wishes to do so to make a brief presentation.

You're not required to take an oath but are required under the Productivity Commission Act to be truthful in your remarks. Participants are welcome to comment in the issues raised in other submissions, the transcript will also be made available to participants on our website following the hearings. For any media representatives attending today some general rules apply; there is no broadcast of the proceedings allowed, and taping is only permitted with prior permission. You're invited to make brief opening comments which will allow us the opportunity to discuss matters in greater detail. I would also like to ask all online observers and participants who are not speaking to please ensure your microphones are on mute and turn off your camera so as to ensure minimum disruptions. And now I'd like to welcome Lesley Yates from the AAAA, so welcome Lesley.

MS YATES: Thank you Paul. It's a pleasure to be with you today, particularly given the nature of the draft report. So, I'll just make some general comments Paul in line with your instructions, and then welcome a conversation with you. I think there are three areas that we'd like to comment upon, the first of that is the general direction of the report, and we certainly welcome the direction that the draft report is moving in. And in that respect, we agree with the definition of right to repair, and the way it's been defined in the report. We also, I mean given the journey that the Australian automotive aftermarket has been on for the last decade, appreciate the consideration that the productivity commission has given to the requirement to be very strategic; this is multifaceted.

And I know if you saw Stuart Charity's presentation to the repair summit you would have seen our reflections on how we managed the policy influence process, and we were fully aware that it gets big, it gets complex, and it can get dangerously multifaceted way too quickly. And in our view, diffused accountability meant no accountability and no responsibility. And it meant that reform would be stalled, or reform would be very slow indeed. So, we have to make sure that we were very specific about what was broken, very clear about what the consumer detriment was, and very clear about what the solutions are. And that of course is going to involve some compromises, so we respect the productivity commission has a similar thought process and I know that there's going to be some push back on that, but we fully understand that selecting specific sectors that are going to have the greatest impact is likely to bring in, or have the highest likelihood of reform, and that's important.

I think what is terrific to see, and we are delighted to see this, is an ongoing conversation about what is an appropriate business model? This was at the very heart of it, the fight that we had to introduce mandatory data sharing in the automotive industry. And what I mean by that is; is it okay to artificially capture aftersales and discount the price of the primary product? So that issue that is raised in the draft report a couple of times, and in a couple of places about if we have open and transparent and fair competition in aftersales in the automotive industry, is that going to drive up the price of the primary product? It's a fair question, but in our view, there are 20 million cars in the national fleet, and is it fair to ask the millions of car owners to be subsidising the price of new cars by giving up fair and open competition and price competitiveness? And I think these reports, the repair summit, the whole right to repair movement is a signal that community tolerance for artificially capturing the down stream aftersales market is vastly running out of currency, that we actually don't want to see cheaper primary products if it means we lose choice, or we actually lose the ability to repair that product.

It's not transparent, and frequently we have seen through studies by consumer bodies - and ourselves - that it's not factored into the pricing

5 decision. So repairability is not something currently that a consumer is
looking at. So, it's not transparent in terms of what the pricing implications
may be to me as a consumer, and it's actually not fair or natural justice. I'm
not sure about your own backgrounds of the people on the call, but I can tell
you that my parents have never owned a new car, and they belong to that
community of people who own vehicles that are seven to ten years of age,
and I don't think their choice or their price competitiveness for getting their
car serviced should be influenced by people getting a reduced price on the
value of a new car.

10 So, I think this report and the community discussion that's occurring at the
moment is about giving a signal to the market that you should not pursue a
business model that artificially captures the consumer. Capture consumer
loyalty with fair price, with better value, and with open transparent business
15 practices, you can't do it by withholding a secret. And I think you know that
in our industry - frequently - we found ourselves unable to repair vehicles
because we didn't know the oil blend, or we didn't know the particular
amperage, the voltage, that was within the standard parameters. So, what
was happening to us was not an issue about skill, or equipment, or training -
20 our staff are professional, they're well trained, and spend a great deal on scan
tools, on ongoing training for new technology. The issue that was tripping
our repairers from being able to service, repair and maintain vehicles was
basically about secret codes, about secret information that could be hidden
and that would frustrate our abilities. I must say we were still able and we
25 are still able to repair vehicles. The issue for us was less about not being able
to fix, but more about wasted productivity. So it could take up to seven hours
to repair a vehicle for an activity that should've taken about 25/30 minutes,
and that's because information was hidden and our very entrepreneurial and
clever technicians had to find ways around. They usually do; it just takes
30 more time.

So I think just as a general principle, what we love to see about the dialogue
at the repair summit, about this Right to Repair inquiry and the tone of the
inquiry is surely the days are gone where we say it's an okay business model
35 to sell a printer at a reduced price and the cartridges cost four times more. It's
not an okay business model. It results in lack of transparency, lack of
consumers' ability to exercise their rights, and for us absolute loss of
productivity, a loss of hours in the workshop given the assets that we have in
terms of labour and equipment. It's a loss of asset utilisation as well. So
40 congratulations on the report; we think the tone is right.

I want to just make a couple of comments about a couple of the issues that
we're going to be commenting upon in a little bit more detail. One of those,
of course, is about consumers' warranty confusion, the confusion between
45 what is a factory warranty and what is a consumer statutory guarantee. I
cannot tell you how happy we were to see you float the principle that maybe
we should get rid of anyone's ability to use the words X, Y, Z may void the

manufacturer's warranty, and if I had one wish it would be that that V word never appears either in verbal advice or in written material. I was delighted to see that. X, Y, Z may void the manufacturer's warranty.

5 The primary statement, of course, should be that you are able to use an independent repairer and parts that are fit for purpose. Clearly we are absolutely on-board with the responsibility of an independent repairer to undertake any activity with professionalism, with their accountability under statutory guarantees to ensure that they provide consumers with appropriate
10 remedies if their work in question, but just the absolute fear that that void word puts into a consumer's head, it's crushing for us as an industry. It frightens the hell out of our members. We know that the motor vehicle is a very special purchase. It goes to the heart of whether or not a household can go about its business.

15 It certainly is the manner of making an income for a tradie or someone who is self-employed. It also is the difference between being able to, you know, take kids to soccer practice or care for elderly parents. So anything that frightens a customer into not being able to select the repairer of their choice,
20 gee, that is an absolute mountain for us for an industry to traverse. And we spend a lot of time and a lot of effort providing material to our consumers about what their rights are, and we recently a couple of years ago opened up a special legal hotline for consumers. So the customers of our members are able to get legal advice about warranty claims.

25 So if they'd been using an independent repairer, they have a legitimate warranty claim rejected and the excuse given for rejecting that warranty was that a consumer used an independent repairer or used fit for purpose parts, we're able to give them some legal advice, and I have to tell you that legal
30 advice is absolutely critical. It's very obvious once a consumer goes back and has a conversation, starts using the term statutory guarantee, that the relationship changes entirely. So we are absolutely delighted to see that covered within the report and absolutely chuffed to see that people are talking about whether or not it's appropriate to be using that language. Our research
35 shows that a lot of this language is also conveyed in verbal advice. We see it printed in logbooks.

We have alerted the ACCC to this wording, but you know, it's quite insidious because it's not quite illegal; it's not quite accurate; is it detrimental? It's a
40 whole lot of argie-bargie back and forward. We know it has a huge effect on our industry, but we haven't yet been able to prosecute on the basis of that language, and we are delighted that you guys have absolutely pointed out that this language is going to affect a consumer's ability to exercise their rights. We're also pleased to see reference to our legislation. You'd know how
45 delighted we were on 24 June to see it go through the senate after what is about 12 years of our work on what we called the Choice of Repairer campaign. We're pretty chuffed to see it.

We know that you're recommending that there be an evaluation after three years. I mean, of course there should be an evaluation of all legislation. We thought that the last sentence about with a view that maybe we don't need it anymore could changes as that's highly unlikely. I mean, the Europeans did this in 2002 and the Americans, at least in Massachusetts in 2012, and nobody has wound back their law; in fact, we've seen them expand it, and we would like to see - and again, we'll make these in our written feedback - we'd like to see some commentary about yes, you know, in a perfect world you might not need this law, but you also might need the law to be expanded into other areas of business activity such as repairability and consumer choice, but we'll make that in our written submission.

Generally speaking, we are very happy with the law. We think it's about 90 per cent there. I don't think any industry body gets 100 per cent of what they want, but we're pretty pleased with the architecture of it. It's got some really good safety nets in there. You'd note that there is an ability for the minister to appoint a scheme advisor; he's already done that. That will be an industry body, and that industry body can give the minister advice on whether or not there are business activities that are frustrating the scheme or are designed to frustrate the scheme.

So the minister does have an ability to take corrective action sooner than a three-year evaluation period, and we're really pleased about that component of the legislation. It's very well drafted. We know how hard the legislative drafters worked. It was a really tough thing to put together. It's very principles based, but it gives our industry a great deal of hope that we're going to have a sustainable repair industry now and into the future and that we've got mechanisms in place to ensure that we can continue to do so. So I think, Paul, that ends my, kind of, rather lengthy introductory comments, and I'm happy to have a chat about any of those components.

COMMISSIONER LINDWALL: Thank you, Lesley. Now, could I ask - well, since you've mentioned 90 per cent, what's the 10 per cent that you think is missing?

MS YATES: Look, we are concerned about our ability to write back into digital service records. So we have access to the service history of your car, but we don't have under the legislation an ability to record that we did a service on your vehicle. So we don't just want to receive the information about your digital service history; we also want to be able to write to it and say what we did. Now, that's important for the consumer to see that we did work on the vehicle. It's also important for the consumer in terms of resale and getting their rights under a warranty plan to show to the car manufacturer that they did get their car regularly serviced. We didn't also make inroads into the issue of telematics. We accept that.

We think that telematics is the next conversation that we need to have, and you're probably fully aware, Paul, of what's been happening in Massachusetts for telematics, and that means that we would like access to vehicle diagnostics. We would like an ability for a consumer to say, 'I want the state of my vehicle to be transmitted to my independent repairer.' I would certainly like that. If my car was running low on oil, I would like my technician Steve to receive that information, give me a call, say car's running low on oil, Lesley; drop in to the workshop and we'll top that up for you. But that wasn't something that we managed to address in this version of the legislation, Paul.

COMMISSIONER LINDWALL: Okay. No, that's all right. I mean, as you say, we did say review; review can mean going in one direction or another. Now, since someone said it in yesterday's hearing I'd like to hear your thoughts about safety concerns about third party repairers and the fact they don't abide Standards. Could you address the issue of the quality of third-party repair compared to, you know, the - authorised repairers, sorry.

MS YATES: Yes. I think we need to be clear about whose safety we're concerned about here. So we're concerned about technician safety, and that's certainly an issue in our industry with electric vehicles. Then we need to make sure that the workshop complies with Australian standards, but occupational health and safety legislation ensures that an employer is not designing a workshop or not negligent in their responsibilities to protect the worker. Also in terms of protecting a worker, we know that more is more, that the theory of occupational health and safety is always give the worker everything they need.

Telling an employee 85 per cent of the information they need to do their job is a recipe for unsafe practices. So if it's about the worker's safety, there are certainly things that we can do, ensure that as an industry we are supporting safe practices. The occupational health and safety legislation certainly protects workers, but in the case of things like EV, what we can do - and we're doing this as the industry body under the new legislation - is implement some accreditation or vetting processes. So the direction that the scheme rules are moving in for the new law is that a technician will need to have completed a 10-hour unit on safely decommissioning the EV system and recommissioning it.

So let's be specific about what that safety is. What we've found over the past 10 years in safety, security, they're kind of bandied about as a catch all, and I think what we need to do is to say to the producer of the primary product, the car industry, what safety? Be specific. What risk is incurred with what information because what we can do - all of this information is coming across digitally - is require some specific vetting or hurdles that provide some certainty about safety. So we do need to ensure that whether it's a roadside assistance or a workshop, that the technician has been through a unit of study

5 - it's going to be about 10 hours - to ensure that they can safely decommission an EV. So I think safety can't be a get out of jail free; safety has got to be interrogated and viewed as the way the ACCC did, which was safety is not an excuse to withhold; safety may require some additional qualifications in order to get that information. But the information must flow, but we accept that there might be some requirements in order to receive that.

10 COMMISSIONER LINDWALL: Actually, I might - since I think it's a good time to talk about warranties and guarantees, and Julie is our lawyer, I might get her to ask those questions.

15 COMMISSIONER ABRAMSON: Thanks, Paul, although I do find it quite a tricky area of the law, I have to say. Lesley, just a couple of things. The first one is your view about whether void terms prohibition would impact the warranty offering. So one of the arguments put to the Commission is that if you did that, manufacturers would not be so generous with their original warranties. So interested in that first part.

20 MS YATES: We do not find manufacturers particularly generous in their warranty offerings, Julie. So again, I think that's a claim that I'd like to see interrogated somewhat. So we're working with consumers. If you have a major failure, a transmission or an engine, you will frequently find the car manufacturer providing excuses that you caused that through your driving practices, and we've certainly seen that and documented in ACCC records on things such as particular vehicle models that started off with some minor complaints and grew and grew and grew while the first consumers who complained were told that some of these faults were caused through their own driving behaviours and not through a manufacturing fault.

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30 COMMISSIONER ABRAMSON: And the second part of that goes to a legal liability issue. Just interested in your views on this because this is another argument that's put up, that if you had both an independent repairer and the manufacturer, it would result in blame shifting, and I as a lawyer have particular views about that of my own, but I'm interested in your views, Lesley.

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40 MS YATES: Yes. I'd like to see some specific examples of this because again, we heard a great deal of this when we were going through the process, and what people do sometimes, I think, is they confuse right to repair with people's normal rights for refund and remedy under Australian consumer law. If there's anything that any of our members have done that caused the vehicle to have the fault, then we are liable, but we have not seen cases where this has occurred.

45 So what we've seen is refusal - I'm not taking your warranty claim because you haven't been bringing it to a dealer for regular service and maintenance; seen plenty of that, and that's why we provide some legal support to

consumers who have that given to them as an excuse - but I have not in all of my six years seen a specific case where an independent repairer caused the fault or where that bounced about from blame to blame. If an independent repairer fixes the vehicle, and this causes the warranty damage, then the independent repairer is liable. That's very clear. And our members are very able and ready to accept that.

I think this does also go to the heart, though, Julie, of the benefit of having a dispute resolution system that has a technical element, and I see that the Productivity Commission draft report speaks to this, and I think it's very, very clear to ensure that any dispute system has the advantage of access to technical expertise because otherwise it becomes your word against mine. And I think what is required is an independent technician to say nope, this is a transmission fault that has been seen in this particular vehicle model. Not just in Australia, but throughout the world this transmission fault is happening on this model and the manufacturer is liable.

COMMISSIONER ABRAMSON: So, Lesley, could I just ask you on that point - so is your view that this expert to be appointed under the motor vehicle scheme will have some sort of ombudsman-type dispute resolution or are you just saying that they will just provide a technical opinion and then people would be left to their other rights?

MS YATES: Well, I think that the technical advice that I'm speaking of here is much more about the consumer dispute system such as VCAT in Victoria. So I am talking more of the consumer mediation systems that exist quite separate from the vehicle-sharing information scheme.

COMMISSIONER ABRAMSON: Can I ask just a couple of other questions before returning to my colleague. I'm very interested in your legal line and I'm just wondering in your submission, if you've not done so, whether you could give us some data about the types of claims that people raise with you and the type of advice you give because it does go both to what consumers are told about warranties. It's a good data point for us. And it also goes to this bit that we were talking about with warranties generally. So that would be really helpful. And I think you've answered the legal liability issue. Paul asked you about the safety issue. The other issue is how could we help consumers to become more aware of their rights? Do you think there needs to be, like, an education campaign?

MS YATES: Yes. Julie, you're talking my language. Yes, indeed. Look, we do what we can. We've got some, you know, point of sale brochures and materials. I think industry can help, industry associations. We see thousands - millions of customers a year and we can be talking directly to them, but gee, we need to be doing some consumer awareness. We've been talking about this warranty statutory guarantee confusion ever since we introduced that term, and yes, I would love to see some public education process which tells

people that there is a difference, that you continue to have your statutory guarantee and no one can take that away from you. We would absolutely welcome that as an industry.

5 COMMISSIONER ABRAMSON: The only other final thing - I'm sorry, Paul; I'm nearly done. The only other final thing is I notice that there's a motor vehicle ombudsman scheme in the UK. Do you have any experience with that, and we would be interested in just generally your views because it goes to this bit about consumers having difficulty enforcing their rights?

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MS YATES: Yes. We do have some contact with that through our sister organisation in the UK and, Julie, we are very supportive. The motor vehicle is such a huge purchase for a consumer, and we can't - you know, we can't look upon it the way we do some other consumer goods, it's fundamental to our way of life and to many people it's fundamental as to whether or not they can continue to earn an income, and we absolutely love that model. We often say that consumers can't exercise their rights unless they know their rights, and this part of the educative process, being able to get good technical advice, being sure that what you think is going on with the vehicle is going on with the vehicle, and then getting some comfort that you're going to be supported through that process.

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COMMISSIONER ABRAMSON: Thank you Lesley. I'm not saying that the productivity commission is going in that direction, I was just interested in your views about the UK spend. Thanks very much Paul.

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COMMISSIONER LINDWALL: Thanks Julie. Could I ask Lesley about how you see the industry evolving given that obviously independent repairers have to pay for the manuals and diagnostic equipment and so on for an individual make of vehicle. I would suspect that means they're more specialised, as they're quite complicated beasts.

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MS YATES: Look I think there is going to be a level of specialisation Paul, we're also seeing some interesting movement in the industry. So you'll know that AAAA covers a lot of what we call the 'banner groups', so they're the national groups; mycar, JAX, Midas, Ultra Tune, those kind of what we call banned workshops, I think we are going to see more of those. In the case of a group like a Repco Authorised Service they're individually owned, but they belong to a banner group to support them with technical expertise, and with marketing. So, I think we're just going to see more of this Paul, the collaboration between workshops. Whether or not we see this or (audio malfunction).

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COMMISSIONER LINDWALL: You're cutting out a bit there Lesley, sorry.

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MS YATES: (indistinct 10:02:16)

COMMISSIONER LINDWALL: Lesley? You're still there Julie?

5 COMMISSIONER ABRAMSON: I am, I am. Lesley we're just having a bit of trouble with your computer, your audio.

COMMISSIONER LINDWALL: She's on mute now.

10 MS YATES: Sorry about that, I just popped in and out a bit, did I?

COMMISSIONER LINDWALL: Yes, that's right. Could you go back, repeat the last two minutes or so that you were speaking, yes.

15 MS YATES: So, I think we're going to see the increased take up of groups joining into major groups and collaborating together. The kind of standalone workshop will need to have some collaborative efforts, and you're right Paul there'll be more specialists, and there might be more sharing with those specialists, so you specialise in Europeans, I specialise in other models, and we would be speaking with each other, so I think we'll see more
20 collaboration.

COMMISSIONER LINDWALL: Okay, yes.

25 MS YATES: What will happen, if what happens in Australia mirrors what happened in America, we may also see some dealers using their service base to service other makes and models as well.

30 COMMISSIONER LINDWALL: Okay. Now can I ask how you see the pricing, given the scheme is only new, the pricing of the materials? It's supposed to be a fair price under the scheme.

35 MS YATES: Look we're really comfortable with the way that fair price has been articulated in the law. There are a lot of safe guards and there are a lot of touchpoints or benchmarks for us to be able to assess it's fair and reasonable. We're already accessing data for Holden, so under the voluntary agreement General Motors was the only car company sharing data. So, we know what the price is to get data from ACDelco, so we do have some benchmarks, and I think we're going to be in a good position to be able to measure what's a fair and reasonable price, and that industry body is there to
40 monitor. The legislation requires that the car companies tell the industry body what the price is, so that's going to give us a good ability to monitor what's going on in the market.

45 COMMISSIONER LINDWALL: Okay, good. And what's the - just for the record - what's included in the scheme and what's not included in the scheme in terms of what has to be provided by the manufacturers?

MS YATES: So, whatever you require to diagnose, repair or service a vehicle. So, all of the information that's normally shared with the dealership that is about a car, so when I diagnose, and I get fault codes I know what those fault codes mean. Whatever I need, that is about the vehicle in front of me, I am able to purchase. So, whatever the dealer gets about the vehicle we'll be able to purchase on fair and reasonable terms. What is not included of course is customer details, you know the dealerships have particular CRM systems, that's not included. We get technical service bulletins, wiring diagrams, oil blends, information about parts. Importantly, we have the ability to reintegrate a part, so when putting a new part in a car, a bit like adding a mouse or a keyboard to your system, we're able to tell the car that it's had a new part incorporated and what we call 'reflash' or reinitialise the vehicle. So, it's about diagnosing what's going on with the vehicle, knowing the parts and the tolerances to put in there, but also reinitialising the vehicle to get it back to its factory specs.

COMMISSIONER LINDWALL: Okay, well what about the provision of spare parts themselves?

MS YATES: We provide - as you know at an independent workshop you get the choice of car branded parts, generic parts, and also reconditioned parts. We, in the ACCC inquiry, didn't report any issues necessarily about access to parts. Sometimes the car manufacture parts can be difficult in some regions, but we don't find spare parts availability to be the heart of our problem, our problem is identifying which part for which car.

COMMISSIONER LINDWALL: Okay, I just asked that because later today I will be hearing from the watchmakers and their biggest issue is the availability of spare parts, so it's interesting how it varies by the type of sector obviously. My final question I think is - two more questions, one about whether you think the scheme for automotive would be applicable also to agricultural machinery - or do you have any thoughts on that, and if so in the same form or would it need to be varied in some way?

MS YATES: I don't have an expertise in agricultural machinery, Paul. I mean on the face of it, it's a vehicle that has similar issues that we do as an industry, but we also know that farmers are doing more work on their vehicle than a consumer is doing on their SUV. And that there are more issues imbedded in the agricultural machinery in terms of, what crops are sown, and what the vehicle is doing. So, I think there are additional complications, we do absolutely sympathise with the agricultural industry, particularly given the value of that machinery, and a number of their issues in relation to whether or not they're able to use their local independent repairer are exactly the same as us, and some of our members do repair agricultural machinery. But I think that issue of what a farmer is able to do to that piece of machinery, and the issue of what information is contained there about agricultural activities that are occurring on the farm, they're quite different.

COMMISSIONER LINDWALL: My final question then is I think it's Mitsubishi is offering 10 years manufacturer's warranties, is that right?

5 MS YATES: Yes, that ten years - I disagree very much with that particular
form of business activity. So, it's a 10-year extended warranty, but only on
condition that you have your vehicle services at Mitsubishi, and I think the
records will show with the ACCC that we advocated strongly against that
10 activity. The term 'extended warranty' just confuses that whole statutory
guarantee warranty. In our research extended warranty offers nothing more
than your statutory guarantee. The components that are covered under the
extended warranty are issues that are covered under your statutory guarantee.
We know how long a transmission should last, how long a fuel pump should
last, and they're covered under your statutory guarantee.

15 And what a consumer is giving up, is their right to have their vehicle services
at a repairer of their choice. Now it wasn't an argument that we won at the
ACCC call because Mitsubishi only has a market share of 7 per cent in
Australia and they felt that wasn't enough to knock back the exclusive
20 dealing request on the basis that it only covered 7 per cent of the fleet.

COMMISSIONER LINDWALL: Okay. Julie did you have any final
questions?

25 COMMISSIONER ABRAMSON: No, that was very helpful Lesley, and as I
said if you'd be able to include some of the data from your (indistinct) in your
submission we'd be most grateful for that. Thank you.

30 MS YATES: My pleasure.

COMMISSIONER ABRAMSON: Thanks.

MS YATES: My pleasure.

35 COMMISSIONER LINDWALL: Thank you very much, Lesley, for
appearing today, then.

MS YATES: An absolute pleasure. Thank you both.

40 COMMISSIONER LINDWALL: All right. Well, shall we wait 20 seconds?
Someone suggested we should have 20-second gaps between meetings, and
our next one is with Kirsty Bishop Fox from Zero Waste Victoria. I don't
know if you're there, Kirsty, but you can stand up if you want.

45 COMMISSIONER ABRAMSON: I think I saw Kirsty before.

MS BISHOP-FOX: Hello. Hello. Yes, I'm here. Shall I wave or shake hands or what do we do?

5 COMMISSIONER LINDWALL: Yes. No, I can see you now. Hello.

COMMISSIONER ABRAMSON: No, I think they were thinking that the team were being kind to the commissioners who have been stuck to their seats most of the day, so - - -

10 COMMISSIONER LINDWALL: Yes. No, it's all right. Kirsty, welcome. If you would like to introduce yourself and give a bit of a statement, that would be perfect.

15 MS BISHOP-FOX: Happy to jump in unless you want to stretch for five minutes.

COMMISSIONER LINDWALL: No, no. I'm fine.

20 COMMISSIONER ABRAMSON: No, we're fine.

COMMISSIONER LINDWALL: We're going to have a break after this one anyway, so that's okay.

25 MS BISHOP-FOX: I hope you do. I encourage my children to get off their technology for five minutes in between breaks, but they're probably not right now.

COMMISSIONER LINDWALL: Yes.

30 MS BISHOP-FOX: They are doing their home schooling, I hope.

COMMISSIONER ABRAMSON: Yes. Many of my team share your pain, Kirsty.

35 MS BISHOP-FOX: Yes. I'm going to assume they're schooling, not doing something else. But anyway, I'd like to start by - well, I want to thank you for the opportunity to discuss the right to repair with you here today. I'm sure everyone here agrees it's an important topic that affects everyone, even if they don't care or choose to think about it. So it's really valuable for me to be
40 able to represent Zero Waste Victoria and generally the broader community in this way. If you don't know much about Zero Waste Victoria, we're a not-for-profit community organisation whose mission is to empower people to reduce plastic consumption and waste through everyday choices and actions which ultimately supports reducing waste to landfill.

45 All governments in Australia want this to happen and, you know, so do many people in the community, too. As for me, I'm an environmentalist and I'm

also an independent sustainability consultant and educator. So what I do is varied, from sustainability policies to waste audits through to promoting environmental awareness, corporate and social responsibility and community engagement programs, particularly around sustainability. But I'm here today
5 volunteering for Zero Waste Victoria as the chair of our organisation and a representative voice for the community on this matter. So the right to repair. Well, I made a submission and I did review your draft report.

Well, some of it. I skimmed it; it's quite a long document. I won't say that I
10 read your three hundred and, I think, sixty-odd pages, but I did look at the sections which are most applicable to our objectives and interests in reducing waste to landfill. I must say, I think the document is quite thorough and I really am impressed with the genuine approach to hearing and taking on-
15 board what the community has to say on this matter. It's often just the companies and corporations, so really do appreciate the community can have a voice in this, too. But look, I'll start, if I may, by telling a brief story. I want to tell this story about Alf. Alf I met recently just last month at a local repair café.

20 The reason I went there was I was hoping to get my microwave fixed which just all of a sudden stopped working one day. There are many people like Alf, and I think you've had submissions from a number of repair cafes, and they will talk even more about this topic than me, if you let them, but Alf told
25 me a story about his experience repairing a keyboard which really touched me. He was repairing this keyboard for Harry. Harry is an elderly man. He played this keyboard very regularly for many years, I'm told. One day one of the keys stopped working and, you know, if you're into music, to have one key not working on a keyboard rules the keyboard ineffective. It can't be
30 used; it's not right for the music.

Alf knew Harry through Meals on Wheels and he wanted to help him with his keyboard because repair is what Alf has done for most of his life. So he had a look at it and he diagnosed it and he considered gluing it, but that wasn't
35 going to work. He realised very quickly that he needed to have the spare part to fix it. So he tried a place in Australia, but they didn't sell the set spare parts, they said. So he looked online and he searched around the world. He found a part in America for \$10 which he thought was great, but then it was going to cost US\$40 to post it. So he kept looking in other places, in
40 Indonesia and Malaysia and all over.

And by accident he got back to the Australian business that he originally started with. He sent them another email and explained that the chap he was
45 repairing it for was a 99 year old returned soldier and that it was his favourite organ keyboard that he was hoping to repair. Alf struck it lucky. He got an email back saying they don't normally supply parts like this, but they would accommodate this request and he had the part posted, I'm told, for \$24.95.

Now, they never know if this turnaround was out of compassionate for the story for Harry or if it was just fortunate that someone different replied to the email this time, but Alf got the parts he needed and was able to repair Harry's keyboard, and I'm told the keyboard now works beautifully and he's very happy with it. Now, this repair story has a great ending, and if most repairs were all like this there'd be no need for this commission inquiry today. But we know that's not typically the case, and the reason that I open with this story, which is an exception rather than the norm, is because it exemplifies that manufacturers can accommodate and supply spare parts which are reasonably priced when they choose to.

Alf also told me a story about a washing machine which stopped working. He diagnosed it was the circuit board. He knew that this part wasn't widely available and it was likely that it was going to be difficult to get, so he suggested they go back to the manufacturer. The manufacturer sent a service man out and he confirmed that it was the circuit board and that it would cost about \$700 for the part plus the labour to repair. Manufacturer gives a price for a single part which is so close in price to buying a new machine. Most people will say they may as well have a new one. And environmentally that's not the optimal solution and not the one that I would preference, but economically it's very hard to argue.

I note from the draft report that this type of situation has been raised many times, so I don't need to spend much time with this point. But I would like to note that this is where the ACCC really does need to come in because with pricing of parts like this, manufacturers are effectively inhibiting the repair industry. They make profits by selling new items, not by repairing them. So price fixing of parts makes it anti-competitive for the repair industry which has been a significant contributor to the diminishing of it. I hope the Commission can look closely at anti-competitive parts pricing which affects the repair industry and also any individual who wants to have their items repaired, whether that's to save them money, because that's what happens when you - you think would happen when you repair, or whether it's because someone is doing it for their own environmental reasons, they ought to be able to have things repaired at a fair price. As an extension of this, I'd like to say if I was in a situation where I had to - - -

(Audio malfunction.)

- - - because this business practice has become commonplace and it results in waste. The waste industry and, ultimately, the government are being left to manage the consequences of the business decisions that these manufacturers have made. We know it's not new; this has evolved over 20 or 30 years and it's not exclusively Australia. It's being raised by many throughout the world. But now it's staring us in the face and we have to determine how to move

forwards and make sense of this whole mess because it's not sustainable and manufacturers are profiting at the expense of the environment and community, and it's not viable for future generations to continue this way.

5 Now from what I've read and what I hear manufacturers may say it's not an intentional strategy, and maybe it's not intentional to make these products obsolete, maybe it's progress and it's just the technological advancement that we live with. And maybe it means consumers have the latest and greatest with all the bells and whistles for everything, and maybe some consumers
10 want that. But the fact remains that there's an item which could once be readily repaired and many irons, and toasters - and I could list so many things - once could be.

15 But now they've been superseded by alternate designs which cannot be repaired, which undeniably creates premature obsolesces which ought to be considered an unacceptable design flaw. If these products were designed and manufactured with product stewardship, and the environment, and producer reasonability as a consideration then we'd be in a different position right now. Now I'm here with a background in waste, and waste is my
20 specialisation, so I couldn't go any further without talking about waste. The National Waste Policy is something that I'm quite familiar with, and you don't need to look at it very much because principle one in the waste policy is to avoid waste, and that is a large focus of my interest in the right to repair.

25 According to the glossary definition in the policy waste avoidance is.

Preventing waste generation, including through design of products, and changing consumer behaviour to preference durable, reusable and repairable products.

30 Now this of course contradicts the consumer behaviour in the manufacturer's preference, and what they've created is a business practice to replace in preference to repair. Which, as a general statement, seems to be a hurdle for our governments as most manufactures can do whatever they want without
35 seriously considering the waste or environmental impact in many cases. The only way to ensure this will change is to start by setting minimum design standards with environmental accountability and requirements to ensure repairability. All of which leads us to the topic of today being right to repair, which in many cases has inhibited waste avoidance because of inappropriate
40 design which does not allow for repair as an option.

45 So, to support our waste policies, if a product cannot be reasonably repaired it ought to be prohibited from manufacture and distribution in Australia, because if we don't do this it will continue to pose a barrier for waste reduction targets which we so desperately want to meet. If a product cannot be repaired, when it ought to be able to be, then it's undeniable that manufacturers and resellers are profiting at the expense of our environment

and also our extended community. As a result, the repair industry is disappearing and premature obsolescence is increasing, and manufacturers seem to have no issue with this as it's their standard practice quite often.

5 The report has highlighted wages and skills shortage in the repair sector, and that's something that's been on my mind for a long time. It's commonly stated in government reports there are many jobs in recycling, repair, reclaiming recourses and in the finite disposal of waste. So, if we're serious about supporting the right to repair then we need to ensure that not only are
10 products viably repairable, but that we have technicians trained and qualified to ensure repair can continue to happen. I know when I got to these repair cafes, usually - in fact I can't think of a case where it hasn't been - the repair person of electrical goods is generally an older person. Sometimes the younger ones give it a go, maybe they've got a grandparent or a parent who's
15 passed that skill on, but I'm of the understanding that some of these skills are no longer taught in tech schools or the TAFES these days.

So, I hope that this will be considered as a priority target area too, because we need to ensure these repair skills are not lost by premature obsolescence
20 by design. In summary, changing manufacturer and consumer behaviour has environmental, social, and economic implications. And whilst some manufacturers may not like this, because for many, many years they have been profiting at the expense of the environment, it's got to change. The right to repair is critical and collectively we need to rebalance this for consumers
25 today, and also intergenerational equity too.

COMMISSIONER LINDWALL: Thank you very much Kirsty. Could I start by asking how - the issue on the spare parts where it's prices very highly, almost the same as the original product, is that a bigger issue than all the
30 repairability of the products do you think? Is it the availability of the spare parts? If you were to look at the general - and obviously this will vary by product - but if you were to look at the biggest in terms of waste, is it going to be the availability of the spare part or would it be the repairability of it?

35 MS FOX: Sometimes both. The repairability is an issue in the sense that some products, the way that they're designed, they actually can't be disassembled and reassembled. So, once it's opened up, it's broken, it just can't go back and that's the way it's been manufactured with the fused plastics and so forth. So that's definitely a significant thing, because there
40 are some cases where technically it can be repaired, but it can't be put back together.

COMMISSIONER LINDWALL: Yes.

45 MS FOX: So yes, that's quite significant too. As to which is the greater one, I don't have an answer for that, somebody who is more expert in repairing these things they would have a stronger feeling, but I do know sometimes -

like with my microwave - I am waiting to hear back from the company again but if the microwaves were \$200 and it cost \$150 for one part then that's the other factor as well too. So, I think that both are quite significant when we consider the whole thing.

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COMMISSIONER LINDWALL: Now one of the reasons - and we've got it in our report a very good graph about how manufacturing products has become a lot cheaper overtime because of the capital-intensive nature of them done in factories and high volumes - so it seems to me, as an economist, that one of the ways to encourage repair is to become more capital intensive and become more productive at doing it. Obviously, you need the skills too but in terms of recycling and repair how are you viewing the progress in terms of making it more productive, in which case more people will do it, I would have thought?

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MS FOX: I think what it comes down to is the accessibility of the parts. You know when you speak to repair people, and you know my father did repair not quite in the same way, but he had a garage. There was always something there, he didn't have to go look for that part, quite often he had it from something else. And whilst that can be the case these days there are so many different parts that one repair person usually has to send away for it, and if the manufacture industry is only manufacturing and not supplying these parts then that's where the issue comes. So, it's quite complex I know, but if the parts aren't readily available, we're always going to be in this position. How do we make them readily available?

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Well, that's another question and something that we do need to think about, but I think if they make - microwaves on the mind, because I'm hoping to get mine repaired, I'm not entirely confident, but it's a capacitor and the magnetron that I'm told that need to be replaced, this is what makes them work. So, these parts have to be available if the manufacturer allows it. Maybe it's a new industry that we need to look at to strengthen repair, I'm not quite sure, but we know it can be done, it's just not viable. How can we make it viable?

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COMMISSIONER LINDWALL: In some cases, it might be 3D printing, I don't know if you have any thoughts on that?

MS FOX: Look I do, I think 3D printing is something that could be an option, that's definitely a technology that's coming through and I like that quite often the 3d printers can use recycled plastic which is even stronger again. I guess it depends on if the part is a plastic part, I'm not sure if 3D printing applies to the metal parts, but it's something that certainly could be considered, yes.

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COMMISSIONER LINDWALL: Could I go back to some of our recommendations, in particular can you comment on the National Television

and Computer Recycling Scheme as a form of product stewardship, and what do you like about it and what don't you like about it, I guess?

5 MS FOX: Sure, first of all the fact that it's a recycling scheme. A recycling scheme is a disposal scheme, it's not a scheme that's designed to make the product last. Sometimes the recycling scheme can inhibit reusing schemes, and repairing schemes, because the schemes are all about recycling. And the reality is that with the computers - and I'm not a computer technician - but I've had computers upgraded and repaired and I'm quite fortunate I've come
10 across a great repair guy. When I went in with my laptop and it had died and I said, 'I really want a second hand one', so he refurbished one and I could do it, but there are some limitations. The reality is when you've got a really solid casing of a computer or an appliance if you could just - if it was designed so you could upgrade it. And I know this can be done because
15 historically it shows that we can, then that would make so much more sense. I would like to see the scheme amended so that there was more incentive to be able to repair and not just a tick box because it was recycled at the end.

20 COMMISSIONER LINDWALL: Now, in one of our findings 7.1 in the e waste area was about the growth of the e waste over time and how it's obviously growing more rapidly than general waste and used Victorian data about the likely growth of waste in the future, obviously, to 2035. Do you have any thoughts on that and where the biggest problem areas are likely to be and where the effort should be focused to reduce that waste, if you like?

25 MS BISHOP-FOX: To reduce e waste?

COMMISSIONER LINDWALL: M'mm.

30 MS BISHOP-FOX: Look, I think a lot of it needs to come in by design. If something is designed - and when I speak about e waste, I speak about everything with a power cord or a battery, so a lot more than just the computers and TVs. You know when you look at a warranty, some things have a 12-month warranty, and some things have a 10 or 25-year warranty.
35 These are things in my kitchen. So, something with a 12-month warranty is never going to last that long and something that can't be repaired is going to become e waste much faster. So, if there were - it was incentivised to be able to have the products repaired, that would make a difference.

40 I also think, and what I talk about waste and the submissions I write to waste is that the true cost of a product is very rarely covered in the sense that that disposal cost needs to be on there. So, if I'm buying something that's going to last a year or two then we should be paying for that there. The disposal cost could be used to incentivise repairing outcomes then that would be much
45 better. I've got something sitting here, I don't know if you can see it, this is part of my stick mixer.

COMMISSIONER LINDWALL: Yes.

5 MS BISHOP-FOX: Something else that's broken. This little part here, I forgot to take it to the repair café with me. You probably can't see it but there's a little plastic part in there which it seems to be stopping it working. But this is really strong, it's really sturdy and when I bought it, I bought it with intention because it seemed to be the most well-made product at the time. But if there is one small part in there which can't be replaced, it means the whole thing is useless.

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COMMISSIONER LINDWALL: Yes.

15 MS BISHOP-FOX: And I'm not a design engineer and some things are easier than others. I think stick mixers are a tricky one but if I actually had my food processor it would be a different story. To be able to replace one small part and repair it instead of having that whole thing go to (indistinct) or recycling, wherever it ends up, it makes sense and when you speak to repair people they could replace the element in a toaster, they could replace the power cord, but if it hasn't been designed for that to happen, then there's no industry. It just goes into the bin.

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COMMISSIONER LINDWALL: Julie, I should just - - -

25 COMMISSIONER ABRAMSON: Thanks Paul. Just on that design point. Are there particular design standards overseas, Kirsty, that you think would be good for us to have a look at?

30 MS BISHOP-FOX: Look off the top of my head, I can't think of them. Look, there are design standards and there are many design standards. There are sort of so many, like some are stronger than others and some are still in shape but that's something I may have to get back to you on.

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COMMISSIONER ABRAMSON: That's fine. If you're putting in a submission, that would be useful for us to know.

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The other issue I wanted to ask you about really goes to a repairability index. You will see that we've asked for some information about what participants might think about that. So, I'm just interested in your views on that, especially as you touched on it a bit earlier about the fact that some things are hard to repair. So, do you have some views on that?

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MS BISHOP-FOX: The repair index, I may have skimmed over that too much in your report. Is that saying something that is readily repaired and something that is - - -

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COMMISSIONER ABRAMSON: I'll go back a step, Kirsty, because it was a big report. What we've asked about, we haven't proposed it quite yet, is

that consumers could get more information when they were at the point of purchase, about whether or not something they've bought could be repaired or around durability, although durability we thought of in the context of the acceptable quality guarantee and in France there has been some work done on an index. But I'm just interested in your views in general because you've really focused on design and the importance of design and, as a consumer, you've also clearly said well, it's really quite important to me as to whether or not I can repair something. So, it's whether that would be a valuable thing to do and what type of things you might include are in that information to consumers.

MS BISHOP-FOX: Yes, look that definitely is a valuable thing and different consumers would place a different value on it. Some people don't think about repair until they have to do it but my situation, I think about it when I purchase. So, I think that knowing that something could be repaired and how easy it is to be repaired is something that would be valuable too. And also upgrading. Now, a kitchen appliance I'm probably not going to upgrade. It's highly unlikely that you would upgrade a toaster. A toaster toasts. The same with a kettle, it heats the water. What more do you want them to do? Or maybe the dishes, I would definitely upgrade to that. But, when I look at other products like my laptop, if technology changes, and technology is always changing, if I could just take out one part and put in another part, I absolutely would support that.

I remember many years ago, this is not an electrical product, but my son has had an influence. I didn't mean for this to happen, but it did, and he looked at like a helmet. He was maybe about, I don't know, maybe eight at the time, and the helmet was one that could adjust, and you could put in different padding and he – this was more. This was coming from his own savings, and he said, 'Mum, if I get this helmet, I'm not going to need to buy one every year, just the extra part'. And I just thought this is a smart kid. Where did you get that from? But, if we could do the same thing with other things as well too because now, he's a bit older and he's got a mobile phone, no doubt in a year or two he's going to want a different phone, even if his phone is perfectly great. But, if we could just change that part, that would just reduce so much waste.

COMMISSIONER ABRAMSON: That's very helpful. I'll give you a tip, if I may, on your hand stick. I found that it didn't really like pepper grinds so that caused mine to have a problem. But thank you very much Kirsty. Back to you Paul.

COMMISSIONER LINDWALL: Kirsty, could I – if you want to put a submission in, it would be most welcome, refer you to page 214 box 6.7 of our report which talks about the French repairability index and, if you wouldn't mind having a bit of a read of that, it's only one page, and maybe give some thoughts on that in your submission, that would be fantastic.

MS BISHOP-FOX: I have the document here right now. I'll have a look when I'm gone.

5 COMMISSIONER LINDWALL: I don't have anymore questions. I don't know whether we've covered everything. Yes, do you have any – since it was raised in yesterday's hearing, someone said that third party repairers and repair cafes often don't have safety standards, particularly around electrical work and so on. Do you have any comments on that?

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MS BISHOP-FOX: I can't speak for every repair café, but I can speak for the ones I've attended, and I have gone to a few different ones. Most recently with the Warrandyte Repair Café, Ringwood is close to me. I've also been to the Brunswick Repair Café, and I've had dealings with the St. Kilda Repair Café as well too. I can tell you that with each and every one of them, that's absolutely not the case. The man who serviced my microwave is an electrical technician. He ran a business from 1966, that's his trade, that's his thing, so very aware of that. I know when I went to Brunswick, I went there to support them when they first started doing it and I had a lamp that I have sitting here. 15 They actually tested and tagged it before I left. So, I would dispute that. I can't speak for everyone, but I think it's reasonable to suggest that many of them do and if it was a genuine concern, it would be reasonable to suggest it be a requirement if that were the case. 20

I also do know, speaking to other people who do the repairs, that there are some repairs that you really ought to have someone qualified, but there are some repairs where it's quite minor and it's quite acceptable to do. So, perhaps there could be a differentiation as to where that line is but no, I do support qualified people doing these repairs. 25

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COMMISSIONER LINDWALL: And people exercising judgment, yes. Any final points you want to make, Kirsty, before we have a little bit of a break?

35 MS BISHOP-FOX: So long as you have a stretch, that's good. I think we've covered a lot but really the biggest things are is that with this here, when it comes to the right to repair, sometimes people look at it, especially the younger generation, it's like we're asking for this new thing. We're not really asking for something new at all. This is something that has happened 40 in the past. It's happened, it was standard practice and now it's changed. Noone can really pinpoint. I've asked a few people, when did it change and it was very, very gradual and while it may have been a gradual change to get to this point, I do believe we need to make a faster change to turn it around.

45 Knowing what I know with waste, and I do waste audits at times and seeing the things that go through, I can only assume that the electrical goods that are thrown into landfill and no, they shouldn't be but they still are, aren't

So, obviously our - - -

5 COMMISSISONER LINDWALL: A good range, yes.

10 MR DODSON: - - - range is extensive, exactly. So, we are really pleased to be able to come and talk to you today and, obviously, we've got a very keen interest in this subject as well and we want to present TTI's, as I'll refer to it, perspective on our product offerings and we put extensive effort into providing, what we believe, to be a leading user experience in both user, usability and also aftermarket service and repair, particularly for Milwaukee and AEG products. Ryobi, we have an extensive replacement warranty that you're probably aware of through Bunnings.

15 So, we place high importance on customer and product care and service, even aftermarket, because we see it as an investment in the future of our company and we want our name and our product names to be names that people look at and say, 'Yeah, I'm going to have a good experience with that product'.

20 And so, it's sort of with that background that we come today to present our thoughts on this subject. And I think, from the outset, what we need to stress is that we are certainly not opposed to a right to repair. We see the need for this type of programme to be in existence in Australia. We certainly recognise that, but we are looking at it mainly from the user repairing their products. Because we see power tools particularly, and I guess it's power tools that we're really sort of concentrating on today. The reality is if you've got a hand tool, you're not going to repair. If it breaks, you're going to have it replaced under warranty, if it's still within the warranty period, and we obviously acknowledge the statutory warranties that have been referred to today, and we certainly abide by all those and go beyond that. Most of our hand tools have a, what we refer to as a limited lifetime warranty and by that we mean it's limited in that, if it's demonstrated to be faulty from a manufacturing viewpoint, there is a lifetime warranty for that. There isn't a lifetime warranty when it can be demonstrated that the user has clearly misused the product.

35 COMMISSIONER ABRAMSON: Andrew, for the purpose of the non-technical person, Paul will know exactly what you're talking about. What do you mean by hand tools? Do you mean power tools and - - -

40 MR DODSON: So, hand tools we mean by spanners, shifters, pliers, non-powered products that you would use in your hand, like a mechanic would use for repairing the cars and whatever else and hammers, saws, so it's quite a wide range of hand tools that are not powered.

45 COMMISSIONER ABRAMSON: Okay, thank you.

MR DODSON: Battery or cord at 240V or whatever, however or petrol or however it might be powered.

5 COMMISSIONER ABRAMSON: Thank you. And do you also, I'm sorry I just want to clarify something.

MR DODSON: You're right, absolutely.

10 COMMISSIONER ABRAMSON: Do you also include lawnmowers? I didn't know if garden care equipment was lawnmowers as well.

15 MR DODSON: Absolutely. Yes, so all garden equipment from line trimmers, lawnmowers, pole trimmers. All sorts of pole hedge trimmers, saws, all sorts of powered outdoor garden equipment. If there's – even if there's a product that we don't have in our range that people want, well we investigate looking at it and adding it to the range.

20 COMMISSIONER ABRAMSON: No, thank you so much, Andrew, but please go on with what you wanted to say.

25 MR DODSON: No worries and I'm happy for you to jump in at any time, no problems. So, yes, so we're looking today at it from a user aspect, from a user repairing a product and they're the sort of main points that we're going to cover – well, that's the background to the main points that we want to talk about today. And the reality is the main points we're talking about are already covered in the paper. We wanted really to just come along and make sure that these points were spoken about. Because it's one thing to read it on a bit of paper, it's another thing to actually hear it presented and some practical examples given as to why these are actual reality or issues in reality
30 in the industry.

35 And our first main concern is consumer safety. So, our concern is based on the fact that the majority of the products that we supply and we're talking about these powered devices, they're complex mechanical machines that have gone through many months, sometimes years, of rigorous design, development, testing, certification in most cases, to ensure that we've got a safe and a product that we can release to the market, and not only safe but a compliant design to standards. So, electrical safety standards and obviously they exist around the world. So, that's why it takes so long to go through
40 testing, because often we're trying to satisfy dozens of countries' requirements, if not continents' requirements. So, that becomes a huge issue that we have an extensive team that's dedicated to that now.

45 Now, just sort of back track a little bit. Techtronic Industries is not an Australian only company. We're actually a Hong Kong based and owned company but the majority of design and development, particularly for the Milwaukee side, is still done in the United States, in Milwaukee itself. It's

still based in Milwaukee. And from the Ryobi AEG side of things, the product development is done in Hong Kong and China, with development with us as well to a degree as well, out here in Australia and in Europe. So, with that in mind, we go through quite an extensive development, qualification, usability, design process that results in what we believe to be a safe product and a product that's going to hopefully last the user, as long as they really need it to.

So, when we see and hear that there's this push to have non-technical and inexperienced persons opening and potentially modifying the equipment, that really causes us some sort of shifting in our seats in an uncomfortable way, because we know the damage that can be done from a power tool. We see it not often, but we do see occasionally products come back through our service centre that's resulted in, unfortunately, injury to the user and invariably, as in most cases, we can trace it back to, unfortunately, user misuse and sometimes even modifying the product that's resulted in an unsafe way. We put an example in our document of a lawnmower that was returned to us and we see that the nut that was holding the blade in position has been lost, for whatever reason, and they had replaced it by a thin piece of plastic and, of course, the result was that the blade flew off. Luckily and fortunately, there was no injury in that instance but, of course, you can imagine that a blade flying off a lawnmower is not something you want happening. That's one example of things that can happen when a user at home can repair their product.

We're not talking about maintaining their product. We're not talking about replacing parts that we literally sell on the shelf, like cord line – line for cord line trimmers etcetera. We're talking about actually doing repair work to a damaged product that the user has continued to use.

The other aspect that we're concerned about in this regard is, of course, lithium-ion batteries. So, we're heading down the path of a huge range of our product being driven by lithium-ion batteries and this is another complex and technical area that a lot of research and development goes into, because we know that lithium-ion batteries, and this is another complex and technical area that a lot of research and development goes into because we know lithium ion is a dangerous product. You know, it's caused a number of failures and fires throughout the last 10 or so years since the lithium-ion technology has really burst into the scene, and we only have to mention, you know - well, we won't mention (indistinct) here, but we know that there were some issues over the last few years of phones and particularly what was known as those ride-on scooters - we saw another case not that long ago where another one had resulted in a fire.

And that's simply put down to the mismanagement of the lithium-ion technology, and so it really causes us pause for concern when we hear that, you know, there might be people wanting to repair lithium-ion batteries. You know, often people - we hear people, you know, repacking, and that is

5 putting - getting cells from an old lithium-ion battery, taking out the ones that they believe are faulty, and putting them into other casings and trying to maintain or use those lithium-ion cells, which are the individual - what you might imagine a AA battery size cell goes into a battery pack. So you might have 10, 15 individual cells in a battery pack.

10 They might pull that apart and start reusing those cells in other packs. What they don't understand is that cell has already gone through stress. It's already gone through, you know - and the majority of its life has been used up, and putting that into a - and mixing it with, say, new cells, for instance, it's a recipe for disaster. And our power tools and our powered products that use lithium ion have complex electronics in there to monitor those battery cells and the battery packs, and they've got all sorts of over temperature and over current and all sorts of things that are there to monitor those battery packs and will shut the tool down instantly if it detects any issues or any problems, and that's why if you've used a lithium-ion power tool, for instance, you'll find that it will just stop, and what it's telling you is that there's something wrong and, you know, you need to have a look and see what's going on.

20 And that may require sending it back for repair for, you know, somebody to have a look at and determine what the issue is. It may be just a fact that the power tool or the battery pack has got too hot and you need to give it a rest and a break from the stresses that you're giving to it at that time, but, you know, needs to be heeded as to why that power tool has stopped, so allowing
25 - sorry.

MR WU: Even ourselves, we don't repair batteries internally. So it's something that we are very concerned, if we say, you know, you can repair our tools and take (indistinct words) battery and try and repair the battery as a
30 consumer, that can, you know, have potentially safety hazards.

MR DODSON: Yes. Thanks, John. So one thing I want to just point out - well, I'll come to this again in a moment, but we also want to point out that - the issue of recycling. And we are able to recycle our power tools and our
35 lithium-ion batteries, and we're partnered with a recycling company in Melbourne that's able to take both power tool and the lithium-ion battery and recycle that down, and they are able to reclaim about 98 per cent of that power tool itself and the lithium-ion battery, and they are able to separate out the components when they crush it down, and in the case of the lithium-ion
40 cells, they're able to go right down to component level, right down to cobalt, and the other elements that make up a lithium-ion battery, and they're able to reclaim that material and then they're able to put it back into the manufacturing cycle. So particularly with the lithium-ion batteries, they're able to take those components and recycle and reuse.

45 COMMISSIONER LINDWALL: You're on mute again. Sorry (indistinct words).

MR DODSON: Sorry. Somebody muted me. Sorry. I was going on too long, clearly. Yes. So we're able to have those lithium-ion batteries recycled, and when we use the phrase recycle in this case, we mean reuse and get those components back into the manufacturing process. With the power tools, they're able to break those tools down into component level, such as plastic, metal, copper, whatever else is used in a power tool, and they're able to reuse those materials. You know, for instance, the plastic goes back into a road base so that we know that there have been roads lain and have sort of a - it's experimental still at this stage, but using the plastic material as a road base material.

Obviously the metals and copper and all those other basic materials are able to be recycled and reused by other industries. So power tools - and we currently recycle many - you know, hundreds of tonnes a year of power tools that come back to us. We - you know, if the power tool is - need to be replaced, the power tool doesn't go into landfill; it goes back into the recycling program - extensive recycling program that we run as a result of that. So the first point that we were dealing with was the issue of consumer safety and from both a mechanical power tool viewpoint and also a lithium-ion battery technology viewpoint, we believe that that's a serious issue that needs to be considered in the legislation that comes as a result of the commission's findings.

COMMISSIONER LINDWALL: All right.

MR DODSON: The second point we wanted to have a look at was brand protection, and really this is sort of following on that from a viewpoint of unsafe or unsatisfactory repairs done to a power tool or, you know, a powered device, that that's going to result in a negative brand experience and will have an impact on our brands. You know, we put considerable money, resources, effort into producing a strong brand and developing a strong brand, and we don't want to put that in jeopardy. We understand that that may be more of a commercial side, so it may not be much of a consideration. So I'll move on to the third point which was intellectual property protection.

Once again, these are all aspects of the report that the commission has put out, and we certainly are only adding our weight to those elements of that report. And yes, we have this concern with this right to repair making freely and publicly available technical information regarding the design and build of equipment. That will obviously expose techtronic industries to competition challenges as - and it will stifle technology development and design because it will be felt that that obviously will result in those ideas just being, you know, produced and counterfeited in many ways, as I'm sure we'll well be aware.

5 The fourth point that we are putting there is one we called expectation, and what we meant by that was that once a user - if a user has repaired their equipment and they believe that the repair has been done satisfactorily, they will expect now that device to be, in effect, returned into the pre-damaged or the pre-failure condition that the power tool was in before the repair was needed. They may be completely unaware that there is other damage that either has been done or existed and, you know, is - and the user is totally unaware of, and they may then still expect and probably will still expect, you know, any sort of warranty to be honoured and followed up on.

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Now, we're not saying that a person is going to intentionally do this, but when we consider, say, a power tool, the components have all been through the same sort of stresses and effort that has been put into that power tool or, you know, there's particular - I'll go to the word stresses. So the stresses that's been put on the power tool - all the components have been through that same stress. So if you replace one component, the tool may be going through some issues elsewhere as a result. When our service department repairs products they don't just repair the problem area; they'll then obviously run the product and ensure that the product is returned to the user in a safe and usable way so that they're not going to hopefully have those same sort of issues or other issues as a result.

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We feel that once we get non-experts involved in that sort of area, we'll have some issues. So really, they're the main concerns that we have and we would like to perhaps have maybe power tools and powered equipment maybe specifically thought about as maybe, you know, as an exclusion to the legislation that comes out. We know that, you know, Milwaukee warranties are quite generous. We have a five-year warranty on power tools. So as long as the power tool has not been obviously abused in such a way that it quite clearly is not a manufacturing default, now users have five years in which they can have their product repaired for free, and that's on the battery powered tools. There's three years on the corded power tools. The batteries themselves have two years. The Ryobi power tools have six years replacement, up to six years replacement, and the same with AEG.

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So, Techtronic Industries have an extensive warranty programme that we believe is quite generous in regard to the product. And I'll be frank and say that our power tool warranties outlast car warranties and I feel for the automotive industry that presented earlier on. But our warranties exceed that of even the automotive industry. So, we think that these are generous and really a power tool has a - particularly in the industrial sector - has a limited life. It's going to - - -

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COMMISSIONER LINDWALL: It does have mechanical stresses.
45 Andrew, have you finished? I think we probably should ask a couple of questions.

MR DODSON: Sure.

5 COMMISSIONER LINDWALL: By the way, I do have an electric
lawnmower with the 36V lithium-ion battery, and it would never occur to me
to try and open a lithium-ion battery and repair parts of it. I think it's
common sense from certain people would be useful in terms of what you can
repair and what you can't repair.

10 MR DODSON: It would be great.

COMMISSIONER LINDWALL: And, anyway, I would just like some
comments maybe on – you were talking about user repair. Now, clearly, if
you've got a five-year warranty and it breaks within that period, I'm hardly
going to repair it myself when I can get it freely repaired from your company
15 anyway. So, it's probably repairs beyond the five years, I guess, or where
someone's done something bad to it. You're right. I mean people misuse
things, drop them or whatever.

20 But what do you think about some of the activities overseas, such as there is a
French scheme on repairability, the Biden Administration and that executive
order about right to repair? So, there's a bit of a movement around the world
about opening up competition to repair in the aftermath of it, if you like. Did
you get that?

25 MR DODSON: Yes, we've spoken a little bit about that repairability, and I
guess we still have the concern that, in some cases a power tool may be able
to be repaired, because it hasn't gone through much use, and it hasn't been
exposed to tremendous amounts of stresses. But the user just doesn't know.
They're unsure as to what's happened and often with a power tool, and
30 particularly with garden equipment, they can be leant to other people and you
just don't know what has transpired with that equipment, what other
additional problems that the unit has been faced with.

35 So, while we support the units being repaired, our concern is that it should be
a limited sort of arrangement for that person to not delve into the product and
start replacing components that are an electrical safety or mechanical safety
mechanism, because that's what we find. If a guard breaks on a motor saw,
people are happy to pull it off and continue using the motor saw. If the
interlock switch breaks, they're happy to pull the interlock switch off. So, it
40 becomes a concern for us.

COMMISSIONER LINDWALL: Some people do stupid things. I mean
that's just - - -

45 MR WU: If I may butt in? I think with this open information that if a user
actually orders a part from us and repairs it, that's less of a risk. One of the
concerns I have is that having this movement is going to open up a whole

5 after-market for different parts. So, like Andrew has said before, all our tools have gone through testing or safety standards for particular parts. So, if there are after-market parts available, for example, my motor died on the lawnmower and I just order one from this particular repairer, because it's quicker or it's cheaper, that particular motor may not be approved with the test reports that we have.

10 So, in effect, even if you repair it and it works, the product may not be compliant. So, if you replace parts with after-market parts then there is a compliance issue there and I think having information openly available to everybody is going to build up a whole market of after-market parts.

15 COMMISSIONER ABRAMSON: John, can I just ask you, just about this after-market, I do have a range of other questions? That's the comment that's often made in motor vehicles but, of course, there are a range of providers in the motor vehicle space where the after-market product can be of a superior quality to the one that's already on the vehicle. So, why would this be a particular concern in your industry?

20 MR WU: I think it's more of a compliance issue. So, if somebody replaces that part and an incident occurs, then we are going to have to say well okay, that product is no longer as per design. It may have been improved; some after-market parts may be better. However, legally speaking, it's no longer a product that we've designed and as intended.

25 MR DODSON: Can I just add another comment there? I think Julie also, in that regard, with the auto industry, you're more likely to have hundreds of millions of components rather than hundreds in the power tool industry. So, you're not going to make – you're not going to sell anywhere near as many lawnmowers of a particular type, as you are for motor cars throughout the world. So, the after-market component area is going to be vastly smaller. So, you're more likely to have inferior components for the power tools. And, for some reason, people don't take power tools and repairs seriously enough. I think they sort of see a car hurtling down the road at 100km/h providing more danger than cutting their lawn with a lawnmower or even just using a hedge trimmer for some reason.

35 COMMISSIONER ABRAMSON: Yes, I understand. Paul, a few of the questions I want are quite detailed so what I'll do, if you don't mind, is ask Andrew and John to take them on notice.

COMMISSIONER LINDLAW: Yes, I think that's good because we have to finish in about four minutes.

45 COMMISSIONER ABRAMSON: That's right. Andrew and John, we might even have another conversation with you because we've not spoken to you before. Could you give us some details in your submission or later about

how many independent repairers there are in your – in power tools and lawnmowers, etcetera, that the extent of the refurbishment market? I'll get the team to send you an email on it, the aftermath, and the cost of spare parts. So, they're quite detailed questions but it's the first time I think the
5 Commission has had a look at the market that you're talking about and, as you know, we've taken an approach well we're looking at particular markets and particular issues. But we need to understand a bit more about your market and we'll send you an email and you can respond to that.

10 MR DODSON: What we can do is, if you're happy to meet with us again, we'll get our product service manager on deck as well and he will certainly have – I've actually already asked, I actually anticipated that question and so I've already worded him up that we need – if we can get those details of particularly the service agents, so that we can show that there is an Australian
15 wide service available for users. They don't have to repair these on their own. There are ways to have it repaired.

COMMISSIONER ABRAMSON: Yes, Andrew, I'll get the team to – Paul Oaks on the call, I'll get us to come back to you. Thanks Paul.

20 COMMISSIONER LINDWALL: And in reflecting upon that, you might talk about, when we come back to you, about the battery design. There has been an issue raised where manufacturers have quite different lithium-ion batteries to effectively lock people into a particular range and I would
25 appreciate some comment on that but probably not now.

MR DODSON: Okay.

30 COMMISSIONER LINDWALL: There's only probably time to go onto the next person. But thank you very much for appearing today, Andrew and John.

COMMISSIONER ABRAMSON: We'll come back to you.

35 MR DODSON: You're welcome. We appreciate that, thank you.

COMMISSIONER ABRAMSON: Thank you.

40 COMMISSIONER LINDWALL: Thank you. So, we'll now move onto Rachael Wilkinson from AIG. Rachael, are you there?

MS WILKINSON: Hi, yes, I am but I am unable to start my camera.

45 COMMISSIONER LINDWALL: I'm sure it will be fixed up in a second.

MS WILKINSON: I'm about to appear. Are you able to see me now?

COMMISSIONER LINDWALL: Well, welcome Rachael and if you would like to introduce yourself and the AIG and give us a little bit of an opening statement, that would be fantastic.

5 MS WILKINSON: Yes, absolutely. So, thank you for the opportunity to participate in the hearing today. My name is Rachael Wilkinson and I represent the Australian Industry Group or AI Group, as we're commonly known, and we are a peak national employer organisation with members that are small and large, in sectors that include manufacturing, construction,
10 engineering, transport logistics, labour hire, mining services, the defence industry, retail, airlines, ICT. So, basically a lot of different members in a lot of different industries, many of whom are impacted by the right to repair, which is why we are here today.

15 So, at the outset AI Group are committed to the pursuit of solutions to the waste crisis that are financially and environmentally sustainable and we recognise the place that right to repair has in that discussion, and we made a detailed submission to the inquiry in January, and we've made a submission on the draft report now, which I'm sure will become available in due course.
20 So, my comments today are just to emphasise those points made on behalf of our members, so just as a matter of housekeeping I note that the report grouped various recommendations and information requests under specific headings, so for simplicity I structures my comments today under those same headings.

25 So, the first of those being enable access to repair supplies, so we'll talk a bit about differences in quality, safety, and security between authorised third party and third-party repairers with regards to safety, human health, and the environment a bit later on but the first thing we really wanted to discuss was
30 the issues with unauthorised third-party repair inside of a manufacturers warranty period. So, the first point there that came up with our members was that to determine if an item is eligible for warranty repair a manufacturer or an authorised representative really does need to see that item to do a root cause analysis. So, the second point was that if the consumer believes they'll
35 be claiming back an unauthorised third-party repair cost from the manufacturer they've really got no incentive to shop around or keep costs down, and similarly the third party really doesn't have an incentive to keep costs down.

40 So, third there was a bit of a worry about overservicing due to poor diagnostic skill or knowledge leading to over repair, so using more parts and labour than what is required because there is a less nuanced understanding of the problem which can drive up costs, which are then passed either to the manufacturer if it's covered or to the consumer if it's not. So as a possible
45 solution to those issues members suggested that if there is a right to sort of unauthorised repairs given to consumers during that manufacturer's warranty period. So, the right of first reply could still be given to the manufacturer

with the cost of the third-party repair reclaim capped at that manufacturer quote. So perhaps if they feel they can get it done quicker locally that's fine, but there needs to be a cap on the pricing.

5 There was a strong member consensus that in almost all instances a manufacturer can repair a product more effectively and at a better price than an unauthorised third-party repairer. And in addition to the cost benefit our own OEMs noted that they do use repair data to improve their products, so the prevalence of unauthorised third-party repair will create a bit of a reporting issue, so if they're not getting access to that feedback, they may potentially miss opportunities to make improvements to their products. So as such it would be better for consumers to support more repair through OEMs and to have their authorised representatives handle things, rather than diverting them away from that network.

15 Members raised considerable concern regarding the grey market and the applicability of right to repair where products had been refurbished by third parties and then sold on. So also, second hand items and display models need to be treated sensibly in terms of equitable warranty and repair expectations so that manufactures, suppliers, and consumers do not experience negative outcomes or worse encounter a perverse disincentive to avoid reuse or refurbishment, and that's especially relevant as we try and transition to a more circular economy. In terms of availability of parts, members noted a couple of issues around costs of making parts available for extended periods of time, possibly waste in stocking parts that might not be needed, challenges of manufacturing older parts when the facilities may no longer be available or have moved on. And they did note that there is a chance that less common products or smaller manufacturers might be disadvantaged by competition issues associated with that.

30 And then on the software side, the term reasonableness came up, so if a period of time needs to be considered reasonable then that needs to be defined in consultation with those impacted. And also, just making sure that the messaging is right with consumers that just because software is available for longer it doesn't necessarily lead to better performance or enhanced features after a certain point in time, and that's because technology inevitably will advance beyond the existing hardware and updates just can't improve a device further. In terms of fair use and fair dealing it's cautiously supported where third-party repairers and suitably qualified or accredited, and it should only be introduced if all players in the market and expected to share that information, and those who refuse to do so are removed from the market to avoid free riding.

45 The response is similar in the case of procurement of tools to legally circumvent digital locks, although I note that it was made clear to us that larger providers would under no circumstances give repairers the ability to open consumers personal lock screens. This would represent a significant

and unacceptable risk to the community, and I believe that debate is well played out overseas. So again, as with the comments on fair use and fair dealing in an accredited setting it's cautiously supported for non-consumer screen or otherwise appropriate locks. So, your next heading was, 'Ensure warranties do not impede independent repair.' So, at the outset AI Group strongly oppose the prohibition of warranties from containing terms that require the use of authorised repairers or spare parts to maintain the warranty on the grounds that it may put consumers and businesses at risk of harm from unqualified, unskilled, or otherwise unscrupulous players in the market.

As was discussed a little bit previously in Andrew's statement there are areas and layouts of certain electronic products for example that consumers and unqualified repair persons just should not be able to access and that is to protect them from injury or death. And beyond the safety dimension our members noted that using incorrect, or nonstandard, or sub-quality parts can actually lead to less durability and reduce the lifespan of products considerably, and again I believe Andrew touched on poor quality parts. So as products become more complex and integrated it's going to become increasingly difficult to determine faults or to isolate issues to certain parts of a product, and that creates some more issues with repair for example, like if the wrong chip is inserted into a laptop it can short the entire system.

So, getting the right part is very important. So, one member advised us of seeing an unauthorised third-party repair where they'd actually used blue cellophane beneath the screen to mimic the look of LCD and it has been attached using a hot glue gun, so no use of original or even standard parts - full craft project as I would call it - and they charged the consumer premium repair price and the consumer had told the manufacturer they felt safe going to them because they had a shop front. But at the end of the day, the repair was improper, and it was overcharged for what it was, and their warranty was quite rightly voided because the device now contained cellophane and hot glue remnants. So, we would argue that that is the reality of providing carte blanche to people who are not authorised or not accredited in some way to be doing repairs.

But in the event that such prohibitions are introduced, they should be designed to limit manufacturer liability for damage beyond their control, like the above scenarios. But even then, not all poor repair work is as obvious as the cellophane hot glue situation, and that means that demonstrating fault could be quite costly and require forensic investigation which is a bit of a reverse burden of proof that represents a fairness issue to the manufacturer. And one member also warned that to allow any third-party service to service equipment during the warranty period with non-OEM or non-genuine parts will likely lead to more failure and therefor an increase in warranty costs. And costs may result in shortened warranty periods, or the removal or extended warranty options or potentially even increased product cost to the

purchaser because a supplier will have to set aside more for future warranty issues.

5 Which brings me onto the next cluster of questions which were under, 'Better information for consumers on product durability and repairability.' So we agree that guidance on how long common household products could reasonably be expected to last without fault could be very useful, but durability guidance, repairability ratings and labelling along those lines can be challenging to produce for several reasons, and some of the reasons that
10 came up with early discussions with our members were to start with; the meaning of reasonable is not well defined or understood, and that's a bit of a foundational issue when it comes to determining what a reasonable term of a product's life might be. They also noted that different guides or ratings would need to potentially apply to the same objects depending on if they
15 went to household or business consumers because of the different use patterns of the product. For example, I could buy a flat-screen television for my living room to use for a few hours a night, but that would be used very differently than the same television in the front of a shop that's running 24 hours a day with marketing material on it.

20 They also noted, you know, on that the care of a product impacts durability, so there'd have to be some care requirements associated, you know, if you feel entitled to expect a certain lifespan. They noted that technology in product design changes often, that sometimes, you know, in terms of what's
25 considered acceptable we rely on case law for product durability standards, which can be problematic because that's looking to the past, so members did suggest the ACCC could be more flexible on issuing or in fact reissuing guidance in that area.

30 They note that price points shouldn't be used as a guide because just because something costs more doesn't mean that it's necessarily going to last longer. They noted that medium term to failure, which is the average amount of time a non-repairable product functions before failure, might be another useful
35 tool in guidance, and finally, some members, you know, did, and I think some of the discussion that I caught at the end of that last presentation touched on this, that they do see repairability ratings as inevitable given the activity that we are seeing in Europe, but they did just note that if we do move forward with it in Australia we should look at models like the French repairability rating and improve on them before we adopt them here.

40 Your next set of questions was improved management of e-waste to facilitate repair, and we've just got a brief statement on that in that we absolutely do support amending the NTCRS to count repaired and reused products in the targets, and that simply because reuse and refurbishment are preferable
45 outcomes in the waste hierarchy, so they should be promoted in activities like the NTCRS. Then finally we just had a few general comments to make. So on definitions, which has come up a few times, members are very keen to see

right to repair clearly defined to avoid any ambiguity between repair, maintain, and modify, and they also raise the issue with new and used and how they interact with refurbishment, reuse, and the grey market.

5 We have seen some concern about business consumers and wanting to make
sure that any changes are drafted in such a way that we avoid adverse impacts
to B2B commercial relationships, especially given changes to the ACL
threshold, and some members did express that they felt that a dollar value
was quite a blunt instrument for defining a consumer. The next point is that
10 there is often a bit of an inference that OEMs are sort of hiding behind safety
as an excuse not to allow repair, but we would argue that, you know, most of
these concerns are genuine and should be listened to.

15 Allowing anyone to complete repairs without appropriate accreditation could
cause significant harm and undermine the safety of the community, and as in
our last submission, you know, our members do foster concerns around the
skill level, education level, and workmanship of many independent repairers
already in the market, you know, noting that they also haven't had any factory
training, and the view of the members was that the best way to address
20 concerns about quality and safety is to ensure that there are clear and
enforceable expectations regarding competency and qualification, and that
includes Australian Standards being required of any business or individual
engaged in repair activities, you know.

25 And accreditation through an OEM is one way to do that but there could
potentially be others of course in the regulatory environment, and they have
also noted some, I think, quite obvious barriers to competition in repair
markets like high callout fees charged for some repairers, short-sighted
consumer behaviours, switching costs, poor information availability, lack of
30 insurance options and consumer lock-in, and they've also just noted that in a
lot of cases they just see consumers not bothering to get repair quotes; they're
favouring replacement in the first instance, and that is unfortunate.

35 There are some manufacturers out there who are keen to do more repair work
but they are subject to the will of the consumer, yes, and you know, in
Australia manufacturers are also reliant on the import of parts from overseas,
which makes them very vulnerable to freight delay, which is very common in
Australia at the moment. There are big problems on our ports, and this will
often, again through no fault of their own, make a repair option too slow, so a
40 replacement will be requested, and obviously a complete item rather than a
niche part is more likely to be in stock domestically, so not be so vulnerable
to that freight issue. There's also the issue of IP, so right to repair, you know,
it can't and it shouldn't be considered without reviewing an interaction with
IP rights, and that's of course a very substantial piece of work given the
45 complexities of that system.

But with regard to access to repair manuals (indistinct) IP, one member made a pretty interesting point, which I'll read out verbatim, and that is that:

5 *Significant IP is contained in product manuals provided with purchase, and any company authorising a repair manual should be entitled to financial compensation for the contained value. If access is required to standard operational manuals they should be required for sale.*

10 So, in other words what they're saying is if unauthorised third party repairers are to make money out of repairing, you know, their products and out of using their IP, I think what they're asking for is some consideration around how that may be fairly compensated. So to sort of get on a pathway to wrapping up, consumers already have considerable rights to have their
15 products repaired, replaced, or refunded under the ACL, and those rights against the current rate of repair would support some of our earlier statements that right to repair is really only useful if people can choose to do use it.

20 So, you know, there is concern that consumers continue to show a preference for replacement over repair, and also just that a formal right to repair that doesn't adequately consider safety, accreditation, IP, financial viability, you know, of repair versus replacement, is unlikely to result in the desired impact and it may put consumers and businesses at risk. So, through consultation
25 with our members it does seem that in most cases repair by an OEM or their authorised representative can be cheaper, it can be more effective, so supporting consumers to seek repair through authorised pathways would likely lead to better outcomes for them while limiting risk of harm, and of course we know that consumer harm can come in a variety of forms, from
30 compromised safety, injury, death at the - you know, at the scary end, to just garden variety overserving or nonstandard parts, you know, reducing a product life.

35 So we favour a refinement of existing instruments, filling in any necessary gaps for enhanced consumer education, and you know, combining that with support for more activity between consumers and manufacturers or their authorised representatives in the repair space to taking steps to try and encourage those relationships would be preferred by us. So, thank you for
40 your time and we look forward to supporting the Commission. I believe we'll be speaking to our members some more as it progressed. I'm happy to take any questions now, although noting, you know, digging into some of the detail I do need my members, because I don't manufacture anything.

45 COMMISSIONER LINDWALL: Okay, Rachael. Thank you. Just on a couple of points you raised, and I know Julie will have some questions too, you know, it's better for people to go to OEMs rather than third party repairers, but I mean, sure, I'm sure there's some poor quality third party repairers, but then again I'm sure there's a lot of good quality ones too, and

doesn't that offer a bit of competitive pressure which is good for consumers, that if there were no third party repairers and there were only OEM repairers, wouldn't that be anticompetitive?

5 MS WILKINSON: Well I think it depends on how many third parties you have, so whether or not there were steps to make sure that manufacturers were accrediting an appropriate amount of repairers to create a market, but beyond that I think Andrew touched on it earlier, you know, it could be more so that certain products just do not lend themselves to allowing, you know, 10 that less controlled environment. So, you know, fixing a, you know, table leg or something is obviously a lot higher - lower stakes than, you know, fixing an electrical device or a power tool as was discussed earlier.

15 So, you know, it may be more a case of if the Commission do decide that that's the pathway we should be going down, making sure that it's only applied to areas where the view is that we need that injection of competition and where it would be safe, actually genuinely safe to do so.

20 COMMISSIONER LINDWALL: Yes. I mean, people do a lot of repairs of their own home, for example their own power points; I've seen that happen, and that's incredibly dangerous if done badly, but people will do what people will do. What about the design of products that there's been a lot of people have been saying in – that product design, and I know your members are not always manufacturers as such, but sometimes are importing products already 25 made overseas, but their designer products are such that they're hard to repair and that can then favour the, as you say, (indistinct) the consumers want a replacement rather than repair probably partly because they're getting something new and they think that it's better and so on.

30 MS WILKINSON: Yes, so with respect to that one, we've sort of – I've heard a lot of interesting member perceptions and it's difficult to sort of answer, but really, it seems to me based on and again, noting that I myself, do not manufacture a product, so I can only speak to what I've heard in our membership, that really, it seems to be a price point issue. So consumers do 35 want things cheaply, you know, small, cheap items that, the day to day use, use and throw mentality that we have that's inconsistent with circular economy vision. For those items to come at that price, sort of my understanding, need to not really be repairable.

40 It's just not possible to make those things, you know, at that price point and have them be repairable. And of course, there is the argument that well, maybe we need to do away with you know, things at these cheap price points, but then of course we have to think about vulnerable households and communities whereby, you know, that's the options that they have. So it's a 45 bit of a tricky problem, but my understanding with regard to things that are sort of made in such a way that they're hard to repair is that it is usually more

so to do with the price points and you know, designers doing the best with what they have which at times is - - -

5 COMMISSIONER LINDWALL: And I presume that you have good systems for a product stewardship that in terms of taking it and pulling it apart old devices and reusing them in different ways and recycling them. Could I ask one more question and then I'll pass to Julie and that's your – you made a point about people fixing things up during the warranty period. That is the manufacture warranty. And then causing problems. And why
10 would a person do that, I mean, if it's in the warranty period, I can take it along to a manufacture, a retailer, and get it fixed up free of charge. So why would I want to do that unless there's something time sensitive about it, I suppose.

15 MS WILKINSON: Yes. So in my experience, and I've come into some personal experience myself, I used to sell phones in a phone shop throughout university and what I – what I found was that consumers would often come in and they weren't happy with the time it would take to send it away to the manufacturer, so they would go over to, you know, phone kiosk and have
20 someone else tinker with it. So it's usually a bit of a time thing, but we live in a big country and we don't, you know, we're not – we usually do have to send things away to get them fixed up and that adds time to it. So I do think time is a big element for consumers. You know, wanting to do it locally and wanting to just be able to walk into a shop and get it done and not have to - -
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COMMISSIONER LINDWALL: Well, we can't cope without our smart phone being – all the time, yes.

30 MS WILKINSON: Yes. Yes, that's - - -

COMMISSIONER LINDWALL: Could I pass now to Julie?

35 COMMISSIONER ABRAMSON: Thanks, Paul. Thank you, Rachael, I've got a few questions. And some of the questions I'm going to put, it's not because I necessarily have that view, Rachael, I just want to test out some of the arguments.

40 S WILKINSON: Sure.

COMMISSIONER ABRAMSON: So, you mentioned before about steps to ensure there are adequate numbers of authorised repairers and yet when we spoke with you previously and I'm sure you don't mind me saying this because part of your submission, there is a difficulty getting repairers in rural
45 and regional Australia, so in the absence of independent repair, how could you have that capacity?

MS WILKINSON: Yes, so – so the point is being made that perhaps if there is to be some kind of regularity intervention, it needs to be made specifically targeting those areas where we can't get the rates of repair up and asking manufacturers to put their heads together, to have a think about how we can get it out there. Or how we can do something logistically to help support communities out there to get, you know, better access to repair as an option.

COMMISSIONER ABRAMSON: Could I ask you about the labelling? You made some comments about reasonable, and correct me if I've misunderstood you, which is entirely possible. Manufacturers already have to deal with reasonable, so why would that be a barrier to labelling?

MS WILKINSON: I think their argument is you know, when we start getting into more detailed sort of definitions of it, for the purposes of labelling or durability or applying it, in ways that they haven't had to apply it before, it can be ambiguous because I believe and again, I can only go on what I'm told, reasonable changes depending on what sort of organisation they're dealing with, what country they're dealing with, et cetera. So there is still a bit of haziness reported to me around what is reasonable.

COMMISSIONER ABRAMSON: Just on parts, the consumer guarantee, section 58 actually requires reasonable access to spare parts. Do you have a view about whether manufacturers should be holding parts, particularly in this country rather than ordering them from overseas?

MS WILKINSON: I don't have a view one way or the other, but I would note that manufacturers have said that you know, stock piling parts like that does add cost and also if – which can go to consumers, but also it could lead to a lot of waste if we're holding parts in a place where we're probably not likely to see them. There is that risk that those parts end up you know, somewhere undesirable like a landfill.

COMMISSIONER ABRAMSON: Just a final point I just wanted to ask, is you've made a lot in the submission about quality and safety. Where – have you got more evidence in relation to that quality and that safety that there is this difference between independent repair and authorised repair and does it exist in particular sub-markets because when we talk about motor vehicles, that there are repairers who have to meet a whole range of requirements. In electrical safety there's a whole lot of – you know, there's another regulatory regime, so I'm just interested in your views on that?

MS WILKINSON: Yes, absolutely. And there are certain industries that lend themselves better to having a sort of more open arrangement like you said, you know, things are very controlled and trades are very good quality in this country in motor vehicles and you know, electricians are well trained, we've got a really stringent Australian standards. So it can be a different

scenario in different markets. We've put a bit more, I don't know if you've had a chance to look at the complete submission that we've - - -

COMMISSIONER ABRAMSON: Yes, no, I have.

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MS WILKINSON: Cool, yes, so there's a – there's a couple - - -

COMMISSIONER ABRAMSON: You had some nice pictures in it as well.

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MS WILKINSON: Yes, I thought we would spice things up with some photos. So that's what we've got at the moment, but that doesn't mean that we can't get more from our members if you're looking for - - -

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COMMISSIONER ABRAMSON: Well, we are because there's a very strong argument that you make and we've heard a whole lot of evidence from other people who say to us, you know, we look at watchmakers, well, it's not true. The quality of work of those people is close to being an artisan. But that is a comment that you're very strongly making, so some more information around that and the industries you think are effected would be helpful, Rachael.

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MS WILKINSON: Absolutely, and just noting that those comments are made in terms of the blanket right to repair, obviously there are – as I said, certain industries lend themselves better to allow third party repair and you know, jewellery artists and stuff like that, it's a very different scenario to, you know, more complicated electrical items or things that one mistake could destroy a whole system in like, you know, fiddling around with certain laptops and things. And I've heard all these things from members, but we can certainly put the call out to actually provide some more specific example photographs, videos, if they're available to you.

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COMMISSIONER ABRAMSON: Thank you. I don't know that we need photos and videos but we are after data, so – but look, thank you, Rachael, and thank you also for the contribution that you've made throughout the enquiry. Back to you, Paul.

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COMMISSIONER LINDWALL: Thanks, Julie. Just one question about the cost of parts holding. You may not be able to answer it now, but just reflecting upon how costly it is to hold spare parts and maybe get your members to comment upon the prospects for 3D printing to ameliorate some of those costs?

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MS WILKINSON: Yes, absolutely. So I'll take that one on notice, if you don't mind and I'll give them the heads up that that's a question that they should be thinking about.

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COMMISSIONER LINDWALL: And when you talk about the quality of third party repairs, you're right about watchmakers as Julie said how they are artisans but on the other side, can't third party repairer motor vehicles which are most complicated products in society are happily done and so I'm not –
5 we have to be convinced that there is something particular about a lot of products so to make them so complex they can't be repaired. And self-repair's different to having qualified third party repair, obviously.

MS WILKINSON: Yes, I think that – yes, I think their concern is around
10 what qualifies as well as third party, because you know, making sure that we actually, the right trade sort of situation exists.

COMMISSIONER LINDWALL: Yes, yes.

MS WILKINSON: For products. So I think, yes, it extends beyond just
15 well, you know, our training or nothing into an area of are our national settings even appropriate to have people - - -

COMMISSIONER LINDWALL: Because you mentioned laptops and I – I
20 don't agree with laptops being a problem being repaired. In fact, I built my first computer many years ago and I have repaired laptops myself without too much trouble also. I don't think they're particularly dangerous. Anyway. So thank you very much, Rachael, for speaking today and we much appreciate it.

MS WILKINSON: No problem.

COMMISSIONER ABRAMSON: Thanks a lot, Rachael. Thank you.

COMMISSIONER LINDWALL: Could I now invite Gerard Brody and
30 Bridgette Rose from CALC to come and speak to us please?

MR BRODY: Good morning, Commissioners. It's Gerard Brody from
Consumer Action Law Centre and I'm joined by my colleague, Bridgette
Rose. Is she there?
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COMMISSIONER LINDWALL: She is, I can see her. If you could just
give a bit of an introduction and statement, that would be perfect.

MR BRODY: Sure. So, firstly, thank you for the opportunity to participate
40 in these hearings. In addition to our attendance today we are planning on submitting a more detailed response to the draft report which we thought was very comprehensive.

Our key points really are that we support recommendations to improve the
45 main areas to access repairs and other remedies through consumer guarantees. We support the proposals around super complaints in relation to consumer guarantees and also the problems with – our points will focus on

the problems with extended warranties, including their affect on assumptions about product durability.

5 Most importantly, when addressing the great need for more opportunity for competitive repair of products, due to wear and tear or breakage, we consider that the Commission should ensure its recommendations improve rather than diminish access to consumer rights for faulty products. Consumer guaranteed protections, including the right to repair under the Australian Consumer Law, are often difficult and expensive for individual consumers to enforce, leading to a reality where a person's right to repair is undermined by inaccessible dispute resolution.

10 So, we strongly support draft recommendation 3.2 for States and Territories to introduce alternative dispute resolution schemes to better resolve consumer guarantee complaints. We support power such as compulsory reconciliation or consumer guarantee directions powers.

15 However, in order to address what might be the most pressing gap in consumer guarantee rights, we strongly urge the Productivity Commission to call on States and Territories to implement specialty no or low-cost alternative dispute resolution schemes for motor vehicles, in particular. This must include access to free expert evidence in order to be effective to overcome that barrier for consumers. Our own data from Consumer Actions Legal Advice Service shows motor vehicles account for approximately 30% of our legal advice around consumer guarantees. State and Territory regulator data, which is included in the draft report, indicates motor vehicle sales to be the top complaint across Australia.

20 About motor vehicle alternative dispute resolution schemes that are accessible are formally and timely, people will continue to miss out on access to repairs, replacements and refunds for faulty cars which can really impact their ability to participate in society and the economy.

25 We strongly support the draft recommendation 3.3 for the Australian Government to enable designated consumer groups to lodge super complaints on systemic issues in relation to the consumer guarantees. Super complaints provide a systematic rigorous and highly evidenced means for regulators to gather insight or conduct within (indistinct) and a consumer protection focus. The UK experience with super complaints has been successful leading to meaningful consumer protection action reforms and, at times, redress for consumers who have been wronged.

30 In relation to warranties, we support draft finding 4.1 and draft recommendation 4.2, to take action on terms within manufacturer warranties that automatically void the warranties when authorised repairs are undertaken. However, rather than focusing just on communication to consumers of these protections, the Commission should also consider

consequences for manufacturers and retailers for breaching any requirements. The power in balance in car yards and retail stores cannot be overcome by mere communication. Furthermore, any recommendations about warranties should apply to both manufacture warranties and extended warranties. Since
5 the start of this inquiry the proposed ASIC product intervention order for car yard extended warranties has been abandoned. There will be no robust consumer protection for extended warranties in car yards. Yet, these extended warranties, along with extended warranties sold by retailers, are often sold under pressure selling, sometimes with misleading sales tactics
10 about what they will cover or what already will be covered by consumer guarantees, while also limiting the purchaser's right to competitive repair. They are also used by retailers and dealers to deflect contact about faulty products that appear not to meet the consumer guarantee of acceptable quality. If access to consumer guarantee dispute resolution forms were
15 improved, there would not need to be as much focus on manufacturer and extended warranties.

We support the draft recommendation 3.1 on guidance on reasonable durability of products. Guidance needs to be specific and say the minimum
20 expected durability of products, including robust minimum time periods which would help refocus durability claims and evidentiary burdens under the Australian Consumer Law, rather than on individual businesses about the over and above warranties I mentioned before. The guidance should be developed in conjunction with consumer representatives and be evidence-
25 based, not just relying on the expectations of industry.

We would be really happy to answer any questions or have a discussion about these points.

30 COMMISSIONER LINDWALL: Thank you very much, Gerard. Could I ask about a comment made by a person yesterday that the consumer laws should favour repair over replacement. In other words, it should reduce consumer choice. Now, I think a lot of consumers wouldn't agree with that, but I would be interested on CALC's view on that.

35 MR BRODY: I missed that. Could you say that again?

COMMISSIONER LINDWALL: Yesterday we had a person who said that
40 repairs should be favoured over replacement, even if that meant that consumers don't get the choice. So, what would you say to that?

MR BRODY: We think that the consumer choice is essential, and that the
45 consumer law provides existing rights for replacement and that's really important because the experience at the moment is that people can be into those cycle of repairs and there is no incentive, or a limited incentive, on businesses to repair in a way that actually contributes to long-term use, rather it goes back and back and back for repairs.

Now repair is important, and we think many people will choose repairs. People want repairs rather than replacement. We think the existing right of replacement is important and should remain.

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COMMISSIONER LINDWALL: Good. On the super complaints scheme which, of course, we proposed and as you say, I guess I'd just ask to see your view. Why would the ACCC know less about systemic issues than say CALC or some other consumer group? In other words, why should you have a super complaints scheme when maybe the regulators now get lots of complaints anyway so they should know what the problems are?

MR BRODY: Yes, well consumer groups, particularly those that provide individual advice and case work, have real connections to local communities and the issues that are happening for consumers. A lot of people do make complaints to the ACCC, but I think even the ACCC would agree that they don't have in-depth connections with communities right around the country, whereas consumer groups are much more local and able to build on those networks and be more in touch, I guess, with what's happening on the ground. In particular, most consumer groups in Australia have a particular focus on supporting the most vulnerable. So, doing active outreach and engagement through trusted community leaders often or through other community groups that might not have a focus on consumer protection, to understand those issues. So, really consumer groups in Australia really extend the work of the regulators in a really efficient way, I think, by being those trusted intermediaries and that that can actually give them great intelligence, in addition to what the regulator might find out through its complaint functions.

COMMISSIONER LINDWALL: Thank you. One question and then I'll pass to Julie. The Australian Consumer Law covers some small businesses in certain cases, for example, buying a motor vehicle and so on. The NFF, in its submission and what we're hearing from them this afternoon, said that purchases of agricultural machinery, which might be \$500,000 or more, should also fall under the ALC. What do you say to that?

MR BRODY: Look, we probably don't have a fixed opinion about the rights of small businesses as consumers. Our function is to support individuals. So, we don't provide advice and assistance to small businesses as consumers. Our function is to support individuals. So we don't provide advice and assistance to small businesses as consumers. Look, the definition of consumer under the Australian Consumer Law has been expanded recently to include purchases up to the value of \$100,000. We thought that was appropriate and were supportive of that change. And I think that has given much greater access to rights under the consumer law for many transactions than existed prior to that for particularly small business and farming communities.

COMMISSIONER LINDWALL: Actually, I do have one more question before I pass to Julie about the French labelling system on repairability, is there anything you'd like to say about it or do you know much about it?

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MR BRODY: I don't know. Brigitte, do you know anything about the French system? No, if you - - -

MS ROSE: No. No, I don't know anything about that one.

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COMMISSIONER LINDWALL: That's all right. I'll - sorry, go ahead?

MS ROSE: I do have just a comment on the first question as well, about the preferring repairers and I think it's important to note that when a person gets stuck in a - in the cycle of repairers, it can actually disproportionately affect people who are experiencing financial disadvantage or other vulnerability. So for example, in the current situation, where it's clearly a lemon car that breaks over and over and over again, if a person is experiencing financial disadvantage, they may not have another car to get to work or to take their kids to school. So it's really - it would be quite a problem, I think for a lot of the clients that we see in our service, if that choice wasn't available where it's necessary.

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COMMISSIONER LINDWALL: Thank you, Brigitte. All right. Julie?

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COMMISSIONER ABRAMSON: Thank you. Now, Gerard, this will be no surprise to you what I'm about to ask you. Based on the work that - the productivity commission has done a lot of work as you know around, looking at different jurisdictions and what remedies they provide and the way that they go about their work. But what I'm really interested in, if you had to say what would be the bear minimum things that you think that all of the ACL Regulators should be able to do, what type of things would you be looking at and you know, we've had some commentary on conciliation powers, et cetera.

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MR BRODY: Yes. Julie, before I jump into what the ACL Regulators could do, I just might emphasise the benefits of specialist dispute resolution forums outside the regulators as well. So we consider that having, for example, ombudsman schemes, it's one of the most, you know, significant advances in consumer protection in Australia over the last 30 years and I think in the last 15 years, we haven't seen the opportunities to build on those schemes in other sectors. So we would like to see for example, a dispute resolution forum like an ombudsman scheme or a tribunal on motor vehicles. And that might exist outside the role of the regulators. And then - - -

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COMMISSIONER ABRAMSON: Like they have in the UK, Gerard.

MR BRODY: That's right. And New Zealand as well, I think.

COMMISSIONER ABRAMSON: Yes, yes.

5 MR BRODY: And the reason I think that is because (indistinct) dispute resolution and the role of the regulator in ensuring compliance and enforcement are related but distinct functions.

COMMISSIONER ABRAMSON: Yes.

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MR BRODY: And it can often be benefits when an entity is focussed on one of them. But that, you know, dispute as a form is really focussed on what it can do to resolve disputes efficiently and effectively and to prevent disputes. Linking, if they identify any underlying issues of non-compliance, they can then make referrals to regulators that can follow up any sort of compliance and enforcement work. But I guess our observation is that the regulators – the dispute resolution necessarily becomes a secondary aspect and not its primary focus and that can lead to under-resourcing and under-focus on dispute resolution by a regulator, if they're twinned together. So I guess that we always like to emphasise the differences between those two things and the benefits of having them institutionally separate.

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So that's the first thing. I mean, in terms of the ACL regulators, I think one of the difficulties that they have if there isn't any sort of – if they've given a dispute resolution function, or a complaint handling function, is they can't – if they have no binding power, is they can't actually force a business to do something on an individual basis for an individual, only they can use their compliance and enforcement tools, then you know, businesses tend to learn that. And, you know, people end up having to go to tribunals if they want to get any outcome and get quite dissatisfied with the regulator as a result.

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So look, so we are generally supportive of greater tools for the regulators to have effective dispute resolution in absence of a specialised dispute forum. So things like the New South Wales Fair Trading Directions Power we think is a good thing because it is a binding direction. And as far as I'm aware, you know, there has actually been limited directions, but it's the threat of direction that makes the most difference, that the business then complies with the guarantee or what the consumer complaint raises. Whether it's that or conciliation, I think it's more important that the dispute resolution forum, whether it's outside or inside the regulator, has a flexible tool to bring the right dispute resolution tool to resolve the matter, whether it's conciliation, mediation, whatever it is, that they should have flexibility around that to sort of resolve disputes efficiently and effectively.

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45 COMMISSIONER ABRAMSON: It would be helpful, Gerard, and thanks for that. It would be helpful in your written submission, which I'm assuming that you'll be making another one to us, to explore that a bit more, like, you

talk about conciliation, you talked about directions, powers, et cetera, so that would be quite helpful to us.

MR BRODY: Okay.

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COMMISSIONER ABRAMSON: The second thing I wanted to ask you about was warranties. You'll note that we had some very specific statements around warranties. The first one being something in the text which alerts a consumer to the fact that independent repair does not void their consumer law rights. Sorry, I put it the wrong way around. It's that getting an independent repair does not relieve the manufacture of the obligations under the consumer guarantees. So that was one of the things that we've put, but the other thing is that we asked a bit about Magnuson-Moss, whether we should go further on that and I'm just interested in your views about that, because as you know, it prohibits manufacture warranties from containing terms that require consumers to use authorised repairers.

MR BRODY: Yes, we would support the going further and more in line with what your note states and I think in the EU they have as well to actually prohibit those terms. And part of that is understanding the way in which consumers engage with businesses and reliance on written information can often not meet the end that you're seeking. You know, they might actually write there on the warranty, that you know it doesn't actually influence your ACL guarantees but either people don't read it or they don't understand it or they rely on a verbal representation to think that they might override that, you know, that people are left with the impression that they've got to use this particular – you go back to the manufacturer or the repairer for any repairs rather than choose a repairer. So I think that if you want the outcome, that we're actually trying to improve access to repairs and create a competitive repair market place, than restricting those sort of terms would be a really important measure.

COMMISSIONER ABRAMSON: One of the things that – thanks, Gerard. One of the things that's been put twice in response to that is for manufacturers to say to us, well, we might be more – less generous with our manufacturer warranty. Now, we've been asking for evidence around that and it's probably not exactly your space, Gerard, but that's what's been said to us, but you've been observing warranties over time, so I'm just quite interested in your actual experience.

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MR BRODY: I mean, our observation is that warranties can be pretty worthless in many cases in terms of what they provide over and above their consumer law. Or they could contain a range of other restrictions or design features that mean that they don't offer a lot of value. So you know, we've been particularly concerned about, you know, retailer warranties in car yards that are – that sort of overlap even, a manufacture warranty. So people are enticed to end up with two warranties. That's – that seems to us to be a

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problem. And that we would like to see a ban, an overlap with manufacturer's warranties. We see that some of these warranties have limitations on them, so you know, the servicing requirements might be particularly retail warranties again, over and above what a manufacturer requires, you know, or suggests about its vehicle for example, so more frequently they're recommended by the manufacturer of the car. There can be some of the mechanical risk products that are out there, they have maximum claim limits on different things that go wrong with the car that are likely to be far lower than the costs of those repairs. So I guess that you know, there are so many factors that bring us to the conclusion that often these warranties are of pretty low value to consumers and so I would say that it's good that the Commission is asking for evidence to back up both claims.

COMMISSIONER ABRAMSON: Thanks, Gerard. The other final thing I wanted to ask you about is that a lot has been made to us about the situation where there's an independent repairer who does work and there's a manufacturer and the work is not of a particular standard and the consumer loses out and that would result in arguments between manufacturers and independent repairers and the consumer will be left to try and enforce their remedies there. I'm just thinking about your experience and I'm just wondering if you see much of that. I'm not talking about manufacturers and suppliers disagreeing as to who has to fix a consumer item, but where there's a presence and an independent repairer.

MR BRODY: I don't know if we've seen to that, Brigitte, I don't know if you could answer that question? But we haven't – I mean, generally, people will be – if an independent repairer has done something to a product and that service isn't meeting the customer's needs, they would raise a complaint with that repairer. So that wouldn't necessarily go back to a manufacturer in that circumstance, I don't think. Brigitte?

MS ROSE: Yes, I don't – I don't know that we've seen much of that – but what it makes me think is that that's part of why that expert evidence is required when a person goes to the tribunal and unfortunately that does cost \$1000 or more, which is why there's – why we're really saying that this evidence should be free. But I would think that expert evidence would help in resolving that as well.

COMMISSIONER ABRAMSON: I think we heard yesterday – no, thank you for that. We heard yesterday, I think, that with a motor vehicle's (indistinct) that's coming in that there is actually an independent – there are independent experts within that. I wasn't quite across that. So I don't know if that - - -

COMMISSIONER LINDWALL: (Indistinct words) the Minister can appoint a scheme administrator.

COMMISSIONER ABRAMSON: Yes, yes.

COMMISSIONER LINDWALL: Who are experts, or who can be an expert, yes. Yes.

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COMMISSIONER ABRAMSON: But I don't know if that's going to help the individual consumers that's probably only in the context of that scheme.

10 MR BRODY: I think that's right, Julie, if my understanding is – that that's really a scheme that governs the relationship between repairers and manufacturers really and it's not really going to – consumers won't directly interact with that scheme. What we think is needed is assistance for consumers to come – overcome the barrier, the evidence barriers, when it comes to raising disputes around breaches of consumer guarantees. At the moment, you know, if you go to a tribunal, the burden is on the individual to make a claim and so you have to bring along, you know, your expert evidence.

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COMMISSIONER ABRAMSON: Yes.

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MR BRODY: And that, as Brigette says, costs, you know, often out of reach for most people and they give up. We at Consumer Action pay for those repair reports often to help people make those claims at a small proportion. And it's only with that, that sort of evidence, as the – well, would we even advise a consumer to go to the tribunal? We would tell them, don't go to the tribunal unless you can have that evidence because you won't succeed.

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COMMISSIONER ABRAMSON: Yes, and I understand that would be part of why you're very supportive of an ombudsman's scheme as well, because we've seen in financial services that they're quite able to call for a particular support on particular technical issues. Particularly in insurance and super and things like that. Thanks for that. Just one final question. It would be very useful in your submission if you might set out to us what you see the benefits of alternative dispute resolution are, because we talk about it in the abstract but you've got the direct experience of working with consumers and you'd be able to prepare the type of results that they can get out of alternative dispute resolution as opposed to just walking away from a particular problem, that will be very helpful.

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40 MR BRODY: Sure Julie, we'd be happy. We'd be happy to do that. And just one I might mention now, because I think it's particularly important when we compare, say, an ombudsman scheme with going to a tribunal, is the work that an ombudsman scheme can do in identifying and resolving systemic issues. Tribunals really have no role or ability to refer things back to regulators. I don't think that ever happens. And so you know, ombudsman schemes have a particular expectation of them, is that they look to the underlying – see has this issue occurred for other consumers? And

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5 should we be resolving it for them? And does it mean that there's a broader systemic issue that requires some other regulatory action and therefore they would refer it to a regulator. That's a really important addition which could help be a sort of a self-fulfilling thing to help make the market work more effectively over time.

COMMISSIONER ABRAMSON: Thank you, Gerard. Back to you, Paul.

10 COMMISSIONER LINDWALL: Thank you, Julie. Gerard, on ombudsman schemes and one of my previous enquiries was telecommunications. I dealt with the telecommunications ombudsman and – they were very effective from what I observed and we know there's a banking ombudsman scheme. How many ombudsman schemes are there in Australia at the moment? And are they all funded by industry or are they a different funding efforts, do you know?

15 MR BRODY: Yes, so in terms of how many, that's a good question, I mean, there is – the super ombudsman now is the Australian Financial Complaints Authority which brought together the banking ombudsman (indistinct words).

20 COMMISSIONER ABRAMSON: Yes, it (indistinct words) review, Gerard.

25 MR BRODY: That's right. That's right. So that's the biggest one. Also, the telecommunications ombudsman in nearly every state, I believe there's an energy and water ombudsman to cover utilities.

COMMISSIONER ABRAMSON: Yes.

30 COMMISSIONER LINDWALL: Yes.

35 MR BRODY: There is in Victoria, a public transport ombudsman which is also funded by industry to resolve complaints between consumers and public transport user/ operators. There are some – they're mostly funded by industry, but there are some examples of some different models, so for example, the VET student loans ombudsman.

COMMISSIONER LINDWALL: Yes.

40 MR BRODY: Was established really as part of the scandal that happened in Vocational Training marketisation a few years ago. That is actually a constituent part of the Commonwealth Ombudsman.

COMMISSIONER ABRAMSON: The Commonwealth Ombudsman. Yes.

45 MR BRODY: That's right. But it operates in a similar way to many of the industry based ombudsman, but it is part of the Commonwealth Ombudsman, so there are slightly different models. There are other forums as well that

become more statutory, if you like, so in Victoria, we have the domestic building dispute resolution Victoria which is again – it's not an ombudsman but it functions very similarly in terms of a dispute resolution forum that is outside the court, tribunal system.

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COMMISSIONER LINDWALL: Okay. But for the motor vehicle one which you're just talking about now, you think an industry funded one would be the appropriate way or?

10 MR BRODY: Look, we're very supportive of the industry dispute resolution schemes that are funded by industry. We think that that helped provide incentives to industry about resolving complaints effectively because, you know, they will bear the cost of resolving the disputes and encourage them to, you know, to reduce disputes as far as possible. And to resolve things earlier. So yes, and that model you know, it's got a well – stand the test of
15 time if you like – a well-developed governance framework which involves, you know, both consumer representatives and industry representatives and some independents there as well, so we think that's really important. They have things like regular independent reviews of the scheme which are
20 transparent processes which enable you know, some external accountability and reform to support continuous improvement of the schemes. And they often, you know, produce great reports and statistical information about what's happening for consumers in a particular market that can inform, you know, the broader marketplace about what might happen.

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COMMISSIONER ABRAMSON: Can I just ask you one final question on that. One of the issues – like it seems strange when we look at it, that no scheme has developed with motor vehicles, when you look at the number of complaints all of the regulators handle, however, it has been put to me that
30 part of the issue relates to the fact that motor vehicle regulation is still a state-based responsibility and that has been one of the difficulties (indistinct) financial service (indistinct) of course is one particular – there's (indistinct) – have you seen that in the past? There's perhaps a blocker of an ombudsman in this area.

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MR BRODY: It's a good question, Julie. I think it could be part of the issue that is a state-based function and there probably hasn't been you know, necessarily the policy priority or capacity within states. I mean, here in Victoria, there was an access to justice – civil access just to view about five
40 years ago. And there was a specific access just to view about five years ago and there was a specific recommendation in that review to create an alternative to dispute resolution forum for motor vehicles in Victoria.

45 COMMISSIONER ABRAMSON: Yes.

MR BRODY: Unfortunately, their response from the government was that they would consider it further and not much consideration, I'm aware of, has

happened. So if it has, it hasn't progressed to any outcome. So I think it's been considered from time to time but it hasn't been progressed unfortunately.

5 COMMISSIONER ABRAMSON: Okay. Thank you. And thank you so much for your help with the enquiry.

COMMISSIONER LINDWALL: Now, I've just got a couple of – we'll just go over a minute or so – a couple of quick questions. One about people have
10 been calling for some – or some people have been calling for higher design standards to make products more durable and easier to repair. And the potential of that could add costs to the product and it might increase the price. So - reflect on that impact on lower impact and the disadvantaged perhaps?

15 MR BRODY: Yes, I think that's a real challenging query, Paul, because you know, the affordability of products is important but of course, if products are going to not be durable and break earlier, particularly if they can't be repaired, then that – yes, and they have to be replaced, at consumer's costs, then – the overall cost to consumers is significant. I think that setting
20 incentives that products are durable is important, even for low income and vulnerable consumers, so they can expect that you know, products will lost.

I think there's focus primarily – solely on a price to find, I guess, the market competition does create incentives to perhaps reduce durability, because
25 they'll produce things that are cheap that will break and I think we see that in some areas.

So I do think that they're – you know, as a potential market value there, that product standards to enhance durability are important. Of course, that the
30 implementation of that has to be balanced to ensure that products, you know, are affordable.

COMMISSIONER LINDWALL: Okay. And one question on third party repairers. You might have been here when Techtronic and AI Group both
35 testified and said that they're poorer quality and they lead to big problems (indistinct words) and safety problems and security problems so did you have any comments on those claims.

MR BRODY: Look, I don't think we do, Paul. I mean, I think that
40 consumers have, you know, complaints with repairers whether it's done by the authorised manufacturer or their repairer or an independent repairer. And we don't have any data to suggest that you know, the consumer outcomes are worse under either channel, unless Brigitte, you want to add anything to that? No?

45 COMMISSIONER LINDWALL: She shook her head. So. All right. Well, only other thing then if you – in your submission, if you could – if you have

any comments upon the UK Super Complaints Scheme and what's your –
what – if we litigated that way, what are the lessons that we should learn
from it and maybe we can have a better system than that, perhaps. That
would be great. All right. Well, thank you very much, Gerard.

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COMMISSIONER ABRAMSON: Thank you so much.

COMMISSIONER LINDWALL: And Brigette Rose?

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COMMISSIONER ABRAMSON: Brigette. Thank you.

COMMISSIONER LINDWALL: We'll break for lunch. And we'll resume
at 1.30, so thank you everyone. Have a good lunch.

15

LUNCHEON ADJOURNMENT

[12.33 pm]

5 COMMISSIONER LINDWALL: All right, Clare, well, would you like to introduce yourself and give a bit of a statement if – Matt, are we ready on the transcripts? Thank you.

10 MS HOBBY: Okay. Thanks, everybody. And I appreciate this opportunity to present to the Inquiry this afternoon. My name's Clare Hobby, I'm from the TCO Certified Sustainability Certification for IT Hardware and as you may have heard just now, I'm bringing maybe a little bit of a different context to the inquiry presentations today in that I'm not typically based in Australia, but we are a global certification and Australia is somewhat of a new, very interesting space for us to start having more of a presence in
15 considering some of the right to repair discussions and sustainable procurement activity that's going on.

20 So I thought it would be interesting today to at least share what we see everyday in the IT supply chain, what we see a little bit more globally when it comes to right to repair and hopefully some of those insights can help inform some strategic policy and free market initiatives that compliment each other moving forward in the Australian space for repair of ICT.

25 So for context, I thought it might be interesting just to give a really quick rundown of our organisation and our certification so that you understand the scope that we deal with. I will not be referring very much to specific Australian legislation or frameworks, regulatory or otherwise that are in place, simply because we are a global certification and I wanted to try and bring that perspective to the discussion.

30 TCI Certified is a sustainability certification for IT products as I mentioned briefly. We've been around for just on 30 years doing this work and typically how we operate is somewhat of a bridge between the IT industry and usually large scale IT procurement. We set quite ambitious criteria that
35 cover environmental responsibility, repairability, product durability but also supply chain social responsibility, so things like ethical supply chains, human rights, working conditions and the like.

40 Manufacturers and IT brands choose to certify any number of their products to our specifications. We then go and test products, we assess factories, we look very stringently at doing independent verification around all the criteria that we set. Purchases, large-scale procurement officers then typically use TCO certified freely, as they would any co-label for example. They insert it in policy, imbed it in tenders, use it fairly freely to specify more sustainable
45 computers and other digital devices that they source.

We are owned by a non-profit and our revenues originate from the IT brands that apply for TCI Certified for their products. So today, I want to share a few perspectives on right to repair which are largely based on the submission that we – that we entered in the first round of comments for the inquiry. And
5 I'd start by saying the right to repair from our view is one of the most critical enablers of the circular economy at its core, meaning we need to keep the IT that we already have in use for as long as possible at its highest possible value.

10 So if we start with this fundamental principle, we're seeing a few very clear targets that we need to pay attention to and the first one is reducing lifetime emissions and repair really plays very well into this. Last year, we did a study of a series of laptop computers to find out where the bulk of the carbon
15 emissions lie and we confirmed that up to 80 per cent of the lifetime emissions of a computer are happening in the manufacturing phase. So before it even lands on your desk.

So what we need to be thinking about is disrupting the frequency of manufacturing of new IT products. We need to slow down that rate of
20 lifetime emissions. The second target that I think we need to keep in mind when we're talking about right to repair is again, using our existing products longer. And I think here we need to move away from this typical three to four year use cycle that we're seeing, particularly in the public sector of the Corporate Space, where IT has got very, very good at delivering good
25 products at a low cost, at a high frequency and we've kind of bought into this whole linear approach to the sector. We're seeing more and more procurement contractors extending that use phase now to five to six years, implementing extended warranties and extended service agreements with mixed results, but we need to find different business models and in different
30 ways to extend the use of what we're currently using.

And one example that I think is really interesting to look at in a study we did last year, was looking at, you know, what – how much are we making the most of that high value longer lifetime? And if we look at printers, that's one
35 of the most glaring examples, I think of the work that needs to be done. And over 20 per cent of printers in use today are used less than three per cent of their usable life before switched out to a brand new product. Either through a lease, or an ownership contract, so by longer use, we're talking about not only the initial use phase but also facilitating greater access to a replaceable
40 components, repairable products for things like battery, memory, key components that can be replaced and driving that function on a secondary market for repair and refurbish devices.

Thirdly, I want to touch on a point that was brought up earlier and the idea of
45 influencing product design, and I can't emphasise that strongly enough based on what we see in the market every day. We need to be influencing a right to repair and repairability before the products land on the desk top and need

repair. So the linear business model is promoting product design often for just one user.

5 And a lot of the products we see coming through our application process reflect that. And one example is phone headsets that many of us might be even using today. They're often including soldered batteries which are difficult to replace but they don't need to be. We're starting to see, maybe through our criteria or other market forces some head sets are starting to be designed with replaceable batteries that don't need that (indistinct) process.

10 So what we're seeing is that volume demand from institutional procurement is starting to drive product design that allows for better repairability in the longer term. And I think we also need to be very aware of the lack of circular mindset around electronics in particular. We see even in volume procurement there isn't enough planning up front for either circular design or extended product life or repair. Both at the industry level but also at the procurement level. We still are struggling with this idea that we get the product on our desk top and that's when we start thinking about repair. But then we have very little opportunity to influence.

20 Moving onto some barriers to the repair of electronics and I won't go into a lot of detail, a lot of what needs to be said has already been said, but I will offer a few key points again, from our experience in a certification world and getting into the supply chain and product design space with industry.

25 Starting with batteries, clearly there's been a lot of talk around batteries. There's still a widespread perception that a product needs replacing once the battery has died. This is largely not true. But I also want to point out the current issue with incorrect declarations of battery life. We want to extend the life of products through longer battery life and replaceable batteries. We've seen a number of laptops that have come out in the last couple of years that are declaring very many hundreds of full battery cycle lifetimes, then when we go and test those products, the actual battery life is around half that.

35 So obviously from a category and product management perspective once it lands on the desk top, this is largely problematic. The price of repair has been dealt with quite commonly. Quite, quite a lot in the conversation, I won't need to go into that very much, but one example, we do see is when products are sent to the manufacturer for repair. There is a tendency sometimes to replace larger component systems rather than the actual component that has failed. For example, when you might be actually needing to replace one chip but instead what might end up getting replaced is the entire motherboard and the CPU and the RAM instead of just replacing that faulty chip, so that's definitely an aspect to consider, what are we actually replacing and what does the price of that actually require.

Component availability has been discussed at length. We are seeing right now clearly a disruption in certain component supply due to the pandemic. On our experience that points us in the direction of an even stronger need for right to repair, likely the not - not the last pandemic we'll have to deal with so we need to be able to make sure that we can refresh, repair, refurbish products to drive resiliency and business continuity as well. Right now we're seeing delays in certain chips for one to 1.5 years, particularly coming out of Taiwan, so this is something for resiliency moving forward.

Schematics availability and repair manual availability have been dealt with at length, but I will just summarise by saying we support the availability of both. In our system currently we require that any product that has our certification on it is backed up by a freely available repair manual online, and key components that are available for replacement for every certified product. One thing I do want to mention in this, the barriers section, is the idea of false product claims. We do a lot of verification work as the certification, and we are still battling greenwash in the ICT space these days. I think there is still quite a lot of messaging going on from industry that certain products are not safe to repair, and I know there was an earlier conversation about laptops - are they safe, are they not safe to repair? We see there's quite - - -

COMMISSIONER ABRAMSON: Excuse me, Clare.

MS HOBBY: Yes.

COMMISSIONER ABRAMSON: You might be kind enough to explain greenwash. I think I know what it means but that would be helpful.

MS HOBBY: Yes, absolutely. I would categorise greenwash as being false product claims related to environmental or sustainability aspects. So they might be - might not be verified. Some of them might be true but many can be misleading, so - and I think on the topic of greenwash it's really interesting, because so much of what happens in the IT supply chain is very hidden from the consumers, from the volume buyers, so more and more they are asked to trust the declarations in the product information that comes straight from industry, and there are a lot of shortcuts, a lot of loopholes because of the complexity of this category.

COMMISSIONER ABRAMSON: Thank you.

MS HOBBY: Thanks. So moving on - - -

COMMISSIONER LINDWALL: You were saying in a comment earlier about a laptop repair.

MS HOBBY: Yes. Was it a question?

COMMISSIONER LINDWALL: No, you - - -

COMMISSIONER ABRAMSON: No, you commented on that you'd heard other participants.

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MS HOBBY: Yes. Sorry, I got - - -

COMMISSIONER ABRAMSON: No, that's my fault because I interrupted you, Clare.

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MS HOBBY: No, that's lovely. So, I just wanted to conclude there that we've seen a lot of discussion from industry that it's not safe to repair certain products, smartphones and notebooks notably, but also things like monitors. You know, these are low voltage products on the whole. The safety or repairing these products is really - we don't see that as being very high concern. There are obviously other concerns, but in those particular categories I don't think the safety issue is quite as drastic as sometimes we are led to believe.

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Impacts of e-waste - I won't go into detail there. Clearly it has been heavily explored and needless to say we support the reduction of e-waste, but I think where the conversation needs to go even more is moving that conversation up the value chain to influencing product design. E-waste conversation begins at product design and we need to find the drivers and the voices that can influence product design at scale, and that's what I wanted to just conclude with, was maybe a little bit of a different take on the idea of the consumer.

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And if we talk about influencing product design I want to just start with an anecdote that we hear all the time, and we speak to largescale procurers, we speak with consumers, we speak with IT brands and manufacturers every day, and we ask them "What makes you apply for our certification?" as an example, and their number one response every time is it's in tenders, public tenders, it's in large procurements from our corporate customers. That's when the change starts to happen, is when we can harness and aggregate the leverage and the budgets and the demands of organisations, large consumers that have the mandates to incorporate ESD and sustainability into their ICT procurement, and I would encourage the inquiry to consider that factor.

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As much as we want the consumers to really get energised and really take action in the space, there are so many studies about consumer behaviour in ICT purchasing that say they want more sustainable options, they want to be able to repair, but what actually happens at the point of purchase is that it's still looks, features, feel, colour, those kind of factors that really drive the consumer more and more, whereas we have these very largescale purchasers that must take sustainability, lifecycle, waste aversion into account, and we're beginning to see those priorities and those mandates play out in how they ask for reparability, longer life, waste aversion directly with the brands, and I

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wanted to just maybe offer some illustration of what we're seeing globally from that very powerful dialogue that happens.

5 And I would say that peers - in that context peers and collaboration and aggregation are really very important to consider, and while some government and corporate buyers can represent large - contracts that are large enough to influence a brand directly, a lot of them aren't. We do a lot of work in Europe and I would even take the Netherlands as a very forward-moving example on this. They are very aggressive on reparability, on 10 circular product approaches, but they are not able to influence product design themselves, even at the national level. So they're doing a lot of very proactive work to reach out to their Nordic neighbours, to the UK, very interested in talking to potential peers around the world to aggregate and to unify a voice directly to influence product design.

15 So some examples that we've seen: there's quite a lot of contracting going on in the public sector particularly that asks specifically for a certain percentage of repaired and refurbished products to be delivered as part of a new product procurement, and we're seeing 20 to 30 per cent at the more forward-moving 20 level, and this is in a negotiation directly with the brands, that they have to offer a certain amount of refurbished product. We're also seeing a move towards longer use cycles for an initial use. Five years is becoming more standard.

25 Some procurement organisations, even in the United States where we are not known for our long product cycles, are able to negotiate directly with the brands for longer warranties which is not a simple proposition and not always the best approach, but it's a step in the right direction, and they're also putting clauses in that they intend to reuse those products after that five-year cycle, 30 so either they need to be able to refurbish them and sell them through a secondary market, which also brings new demands on data sanitisation and data security once they are - once they hand those products on. So these are conversations that have to start way ahead of that procurement actually taking place.

35 And there is a growing market for used and refurbished and remanufactured IT in the corporate space and in the public sector space, and that's giving rise to a lot of really interesting repair industry opportunities but also social benefits. We're seeing quite a lot of communities in our markets that are 40 using collection, repair, refurbishment as an employment opportunity for new citizens, younger people in the workforce, creating some really interesting circular job opportunities as well. And finally, the redeployment of used products is a really huge trend too, so assessing the IT needs in the organisation, redeploying used product to lower computing intensity tasks, 45 either in your own organisation or maybe in the wider community at primary schools and the like. So, really, in summary, volume purchasers have the power to extend the life, ask for repair, create repair industries that also

impact the brands straight off the bat. And I would really encourage that the inquiry finds maybe a parallel pathway here to good policy to really harnessing that power as a model for consumer – maybe a trickle down to consumer engagement as a follow on.

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And very finally, I just want to touch briefly on the idea of a repairability index which has been discussed quite a lot in the inquiry and to repeat what a few voices have said before me, that I would strongly encourage taking a look at the French repairability index as a baseline and one main reason for doing that is, yes, not reinventing the wheel. But what we see directly with the IT industry is that it is so much more effective if we can unify the ask of them. When we start creating desperate criteria or national level criteria, it is very inefficient for industry to respond to that in several different ways. The more we can aggregate unify that voice, the more effective response we receive and the faster we're able to drive that progress at an ecosystem level.

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So, I hope I have been able to maybe offer some global input on this very important discussion and very happy to take any questions you may have.

COMMISSIONER LINDWALL: Thank you, Clare. When you said before that 80% of the lifetime emissions are at the production phase, is that particularly evident in certain types of ICT, like printers versus laptops versus main frames?

MS HOBBY: We're seeing it fairly much across the board for computers. Printers' servers I think are similar, I don't know if it's exactly the same though.

COMMISSIONER LINDWALL: Because I would imagine that a printer probably uses a bit more electricity than a laptop or something like that and thanks for finding out the voltage of a laptop. And how, pushing up, how does this go against (indistinct), because of the doubling of computer capacity every three years or something like that? So, and I hear what you're saying about pushing things to lower demand, older computers down to lower demand uses, but on the other hand we get new software which has either more intensive demands on CPUs and RAM and so forth.

MS HOBBY: Yes, I mean I think the software question, we're actually doing some research in that right now, so I would be more than happy to get back with you once we have some findings on recommendations of software. But clearly, it's a hot topic and I think that's why the redeployment thing is – there is still that initial use phase of – the sweet spot seems to be somewhere around five years before the software issues start to have an effect and that's why they've been mostly older products have been either moved to a refurbisher or maybe to more lower intensity tasks.

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COMMISSIONER LINDWALL: So, what you're saying is going from three to five years is quite a substantial change.

5 MS HOBBY: It is quite a substantial change but it's a very doable change and I think what we've seen is that a lot of the purchasers we talk to is that there was a lot of three-year replacement cycles just out of perception, and I was in a conversation, when were we able to travel. About a year and a half ago. I was in a conversation with a very large European buyer and a very large brand. I won't mention either, but it was a fascinating conversation and
10 the buyer said, 'Well, when are you going to deliver us more circular longer-term solutions?' And they said, 'Well, that depends when you start asking for it'.

15 So, this five-year cycle is very doable. Interestingly, in the server space, we're seeing a hard three-year replacement cycle, particularly with the hyperscalers. There is a perception that a server is a three-year product, where they're actually designed to last for 10 years. So, because of the data security concerns, a lot of servers are being decommissioned and actually shredded and the same with laptops, particularly in some healthcare settings,
20 it's purely because of data security. So, I think that's also a topic that needs some investigation.

COMMISSIONER LINDWALL: Yes, that's a good point on that. Could I ask your view of why, and we won't name any brands, but why are some
25 major brands putting out products like you mentioned, I think the little earbuds type headsets.

MS HOBBY: Yes.

30 COMMISSIONER LINDWALL: So, with batteries that can't be replaced you would think that the pretty obvious thing to not do, given that you would think there's blatant demand for replacement of batteries.

35 MS HOBBY: I think if you take a headset, for example, that has often been classified as a disposable product and so I think we're a little bit – there's a learning curve going on there through call centers and the like, that you can actually replace these components and that is a learning curve.

40 COMMISSIONER LINDWALL: People think that they own a torch, they can screw out the batteries and replace them, so I don't know what the difference is there.

MS HOBBY: I think the difference is hygiene too. I think because it's close
45 to the ears, it's been an age disposable product, yes.

COMMISSIONER LINDWALL: Yes. Julie.

COMMISSIONER ABRAMSON: Thanks. And Clare that's been really interesting. I wanted to ask some questions based on your international experience. So, you talked about the procurement processes which are overseas regarding refurbishment and reuse. Of course, our principal recycling scheme, the NTCRS, does not incentivise that, which is one of the things that we've suggested. So, when you were overseas, what other levers are there that are incentivising refurbishment, apart from a sentiment that we need to do better in that space?

MS HOBBY: Yes, I think there's actually some good data coming out of Denmark where they've actually computed cost savings related to refurbished products. They do a combination of longer use and a portion of refurbished products. So, they've just gone ahead and calculated cost savings related to that. Also, the secondary markets, there's a big push right now to find, where is the sweet spot of use, where we can capture that embedded value that remains in the product, sell it onto a licensed refurbisher, one of the R2 or one of those firms, and recapture some of that value? So, I think a lot of it is follow the money, whether you are saving or you're able to gain some income from selling it after a certain point in time.

COMMISSIONER ABRAMSON: We'd be interested in your – I'm taking the liberty of suggesting you might give us another submission, but interested in any of the overseas policy drivers because it's one thing, for example, in Australia if you change the APS or the public service procurement policies, but there would be a whole lot of other things would have to happen and you talked a bit about that because you said well part of it is how people perceive what the lifespan of a product is and needs to work in civil construction and there was an old maxim that nobody got sacked by getting one of the big manufacturers but if you went out and got something a bit different, then that was a real problem. So, any other drivers, we'd be interested in that.

MS HOBBY: Yes, I'd be happy to look into that Julie so that I can give you a well thought out response of some of those policy drivers and maybe give a more global overview for you. Would that be helpful?

COMMISSIONER ABRAMSON: It would be very helpful and what I might ask is Sophie, who I'm hoping is on this listening in, Sophie will get in touch with you Clare. So, thank you for that.

MS HOBBY: Yes, I just to preface that Julie, because I'd like to check in with some of the refurbishers that we know well and just see it from their perspective as well, give you a more complete answer.

COMMISSIONER ABRAMSON: Thank you Clare. It's been a really interesting presentation, thank you.

MS HOBBY: Thank you all.

COMMISSIONER LINDWALL: That has been very helpful, thank you Clare. Take care.

5 MS HOBBY: Thank you. Same to you.

COMMISSIONER LINDWALL: So now we're moving onto the National Farmers' Federation, Sue Middleton, and Ash Salardini. Are you both there?

10 MS MIDDLETON: Hi Paul, I'm just trying to get my video working.

COMMISSIONER ABRAMSON: I could see you before, Sue. So, we know you're there. Don't tell us it's the NBN connection where you are.

15 COMMISSIONER LINDWALL: There should be some sort of official review on this. Anyway, welcome Sue and Ash, if you'd like to introduce yourselves and give a bit of a presentation, that would be perfect.

20 MS MIDDLETON: Thank you Paul and Julie. So, on behalf of the National Farmers' Federation, we'd like to thank you, the Productivity Commission, for exploring the potential for the right to repair for ag machinery in Australia. This is a really critical issue for Australian farmers.

25 So, I'm a farmer from Western Australia and I chair the Economics of Farm Business Policy Committee for NFF and I'm presenting today with Ash Salardini, who is our chief economist and head of trade for NFF. And I'm presenting today with Ash Salardini who's our chief economist and head of trade for NFF. So what we'd like to do is to do a brief presentation and then just open that to questions and let you ask us the questions that are really
30 important for you to understand.

We believe the restrictions placed on the repair of our machinery including those relating to repairs by the farmers and third party repairers is placing an unreasonable cost on Australian farmers. And those costs go well beyond the
35 hire cost of repairs. What we want to demonstrate is that it causes in small to medium size family farms significant delays in having machinery serviced and which for a grain growing business, can mean the difference between making a profit in any production year (indistinct words) so it's really quite critical. Timeliness around being able to service seeding machinery which is
40 putting the crop in, fertilising, applying pesticides and then taking the crop off which is harvest, are all really time critical events. And so any delays cause those businesses significant losses.

45 Farmers also base costs where they have to void warranties to make timely repairs for their machinery outside of authorised repair networks when there isn't an availability and without a right to repair for agricultural machinery in Australia, what we're in effect doing is creating quasi-monopolies for very

expensive agricultural machinery based upon the availability of authorised dealers and repairers and the dealers are becoming far more concentrated and there's far less choice for farmers in achieving any competitive pressure around repairs. So restrictive repair networks not only reduce the availability of repairs (indistinct) and increases the cost after market services, but they also narrow the choice of machinery that's available to farmers in a geographic area, so that's a very negative outcome for productivity and competitiveness of the farm sector.

And we understand that the Productivity Commission's seeking more evidence as to those costs and NFF and other agriculture representatives have - obviously were provided examples and were provided case studies but we will help you with disseminating surveys and any other material amongst the farming communities that have quickly filled a body of evidence around cost for you.

However, we did want to just outline the principles again today. I know we've talked with you before, but we wanted to do this again just to establish that there's a broader set of principles that we think could work in terms of who we would progress and how we can work with key other people in the supply chain for farmers.

So we are all obviously having read the draft report, we are concerned that there is, I guess - I guess, there's different opinions, but we don't want to waver on the need for the right to repair. Current regulatory provisions do not provide farmers with adequate - with adequate protections with respect to repairs. So two keys ones, the farm machinery - the farm machinery for the most part is not covered by the consumer (indistinct) provided for in Australian Consumer Law because of the hundred thousand dollar purchase cap for eligible products. Most of the machinery we're talking about far exceeds that.

And there's a limited protections afforded by Part 4 of the Competition Consumer Act 2010 because it only provides a remedy where the right to repair issues are also end competitive. And that leaves a bigger range of potential harms outside of the scope of those protections. We also refute the notion put forward in the draft report that the benefits of a right to repair are outweighed by significant compliance costs and unintended consequences and we'd like to see the same evidentiary burden applied to those compliance costs and unintended consequences of a right to repair as we are providing with the cost of respective repair practices on farmers.

So we believe the compliance costs and unintended consequences have been overstated. And we would like to see that there is, I guess, the same principles applied in terms of being able to quantify those costs and to make sure that those costs are determined and demonstrated.

5 Furthermore, we think, in terms of how we would go forward that many of
the costs and the consequences can be fully or partially mitigated by a
measured and well-defined right to repair regime. So concerns around safety
and compliance costs can be mitigated and we believe any right to repair is
10 limited by genuine concerns. So the NFF has discussed this matter with the
Tractor and Machinery Association of Australia and as an integral step, the
working group with the dealers, the manufacturers, the third party repairers
and engine users could be set up by identify the types of repairs that should
fall under a right to repair regime and those where there may be genuine
15 safety concerns.

20 So the NFF believes that the onus should be on the manufacturers to
demonstrate their safety concerns are a linked to a right to repair. The NFF
are also clearly – we’re all part of a supply chain together – so we also want
15 to make sure that the reasonable right to repair regime should not place
needless risk on manufacturers and dealers because you know, we believe
that, you know, the – however, we progress needs to be fair for all the parties.
However, we think fears of public safety issues and cyber-security breaches
are red herrings.

25 Any right to repair regime would not entail an open access data regime where
there’s a free for all with respect to consumer’s repair data. A properly
defined right to repair regime would put consumers in the driving seat in
providing access to their data where they would see benefit and the use of
20 data would be governed by the development of codes on the use of
examination of that data.

30 We think to suggest farmers cannot be entrusted with the power to control
their own data with respect to their machinery is quite frankly offensive. So
consumer data access regimes have been created in highly sensitive sectors
such as banking, finance, electricity, markets, and public safety and cyber
security fears have not stopped the introduction of consumer data rights in
those sectors.

35 And we’re certainly not suggesting that farmers’ third party repairers be
provided access to data and (indistinct words) machinery and the right to
repair does not equate to right to quantify. So, we’d like to thank the
Commission for the opportunity to present on this important matter and we
40 look forward to your questions.

45 COMMISSIONER LINDWALL: Thank you very much, Sue. Could I ask to
start off with, given that there’s only been – there’s recently been an
executive order by the Biden administration on the right to repair, which
influences among other things, I think it’s 52 different areas – I looked at it.
One of them is agricultural machinery. And given that a lot of agricultural
machinery is made in the United States, would that – will that directly benefit
Australian farmers, do you think, given that presumably, the manufacturers

will have to cope within the regime in the United States. So it shouldn't be much of an extra cost in Australia.

5 MR SALARDINI: What I would suggest, on that point, is that yes, it would reduce the compliance plus any right to repair in Australia. So you know, there is only five or six, potentially seven big manufacturers to your point and many of them are in the United States and having to adhere to a right to repair regime by rights, reduce compliance costs because there wouldn't have to have the processes in place and I guess where possible an Australian right to repair regime should underline, where appropriate, what – within a global setting is we are genuine about reducing compliance costs and I think that's one of the issues we have is that compliance costs can be mitigated and to your points, some of these processes that need to be put in place will have to be done so on a global level because this movement is not an Australia-specific movement. It's a global movement and particularly with farm machinery, the United States President has obviously weighed into this issue and specifically targeted farm machinery as an area for right to repair.

20 COMMISSIONER LINDWALL: Now, I think you've said in your submission but it's good to say it in testimony, that in terms of the experience of the NFF and of third party repairers, in terms of their quality and standards of safety and so forth, then there's no systematic difference between them and the OEM authorised repairers?

25 MS MIDDLETON: Ash, do you want me to tackle that one?

MR SALARDINI: Yes, as a farmer, I think you should, yes. I'll hand it over to you.

30 MS MIDDLETON: Yes. So the – that's why we believe that it would be good for us to work through a right to repair regime and ensure that all the checks and balances are in place. I mean, clearly, you know, I'll give you a personal experience. The third party repairer who is separate to the machinery dealer that we have in our district provides us with all the same compliance and I guess all the same guarantees and all the same, I guess, capacity to give us assurances around the quality of the work that is done. But they will be smaller businesses, so I think it's important that where there is that risk where there could be, you know, some kind of difference in performance of standard, that we deal with that with the right to repair regime and make sure that, if there's training needs or support requirements or accreditation or whatever the system we need to put in place, that we support that system to be put in place so that people can have that assurance.

45 COMMISSIONER LINDWALL: Okay. Now, the available - well, firstly, the motor vehicle scheme that was introduced, which you'd be fairly aware of I assume, and we spoke to the AAAA.

COMMISSIONER ABRAMSON: Four As.

COMMISSIONER LINDWALL: Four As, Automotive Aftermarket Association of Australia or something like that, and they said that spare parts wasn't such a big issue and that's not really covered; it's more about things like the diagnostic tools and the manuals and so on. I'm interested in the agricultural machinery. Is spare parts a big issue or not?

MS MIDDLETON: Yes, massive, massive issue. In fact, I think out of - Ash might probably want to comment on this, but it's one of the biggest issues for farmers and it's one of the biggest issues that's driving - it's not just the cost of the spare parts, it's the availability of the spare parts as well.

COMMISSIONER LINDWALL: Perhaps if Ash is answering that, Ash, you might reflect on why that would be the case for agricultural machinery but not for motor vehicles.

MR SALARDINI: I guess there's a limited availability of manufacturers and because of that network effect you can't easily switch between manufacturers, so you are in a sense locked in to a set manufacturer in a certain network, and therein lies the problem, and so you are seeing it with higher prices for spare parts, and an example that's sort of most pertinent because this is a very sort of commodity, generic product, bearings in a seating machine is, you know, two or \$3000 for a seating machine but for any other tractor or truck is 250 to \$500, and so there's nothing inherent with - there's no IP in ball bearings. It's just ball bearings in a container to help a wheel or some sort of machinery part move. So that's one element of it.

The other element of it is that not so much built in obsolescence but there are restrictions on where you can get your parts from. So we have examples where the manufacturer and the authorised dealer in Australia restricts sort of what parts can be brought in after a certain period. So after, for example, 10 years, despite the fact those parts have been readily available in the US and because of contractual obligations those US parts owners can't provide the parts to an Australian farmer.

COMMISSIONER LINDWALL: So (indistinct) availability in parallel with parts then?

MR SALARDINI: Yes, and so - but, I mean, farmers are a wily bunch. For example, they'll buy a broken up tractor and use it as spare parts, but you know, that shouldn't be - that's not a functioning market to, you know, basically go scrummaging in the bin to find spare parts. The data issue, though, we shouldn't underestimate the data issue. You know, I've sat in some of the hearings and I hear that, you know, the complexity of data platforms and with this complexity it's very hard to, you know, allow people

to do a repair because now it's this intricate sort of complex sort of, you know, ecosystem and one thing will lead to another.

5 In fact, you know, we're surrounded by death traps after I heard the manufacturers talk over the last two days. "Everything will blow up if someone dares tinker with it and we will all die" was the vibe I got, but that's, I guess, people overegging the situation. We've talked to farmers and, for example, they don't have access to diagnostic data which would tell them that, you know, a cog has broken down. Nothing is going to blow up.
10 Nothing - the performance metrics and standards and modifications won't be affected. The environmental standards of the machine won't be affected.

15 The engine won't be overclocked, so some of these complexity - and I have worked in the private sector for a multinational company that does products and services. Creating complex systems that no one can access is a part of their business strategy. It's not inherent. When manufacturers want to they can make things universal. The USB is a universal standard to plug stuff into a computer, because it was in their interests to do so. Complexity is a
20 creation to subvert free markets and competition, and so the data issue and how they handled that and the complexity of the data platforms is a key issue in going forward. It's going to be the issue between farmers being able to pick and choose repairers and manufacturers and being locked into one repairer and one dealer network.

25 COMMISSIONER LINDWALL: So there's no provision like there is in automotive of third party aftermarket parts which are not authorised parts, so you can buy, you know, brakes in the car, for example, which are made by a manufacturer other than the car manufacturer quite easily. So that doesn't happen in agricultural machinery?

30 MR SALARDINI: Yes. The other element of the sort of more complex data system is then people can restrict service. So in the end the farmer also needs the data as they're using the tractor, and there could be provisions to say that "If you use a part that's not been authorised we'll restrict that service", so
35 there's a few other sort of restrictions placed because of this sort of ecosystem that's created through to the data platforms as well, which means even if there was an available alternative they could withhold service based on saying, "Well, you know, that's not compatible with our service, and we'll - - -

40 COMMISSIONER LINDWALL: Is it dangerous to drive or use agricultural machinery?

45 MR SALARDINI: I believe it's dangerous, but it's dangerous to drive a car, and I think the car example is - - -

COMMISSIONER LINDWALL: Yes. My question is, is it more dangerous or less dangerous to drive and use agricultural machinery than to repair agricultural machinery?

5 MR SALARDINI: I'd leave that up to Sue. Again, I'll (indistinct) to expertise.

MS MIDDLETON: So is there a - I guess maybe the question is, do you need, like, a higher level of expertise - - -

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COMMISSIONER LINDWALL: The point I'm trying to make is that it's probably more dangerous to use agricultural machinery than to repair agricultural machinery.

15 MS MIDDLETON: Yes, if you - look, my perspective is that you need to be a highly trained and highly experienced person to operate our machinery, so do you need more experience to do that than to drive a vehicle or to - you know, to repair it? Look, I mean, I think - look, to be honest, I think that's what we're really asking for, is the opportunity for third parties and/or
20 farmers who have the capacity to be able to service their own machinery and to do that, and who would be doing that if they weren't experienced enough? Because you just simply couldn't afford to do that in your workplace. No, I don't - I'm not a hundred per cent sure how you would demonstrate that. That's an issue for the farmers, I think, to be able to do within their own
25 business.

COMMISSIONER LINDWALL: I guess my point was more that, you know, you hear a lot about the danger of repairing things if people are not qualified, and if you took that to the other degree then you should say that
30 people shouldn't be able to use the machinery in the first place because it's by nature dangerous. Anyway, Julie, did you have some questions?

COMMISSIONER ABRAMSON: Yes. Look, thanks, and thanks very much for your participation in the inquiry. One of - it's a comment, and it's
35 probably more for you, Ash. In your submission, looking at the motor vehicle scheme, which is the only current scheme that's on the table, it would be very useful to know where your situation would differ from that, and Paul has explored with you the issue of spare parts, which is a big issue. So that - given that that's a template I'm not saying that the Productivity Commission
40 is going in that direction, but it would be useful for us to know that.

And then the issue I wanted to ask you, Sue, is a couple of things. How many farmers actually do repairs themselves as opposed to independent
45 repairers? Because in motor vehicles it's - apart from people fitting aftermarket things it's not really a common thing, but I've picked up from you that actually farmers would like to do some of the small mechanical things that they could do.

MS MIDDLETON: Absolutely. So I think that would be one of the big differences, Julie, is that it is if you can get the parts and if you can diagnose the problem you would like to deal with it yourself. If it was too complex
5 then you'd use a third party operator, and - but one of the main reasons why people are supporting the third party repairers is because of cost, because it's - and it's not just cost around, you know, the actual bill that you're paying. It's that you can get hold of them and that you can do it in a timely manner. So the third party repairers are really important where the issue is a little bit
10 more complex, but yes, for all of the simple stuff, if you can get hold of the parts yourself you could do it yourself.

I mean, a business our size, we're a good example in Western Australia. We have our own workshop manager and he is capable of doing everything up to
15 the point where it requires diagnostic support. So we already have a staff member whose job is to - he looks after all the machinery across the businesses.

So, ideally, that's how we would like to do it. But increasingly, that's
20 becoming more of a challenge. Hence, obviously, our desire to be able to put a right to repair regime in, because we could have responsibilities as part of that regime, all at different levels at which something gets repaired. So the farmer could have a certain level of responsibility. For example, the way in
25 which farm safety is required, and we've got what we call the chain of command, in terms of the level of responsibility you have right through the business.

So there's examples of how we do this in farming, where we could make sure that safety is ensured, compliance is ensured, and that when you're using a
30 third-party repairer, that you could also then make sure that they're vetted, and that they've got the appropriate accreditation as well. So I think that a large (indistinct) dealer could do, we could either do ourselves or with a third party, and ensure both safety and compliance is - that the right things are accounted for.

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COMMISSIONER ABRAMSON: The safety and compliance - it would be very helpful in your submission if you step that out, because we have had a conversation about that before, and my colleague, Paul, was also reflecting some of the comments that we had from manufacturers about this safety
40 issue. Now, farmers, I know for a fact that the biggest farm injuries are on rollovers.

I remember having to look at that before. It's really quite a serious issue. So, managing safety in farms has been a very big issue for other work, health and
45 safety reasons. So that would be very helpful. The other issue that does happen in civil construction, which I have a background in, is refurbished

equipment. How much equipment is refurbished and used as refurbished equipment in farming?

5 MR MIDDLETON: Well, the easiest way to describe that, Julie, is that we don't throw anything out. So literally everything gets refurbished. And there's a market for - - -

COMMISSIONER ABRAMSON: Yes, I was quite interested in that.

10 MR MIDDLETON: There's a market for anything. So, yes, you can sell machinery that is back to – we just sold machinery that went back to the 1960s, because people are really interested in some of the stuff that doesn't have the electronics, because then you have something that you actually can repair. Electronics actually makes it – obviously, everyone wants to
15 (indistinct) new gear, and that's your goal, but that is – therefore, it then restricts what you can do with the machine once you move into that space.

COMMISSIONER ABRAMSON: I'm interested in any commentary – I'm
20 happy for you to take this on notice, by the way, and I know we're going to talk to you a bit further about this, but I am very interested about the state of warranties and guarantees and all of those things in the secondary market, when a product has been refurbished, and is away from its original OEM.

25 So I'm just interested in that. Because if we're thinking about a scheme, we want – I'm not saying that that's where the Productivity Commission is going, but as you know, I'm just exploring the ideas. But you would want to be thinking about, well, is it just new products from an OEM that it relates to? Does it relate to refurbished type products?

30 MR SALARDINI: We will take that on notice, and we will try to do some surveys and some more targeted engagements with the Productivity Commission.

35 COMMISSIONER ABRAMSON: Thanks, Ash.

MR SALARDINI: But on that sort of existing market of reuse, all the doom and gloom around everything blowing up, people losing arms and legs and eyes, should already have happened. So I think this is the issue. If indeed
40 letting people do these repairs themselves would bring about Armageddon, we should have already been there, and we should have no membership in our organisation (indistinct).

COMMISSIONER ABRAMSON: I do think, to be fair, there are probably
45 some – we've been talking to medical technology people, and there are very strict guidelines from the TGA. So I think it's a continuum.

MR SALARDINI: Exactly. An engine overhaul maybe is an issue, but changing a hose or some cogs or bearings in the machinery is quite another thing. So, agreed with you, and I think that's why we've earnestly suggested that (indistinct) TMA, if they had something of use, to go, what are those
5 genuine safety concerns? Let's have limits on those. But on the most, (indistinct) right to repair, where those simple repairs can be done.

COMMISSIONER ABRAMSON: Thank you.

10 MR MIDDLETON: Now, Julie, I think it's worth making the point as well, most farm safety accidents have occurred because of operator error. So it's also about training, and making sure that you have standard operating procedures in your business, and that you're picking up – so our kind of way
15 of talking about it in our farm is that 99 near misses happens – it only happens on the 100th; picking out near misses and acting on them. So it's a systemic issue. So, once again, any of the safety stuff, we could embed into the right to repair regime, and make sure (indistinct).

20 COMMISSIONER LINDWALL: It was something we raised in terms of farm safety in our agricultural regulation (indistinct).

COMMISSIONER ABRAMSON: It's the same in civil construction, to be honest. It's usually operator error.

25 COMMISSIONER LINDWALL: I've got a couple more questions, unless you do, Julie.

COMMISSIONER ABRAMSON: No, all good. Thank you.

30 COMMISSIONER LINDWALL: Now, Ash, you mentioned that you're not allowed to import spare parts from overseas, parallel importation. The PC is pretty strong on this type of thing, because we put out a book report which argued that we should allow parallel importation of books. But I didn't think
35 that things that are physical, like spare parts, would actually be banned. So why can't you bring in spare parts from overseas?

MR SALARDINI: Again, I'm going by a case study where the spare parts was from machinery over 10 years. The authorised dealer had restrictions on what can be done with machine that's 10 plus years. And they also had an
40 exclusive supply arrangement with the spare parts provider. And so when the farmer tried to bypass the authorised dealer, the spare parts provider said, 'You're in Australia. Sorry, we can only provide you this through the authorised dealer.' So, whether that's right or whether that's something that they can or can't do, that's (indistinct).

45 COMMISSIONER LINDWALL: I'm not sure that's legal, but anyway. I should ask you also, because some of the manufacturers have said to us – for

example, John Deere – that they do allow information to be provided to farmers. So, how do we resolve this? You say they don't, and they say they do, and - - -

5 MR SALARDINI: We never said, as a blanket, that they don't. They will choose when and when not to, and certain manufacturers might do more so than others, and John Deere might be one of those that are a bit more receptive to (indistinct) the data. But we don't have laws because everyone breaks them. We have laws because most people abide by them, and you
10 want the recalcitrants to come up to good practice. So, the fact that John Deere might be providing that data is actually (indistinct) well for that data sharing sort of protocol.

15 COMMISSIONER LINDWALL: Now, I know you've argued in your submission that – and your revised one, too, what we just received a short time ago, that it should be covered within the Australian consumer law. But I gather from your comments that the most important thing is (indistinct) right to repair as in what the United States has. Because after all, in the United States there isn't a consumer law that covers business purchases.

20 MR SALARDINI: That's right. I guess the consumer guarantee was sort of the easy off-the-shelf reach for us. And in the absence of the will to go down a more thorough path, we said, well, there's an off-the-shelf example. And we didn't necessarily suggest that all the consumer guarantee needs
25 (indistinct). There's other issues around – certain things around products and representations.

We don't have necessarily have a position on that. It was that right to repair angle to it. But I guess principally what we're suggesting is, a lot of small
30 businesses, the way they interact with manufacturers, the way they interact with large corporations is that of a consumer.

And whether you negotiate the contracts – contractual terms, for example, for a sale, is indicative – and I note the ACCC survey suggested, for example,
35 that 85 per cent of farmers thought that a warranty, terms and conditions was on a take-it-or-leave-it basis, which is more akin to how a consumer would act in that situation versus a business.

40 Even I sometimes negotiate contracts and terms, and I'm a consumer. So I guess that's the point we're making. This sophisticated business-to-business transaction sometimes is over-egged, particularly for family farmers, who don't deal with a big manufacturer in the same way.

45 COMMISSIONER LINDWALL: All right. Sue and Ash, thank you very much. We look forward to continuing, especially with a round table and surveys that we were talking about previously, and I appreciate your time today.

COMMISSIONER ABRAMSON: Yes, thank you very much.

MR SALARDINI: Thanks so much, guys.

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MR MIDDLETON: Thank you for the opportunity.

COMMISSIONER LINDWALL: So now we've got Karen and Danny from Mend It, Australia.

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MR ELLIS: Hi, Paul.

COMMISSIONER LINDWALL: Hello, Danny. How are you today?

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MR ELLIS: Not too bad, thank you.

COMMISSIONER LINDWALL: Thank you, Danny.

COMMISSIONER ABRAMSON: I think Danny has been good enough to be on our call the whole of the morning.

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COMMISSIONER LINDWALL: Yes. You were there yesterday, too, weren't you, Danny?

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MR ELLIS: Yes.

COMMISSIONER ABRAMSON: Hello, Karen.

MS ELLIS: Hi, how are you both?

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COMMISSIONER LINDWALL: Very well, thank you. So, if you would like to just introduce yourself and talk about Mend It, Australia, and then give us a little bit of an introductory statement, that would be great.

35 MS ELLIS: That would be great. Thank you very much and hello to all who are attending. Thank you to the Productivity Commission and the commissioners for the opportunity to present at this Right to Repair hearing. Danny and I are known as Mend It, Australia, a legacy project in retirement since 2015 with the goal to raise awareness of reuse and repair. We are self-funded and our services are free, and today at this hearing we have self-

40 appointed ourselves to represent grassroots community repair and repairers. We feel some more attention is required in the draft report related to community repair initiatives - - -

45 COMMISSIONER ABRAMSON: Excuse me, Karen. Are you able to speak a bit more closely to your microphone? We are taking transcript and it's just a little hard to hear.

MS ELLIS: Certainly.

COMMISSIONER ABRAMSON: Thank you.

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MS ELLIS: I'm sorry. Do you want me to repeat anything?

COMMISSIONER ABRAMSON: No, no. We followed you, but I'm just thinking about our transcript person, but that's great now. Thank you.

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MS ELLIS: Good. Good. We feel some more attention is required in the draft report related to community repair initiatives and repairers. We would like to suggest that the draft report is an opportunity to make recommendations to the government about community repair. So first up we will flag three ideas for consideration and discussion. They are not all our ideas; we're just going to present three here: (1) federal funding for repair sheds similar to the men's shed funding modelling; (2) an Australian body or an auspice of the possible future repair coalition from the repair summit to support and assist community repair initiatives with things like insurance and liability, et cetera; (3) tip shops and community repair and reuse opportunities that do fit with the federal and state (indistinct words) for a circular economy. This idea for community repair could fit in with an expanded NTCRS.

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Also, just to mention that some points made in 2.1 on page 47 of the draft report we do not agree with and are happy to mention those. Then, if there is time today we would like to suggest some ideas for how the NTCRS may include repair and reuse. Mend It, Australia is currently undertaking a computer screen repair project with Mike Tynan, a tech writer with iFixit in the US. Mike has told us he is zooming in tonight from the US. Hi Mike, if you are still awake. The circuit board to fix the \$400 Samsung computer screen rescued from recycling can be sourced overseas direct from Mike for \$20, but to order it in Australia the part would cost \$179 not including postage and handling.

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The other part, a (indistinct words) in a packet of five, is \$6 from China - that's pre postage - which we have ordered to arrive in Australia in October. We want to share some ideas on how the NTCRS could be expanded to have more benefits for the community like this project with Mike. How to capture e-waste for its spare parts before it is dumped in a skip bin at the recycling facility is the question because there are options for the following. Here are some ideas: resale of working and non-working appliances and parts at tip shops that have community benefits like jobs, volunteer opportunities, environmental benefits, et cetera. The e-waste we come across piled in a large skip bin at the local recycling facility is not all old, as we've been told, or is it totally useless technology. All our household appliances and digital devices have been someone else's e-waste. Most of it has been working and

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is old technology or old design, but it works well for our needs. And we will just show you our laptop. This is an Acer laptop. How old is that, Danny?

MR ELLIS: 2015.

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MS ELLIS: 2015. That has been sourced from e-waste, working. And we are very grateful for it. We paid nothing for it and it worked when we picked it up. It just needed a bit of a wipe over.

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COMMISSIONER LINDWALL: Okay.

COMMISSIONER ABRAMSON: Karen, can I just ask you a question. You refer to a tip shop. Is that an op shop or is it a shop at a tip? What's a tip shop?

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MS ELLIS: A tip shop is a shop at the recycling facility.

COMMISSIONER ABRAMSON: Good. Thank you.

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MS ELLIS: Sometimes they're called resale centres. They all have different names.

COMMISSIONER ABRAMSON: Yes.

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MS ELLIS: But from our generation they were tip shops.

COMMISSIONER ABRAMSON: Thank you.

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MS ELLIS: They were - yes.

MR ELLIS: Yes. And that laptop had someone's data on it and all I did was did a factory reset on the laptop and all the data disappeared, so again, we can talk about data security later on as well, but Karen can continue.

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MS ELLIS: And finally, keeping in mind what you said yesterday, Julie - how big is the ocean? - we would like to throw a spanner in the mix with the mention of textiles and the right to repair, knowing that it is not the focus, but could be at another time and place. Whilst the main focus of the Commission's inquiry is mostly related to digital technology and e-waste, Mend It, Australia is also interested in the Federal Environment Minister's inclusion of clothing, textile waste in the national priority waste list. There appeared to be no submission and brief comments to the issues paper related to textiles. Please correct us if that's not the case.

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As with the NTCRS, any voluntary or mandatory product stewardship scheme related to textiles will almost likely focus on recycling or downcycling of textiles with good quality textiles being sent to charity

partners for reuse in retail stores and other settings. Mend It, Australia has some suggestions to encourage and support the repair of clothes and other textiles, and just like with the NTCRS, there will be a bit of pushback for more recycling-type initiatives which alone are not beneficial to the community and a truly circular economy. In our networks passionate individuals like Orsola de Castro, cofounder of Fashion Revolution following the Rana Plaza disaster, and Ros and Elahe from Repair What You Wear are raising awareness of the importance of mending.

Orsola is vocal about mending stations in large department stores. These existed decades ago. Selfridges in the UK has a repair concierge station and Browns (indistinct words) and Patagonia offer mending services for their clothes. Repair What You Wear, like Mend It, is a legacy project. It teaches clothes-mending skills in a practical way via mending tutorials as well as educational resources. This UK-based project is making social change with its fashion and environmental skills course to skill up a new generation to mend as the key way to keep clothes in circulation for longer. The Victorian State Government Secondary School Reform Consultation closes on 30 July. That's where we are in Victoria. This is an opportunity for Mend It and other Victorians to mention repair and mending for its possible introduction into schools under their sustainability curriculum. Now, Danny would just like to share his repair story related to our chainsaw to inspire some discussions if that's okay.

COMMISSIONER LINDWALL: Sure.

COMMISSIONER ABRAMSON: Was that a chainsaw? You appear to be in one piece, so I'm gathering it's had a good outcome.

MR ELLIS: A little story. I've had this chainsaw probably eight years now, and very little use, and after about five years I took it back to the shop where I got it and - - -

COMMISSIONER LINDWALL: Is it a fuel powered or electric one or a petrol powered?

MR ELLIS: A petrol one. Sorry, Paul. The petrol one. And they told me that the (indistinct words) because I put the wrong petrol in which I didn't, but I took it back to the authorised repairer and they told me it's going to cost me \$1100 to repair for a \$700 chainsaw. So this is why, me being me, that wasn't acceptable to me, so I went online, purchased what I needed to from China, and for \$60 I repaired the chainsaw and it's been running fine for the last three years.

COMMISSIONER ABRAMSON: You're not going to show us that - - -

MR ELLIS: Here it is here.

COMMISSIONER ABRAMSON: For the benefit of the transcript, Danny is now holding up said chainsaw.

5 MR ELLIS: A STIHL MS350.

COMMISSIONER LINDWALL: \$1100 to repair? Amazing.

MR ELLIS: That is - - -

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COMMISSIONER ABRAMSON: Danny, perhaps you might address the safety issue, because you've been listening in all day and yesterday, and a number of the manufacturers have made quite - or their reps have made quite strong claims on that, so perhaps you might like to address that.

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MR ELLIS: How I'd like to address that is that Karen - you usually - sometimes she refers that I should do heart surgery because of my ability to fault find and repair, and it's a skill that has developed. I haven't done - I didn't do any courses on small motor repairs. It's just a skill that a lot of people have, just not me, and I get very wary when manufacturers say that you need to have - to be - - -

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MS ELLIS: Qualified and registered.

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MR ELLIS: Qualified and registered, but I used to drive trains and worked with electricians, worked in the printing industry, so it's a skill that is acquired through your lifetime, and I know a 20-year-old won't have the same skillset as a 60-year-old, but RPLs are recognised in industry, so recognised prior learning can apply to people out there to fix anything, and there's plenty of YouTube videos, some good, some bad, like repairers - there's some good, some bad, and I think again, as an individual repairer, which I am. I'm, you know - it's - we talk about the authorised repair and third party repair. I don't class myself any of those.

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35

I just repair what is put in front of me and I use my skillset, but I will say, when it comes to safety, I will say to whatever item is brought in I will refuse to repair that if I doubt my ability, and I think that's the circuit breaker that hasn't been recognised. What's been sort of related, probably to Paul and yourself, Julie, is that we're all dummies out there and no one's got that circuit breaker, but I believe that with the repairer events we go to it's really, really good collaboration between all the repairers, whether you work in mechanical, electrical, or even in textiles, we all seem to talk to each other and you'd be amazed that we'll stop each other and say "Right, have we got the skills to do this?" "No, we haven't", and we move on to the next thing, but you'll be surprised how many things we can fix just through perseverance and using the Internet, or someone else might say "Oh yeah, (indistinct)

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doing this", and that takes you off on a different path and you actually find the cause.

5 COMMISSIONER LINDWALL: That's a bit of ingenuity and also consulting if you go to a repair café, I suppose, and there might be an expert on a particular type of repair.

10 MR ELLIS: That's the thing, Paul. It's - I don't think anyone likes to class themselves as an expert. I think it's that you just bounce off each other and it's that knowledge base that everyone's got that enables us to determine how far to go with a repair. I don't think it's - look, you can be lucky sometimes and get a retired engineer or an electrical engineer or a retired - - -

15 MS ELLIS: Fairly rare though.

MR ELLIS: Very rare, but you even get people that have been in white collar jobs that will love pulling things apart and they're just as able as what I am to repair, and it's very - it's good fun and it's very rewarding.

20 COMMISSIONER LINDWALL: And your point about safety is well taken, but in terms of security when it comes to a laptop or a computer, well, I mean, I know a bit about that myself. Obviously you can use a shredding program if you want, is one way of doing it. If you're really paranoid, like I was to get my laptop repaired - the screen once - I actually took the drive out and gave the laptop without the drive to the person to repair, so you know, 25 there are ways of doing it.

COMMISSIONER ABRAMSON: Yes.

30 MR ELLIS: Yes, and I think, Paul, that gets back to education. If we can sort of, rather than throwing the whole laptop away, as you say, remove the hard drive. You've got the data in your hand, so the laptop can go off and do what it likes.

35 COMMISSIONER LINDWALL: Yes.

40 MR ELLIS: But I had a colleague that had two laptops who'd actually thrown them in the bin, and I said "I'll take those". "Oh, I'm worried about my data", and I said "Don't worry, I'll wipe the hard drives and we'll be right", and she didn't know. "Oh, can you do that?" So I think it's that consumer education about data is - yes, it's very important but I'll give you an example - the phones. Phone got off Ebay. I bought two of them and one worked - I repaired that - and it takes about five minutes tops.

45 COMMISSIONER LINDWALL: Looks the same as that phone.

MR ELLIS: Yes, an S7. Yes, and it takes about - not even five minutes to erase the data.

COMMISSIONER LINDWALL: Yes.

5

MR ELLIS: You would probably know, Paul, that you just factory reset.

COMMISSIONER LINDWALL: It's very easy, yes, I agree.

10

MR ELLIS: And I think (indistinct). Sorry, Paul?

COMMISSIONER ABRAMSON: You've frozen, Paul.

COMMISSIONER LINDWALL: Sorry. Are you there still, Julie?

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COMMISSIONER ABRAMSON: Yes I am, and so are our participants, but you froze for a moment.

COMMISSIONER LINDWALL: Okay. I froze?

20

MR ELLIS: Yes, and we missed what you said, Paul, about - - -

COMMISSIONER LINDWALL: I was saying about flash drives are easy to (indistinct).

25

MR ELLIS: Yes, and I think it's back to that education, you know, of the consumer, that when they want to move their phone on or any equipment on there's always that way that you can wipe your data off, and a lot of the stuff's in your cloud now anyway.

30

COMMISSIONER LINDWALL: Exactly.

MR ELLIS: They use the cloud, and it's - that's important, but I think it's also important that we educate them that if you do take your - I think the biggest problem at the minute is that when they move their phone on, so they don't remove their accounts.

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COMMISSIONER LINDWALL: Exactly.

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MR ELLIS: And it blocks the phone, especially on an Apple phone. You won't - if that's not removed they're useless.

COMMISSIONER LINDWALL: Yes, exactly. No, you have to reset them before you get rid of them.

45

MR ELLIS: So if we can educate those consumers or actually take them back to the store and you get the stores to, say, "Can you wipe all my data and my accounts so I can sell the phone?"

5 COMMISSIONER LINDWALL: Exactly.

MR ELLIS: That would be really helpful to alleviate some of the - and maybe MobileMuster won't get as many phones - I don't know, you know?

10 COMMISSIONER ABRAMSON: Well to be fair to MobileMuster, they're actually pretty keen on the (indistinct) on the consumer education.

MR ELLIS: Exactly right, Julie, but I think the Telstra shops and Optus shops and all those can also be a part of that, of helping people move their phones on safely, and I think that's something we could look at also.

COMMISSIONER LINDWALL: Could I ask whether you know anything about the - well, what do you think about product labelling schemes? Like, there is a French scheme about repairability and durability. Have you seen it at all?

20 MS ELLIS: Yes.

COMMISSIONER LINDWALL: And what do you think of it?

25

MS ELLIS: Yes, well we've been following it and we agree with it. We're repairers and we're consumers too, and we think it's just another very, very useful tool for consumers to actually be able to see. It needs to be online and in the store. We agree with it. Yes, France is doing it so why reinvent the wheel? We can follow on there. iFixit has been involved, actively involved in that, in the France scheme and sings its praises, so yes, it wouldn't hurt, and I think it would actually promote repair just generally.

30

COMMISSIONER LINDWALL: Yes.

35

MS ELLIS: Yes. Starting to put repair into people's mindset.

COMMISSIONER LINDWALL: Exactly, yes. In terms of repair cafes, which of course - I mean, it's not - I suppose, would you categorise yourselves a bit like a repair café or - - -

40

MS ELLIS: No.

COMMISSIONER LINDWALL: No, okay.

45

MS ELLIS: We're travelling tinkerers. That's what we say, and we offer a free service and we go to repair cafes that are organised by others, and, Paul

and Julie, other community repair events as well. There's not just repair cafes, and (indistinct) - - -

5 COMMISSIONER LINDWALL: Could I ask about your second option there, which is about your second option there, which is about insurance and liability? How does it work in repair cafes at the present, do you know, in terms of insurance in particular?

10 MS ELLIS: Yes. There's different ways they do it, the coordinators. Most of the groups we know actually auspice themselves, so the repair café will auspice to a not-for-profit in the community, and that's how they get insurance liability.

15 COMMISSIONER LINDWALL: Yes.

20 MS ELLIS: Other repair cafes are attached to neighbourhood houses. The neighbourhood house usually has Victorian insurance - managed association insurance and - in Victoria. That's broad based insurance covered by the Victorian Government if the neighbourhood house meets certain funding requirements, and that's marvellous insurance because all that's required there for Danny and I to actually participate is to sign in and out of the event, as simple as that, and it covers electrical items being repaired as well, so yes, that's ideal. It'd be great if that was available in other states, that type of insurance.

25 COMMISSIONER LINDWALL: That's a Victorian thing?

MS ELLIS: That's Victoria, (indistinct).

30 COMMISSIONER LINDWALL: It covers a whole array, yes.

COMMISSIONER ABRAMSON: Yes. We'll have a look at it, but it's obviously attached to other programs and things, and so it's - they're able to get that particular insurance.

35 MS ELLIS: Yes.

40 COMMISSIONER ABRAMSON: The other thing, too, Karen and Danny, do they ask for waivers? Because it occurred to me that although you would have insurance you might, when somebody comes into a repair café, say "Well actually, you need to take responsibility for this. I'll do it to my best of my care, skill, and attention, but also you've got to understand you're in a repair café."

45 MS ELLIS: Yes. The Repair Café Foundation in the Netherlands, if groups sign up to that they get a package, and that package includes a waiver, yes, and the waiver - they say that legally it probably wouldn't stand up in a court

of law. However, I think it just makes for that extra accountability, that extra transparency that it sort of explains to the people coming in that, you know, we're all volunteers and we're trying our best, but yes, it's - from what I believe, wouldn't perhaps stand up legally, and I'm not a lawyer so I can't
5 comment further on that, Julie.

COMMISSIONER ABRAMSON: No, all good. I've got good news for you by the way, Karen. I do know how to darn a sock. I was actually taught how to do that. I know nothing about chainsaws but I can darn a sock.
10

MS ELLIS: Well done. I think that's harder than actually fixing a chainsaw, Julie. Well done.

COMMISSIONER ABRAMSON: Do you know what? You need one of those little mushrooms, those wooden mushrooms, and they're probably very hard to get except at op shops, but I'll bring you back to Paul because I've taken us off track.
15

COMMISSIONER LINDWALL: I managed to get my button back on my shirt once before.
20

MR ELLIS: Paul, before you go ahead, Julie, I made a mushroom out of a yo-yo.

COMMISSIONER ABRAMSON: That's very clever. I've got my grandmother's, so.
25

MS ELLIS: That's nice. Well I didn't have one, Julie, so Danny made one out of an Oral B toothbrush and a yo-yo. It's very good.
30

COMMISSIONER ABRAMSON: Well one of the great shames for us at the moment with this inquiry is obviously we all can't travel, because I certainly think that we would have been taking you up on an invitation to come and have a look at some of the things that you do, so.
35

COMMISSIONER LINDWALL: Exactly. Could I ask, Karen, you mentioned in your three points about tip shops, and did I get the implication that they're not allowed?

MS ELLIS: No. Tip shops are - but what are not allowed, Paul, tip shops - -
40 -

COMMISSIONER LINDWALL: Sorry, so what did you want then? You said there should be tip shops. There are tip shops, are there?
45

MS ELLIS: There are tip shops, yes.

COMMISSIONER LINDWALL: So you want more of them? Is that what you're arguing?

5 MS ELLIS: Yes. The state government here in Victoria is putting quite a bit of money into very large schemes at recycling facilities to actually capture a lot of the stuff coming through the gate before it goes down, yes, to be recycled. So they have workers in these tip shops or resale centres, whatever you like to call them, and they come in the gate and workers are meant to take things out of the trailers, into the shop for resale back into the
10 community.

COMMISSIONER LINDWALL: Okay, (indistinct).

15 MS ELLIS: So that's where the NTCRS could perhaps be expanded.

COMMISSIONER LINDWALL: Yes, expanded, yes, which is what we did say in the draft report about being more on repair and reuse rather than just recycling. I'm not sure if there's anything I have more apart from the - of course we haven't covered textiles in the report. It's mainly focused on e-
20 waste, but I suppose we should at least think about it some more, yes.

MS ELLIS: Yes.

25 COMMISSIONER ABRAMSON: Well I do think with some of the textile things, is that there are a number of retailers who are now taking that on board, especially with the whole movement over, you know, fast fashion and things, so a number of - it's - and I think that that's driven by young consumers who are quite focused on those issues. So there is a little bit of stuff that's going on in that area that I'm aware of.

30 MS ELLIS: Can we just say, with the tip shops and, you know, e-waste being perhaps collected before it goes down into the skip, that we think that that - they're mentioning about doubling up, or - the counting - double counting, that's right, and we're feeling that if items were taken out before
35 they actually go into the scheme, down into the skip, that that would perhaps stop the double counting situation. So that's a thought.

COMMISSIONER LINDWALL: Yes. No, that's right, yes.

40 MS ELLIS: And also, yes, just that the spare parts would be invaluable to community people, to community repairers, a bit like in the car industry where they have pick a part. You can go to these places and get parts for cars. It would be really great for someone like Danny, who's working with Mike at the moment, to be able to go into a tip shop and source parts.

45 MR ELLIS: And I think other - I've heard yesterday they were talking about the stockpiling and all that.

COMMISSIONER LINDWALL: Yes.

5 MR ELLIS: Maybe that could be a good way to, you know, spread the stockpile out a little bit and actually let people come in and pick out what they want and need. I don't know if that could be done.

10 COMMISSIONER LINDWALL: Exactly, yes. Right. Well I think that's all the questions I've got, and so, Karen and Danny, thank you very much for - -

COMMISSIONER ABRAMSON: Thank you. It's been a very interesting presentation and it's really been quite enjoyable, if I may say so.

15 MS ELLIS: Thank you.

COMMISSIONER LINDWALL: Indeed. I agree.

20 MR ELLIS: Thank you. Thanks for having us.

COMMISSIONER LINDWALL: Thank you. So it's now 3 o'clock, so we might have a 15 minute break and resume at 3.15, all right? Thank you.

25 **SHORT ADJOURNMENT** **[3.00 pm]**

RESUMED **[3.14 pm]**

30 COMMISSIONER LINDWALL: Could I welcome Carla Vasconi, if she's here? Hello, Carla.

35 MS VASCONI: Hello.

COMMISSIONER ABRAMSON: Hello, Carla.

MS VASCONI: Hi, how are you?

40 COMMISSIONER LINDWALL: We're fine, yes.

COMMISSIONER ABRAMSON: It's cold and wet and miserable in Melbourne today, isn't it? It's turned on all the reasons why you want to go north. "Oh, we can't go north."

45 MS VASCONI: Can't go anywhere, can we?

COMMISSIONER LINDWALL: It's cold and miserable in Canberra too, so - yes, Carla, would you like to introduce yourself and ANZRP and perhaps give us a bit of an introductory statement?

5 MS VASCONI: Yes, sure. So my name's Carla Vasconi. I'm the chief operating officer at Australia and New Zealand Recycling Platform. We're one of the approved co-regulatory arrangements under the National Television and Computer Recycling Scheme, so we're a not-for-profit based organisation and our members are some of the NTCRS liable parties,
10 predominantly some of the larger IT brand owners and also some of the retailers such as Officeworks. And so I was asked to come along to this session, so my focus is on the e-waste/NTCRS components of the draft report. I haven't - I don't - we don't have an opinion on any of the other recommendations, but basically there are a couple of recommendations, so
15 one being around potentially making changes to the NTCRS to enable reuse, and the other to use GPS trackers under the NTCRS scheme as well.

So I guess, so kicking off around reuse under the NTCRS, so aimed at IP supports reuse. It's obviously high up on the waste hierarchy, so we support
20 it wherever it's practical - practicable - and so potentially making changes to the NTCRS to support inclusion of reuse could be feasible. However, the scheme is currently designed as an end of life program and I think a bit of - a bit more research would be really great on the size and complexities of the reuse market that is currently in operation, and yes, that would really help to
25 inform any commitments or proposed changes going forward, and also it's really important to acknowledge that there is an established overseas repair and refurbish market where e-waste from Australia actually does end up, so any changes to NTCRS really need to understand this and factor these in, and that's just included because all the product under the NTCRS will be in-scope
30 product. It's made overseas, it's all important into Australia, so that's why it does end up overseas for reuse and repair. Did you want me to keep going on some of the - - -

COMMISSIONER LINDWALL: Yes, it'll be fine. Yes, keep going.
35

MS VASCONI: Okay. So one of the areas where it'd be great to have some more research or further data is understanding the IT asset management industry in Australia, so that's where business and government departments and big organisations such as schools and unis lease IT equipment such as
40 computers, and they lease them from the asset management companies. So the asset management companies purchase the IT equipment and then enter into a contract with customers to lease these products, say, for three or four years, and then at the end of the lease the customers return the equipment to the asset management company and they then often assess whether or not
45 these products can be repaired or refurbished or whether or not they can be recycled, and they do this, you know, based on the functionality and

condition and model of the product, and they can use e-waste recyclers to do this.

5 And so those that are assessed as able to be repaired, they're sent to a repair
or a refurbishment company and many of these are overseas, particular in
Asia, at well-established, large facilities, often where the new products are
manufactured, and so the products have to be exported as working product,
and then they can be repaired, refurbished, and resold in overseas markets.
10 So, I guess just wanted to note that that is a big market that already exists.
Now, the NTCRS kind of acknowledges that that happens through scaling
factors. So, scaling factors are used to determine the annual scheme
recycling target, and what they do is they help calculate waste arising by
taking into account that not all electronic product purchases, so new
15 purchases of equipment, are replacement products, and therefore generate e-
waste in the same year, and they also take into account that some of the e-
waste that does get generated gets exported overseas for reuse.

20 So, those scaling factors were last updated in 2018 based on ABS export
data, so it'd be really great if those numbers were run again to see if those
scaling factors are in fact accurate, and they can also be used to help, you
know, determine the size of the asset management and repair market at the
same time. That would be, I think, really - - -

25 COMMISSIONER LINDWALL: Who does the scaling factors? Was that
DAWE or something?

30 MS VASCONI: Yes, so they used ABS export data to do that last time, and
so they had to put in a change to the - or it was the regulations; they're now
the NTCRS rules. Yes, and so there's different scaling factors for computers,
for printers, for televisions, and for computer parts and peripherals.

COMMISSIONER LINDWALL: Could you explain, what do you mean
precisely by scaling factor?

35 MS VASCONI: So at the moment I think for computers the scaling factor is
0.71, so basically you multiply the amount of e-waste generated - computer
e-waste generated per year. You multiple that by 0.71 and you say that that's
the amount available to the NTCRS scheme for recycling, and what it does is
it discounts that some of the product is lost overseas for export for reuse, and
40 then some of it - some of the purchases of the products aren't replacement
purchases. So I might buy a fancy new laptop but give my old laptop to my
child and they can use it, et cetera, so it doesn't actually end up in the waste
stream.

45 COMMISSIONER LINDWALL: Okay.

MS VASCONI: Yes, so - - -

COMMISSIONER LINDWALL: Then if you want to move on - is it - the next topic would be the GPS trackers? Is that right, or - - -

5 MS VASCONI: I just wanted to also just talk about some other things around reuse. So another thing that happens at the moment is what's called ad hoc volume. So what happens currently, so a co-reg can achieve their recycling target by collecting e-waste from, like, reasonable access sites, which can be, like, council collection sites, B2B customers via their member
10 take-back programs, and then what's called his ad hoc volume, which is basically recycler-sourced volume, and it's where recyclers go out and collect e-waste from their own customers and networks. Then they recycle the e-waste and they sell a co-reg a certificate of destruction.

15 So basically a COD is traded, so the co-reg doesn't really have any oversight of how this - where this volume came from, and co-regs are increasingly using this more and more to achieve their recycling target, but not all co-regs do thorough checks to make sure that this volume is valid, so is it real volume or was it made up? Is it in-scope product or does it include out of scope
20 product? Has the certificate of destruction been traded with another co-reg, et cetera? So there's quite a risk that not all the volume being counted is true volume, and if reuse was included in the NTCRS target there's a risk that this could happen in the IT asset management sector as well, where reuse certificates could be traded, for example, so that's just another thing to
25 consider.

And then another thing is - another issue is monitoring recycler behaviour. So recyclers obviously - so recycling certified to the standard that AS-377 standard, and that's a requirement under the NTCRS rules. However, because
30 the rules don't have any legal requirements over recyclers the NTCRS regulator can't really do anything if they know the recyclers are doing something wrong, and they - and obviously HSE legislation is regulated by the states and territories, so the NTCRS regulator can't do anything if they know about an EPA problem, for example, and all the regulator can do is
35 check that the co-reg submits that a recycler has a current certificate of certification to the standard, and they can check that co-regs are doing some kind of due diligence over recyclers, though to date the regulator hasn't really done that much at the moment.

40 So as a result there's been quite a lot of instances where e-waste recyclers have behaved non-compliantly, and that's a real issue for the scheme. So if you're then including reuse into the scheme it's the same e-waste recyclers who will be doing - likely to be doing the checks, to check whether or not a product is functional and can be repaired, and if so, you know, does it get
45 exported compliantly under Basel, et cetera, so there's just more room for poor recycler behaviour and it's just something that, you know, we really

need to fix under the current scheme before we can allow further activities to be conducted by recyclers.

5 And then also the repairs under product warranty that OEMs do currently, they're really reliant, obviously, on spare parts or components. So often, well, the components are supplied by different OEMs, so suppliers of motherboards, memory cards, power suppliers, et cetera, and often these components are made overseas again, so if they need to be repaired they get repaired overseas, and it can be quite complicated as to the stocks and flows
10 of these spare parts, and sometimes when a spare part is sent overseas for repair the ownership can change. So the component manufacturer can be assigned ownership of the spare part, and then it transfers back again, so it's just quite complicated how the spare parts move in this repair industry, so that's just something that needs to be taken into consideration as well.

15 And also to be noted, that the NTCRS target is based on whole products, whereas reuse of these products is really reliant upon spare parts, so that's just something else that should be considered and understood. And then lastly, for a product that is actually available under the scheme and can - and could
20 be recycled or it could be repaired, I don't think - well, I'm not aware of any robust studies that have checked the age and the repairability of products that come through, e.g. through a council transfer station, or through a retail drop-off zone, so if any targets - reuse targets were set we really need to understand what percentage of the product coming through the scheme
25 actually could be repaired in the first place.

So, I've just thrown a few issues to be considered before, I think - you know, how we could start thinking about how the NTCRS could be changed or expanded to include reuse, because it's - yes, there's a lot of broad issues.

30 COMMISSIONER LINDWALL: Did you want to talk about GPS trackers or come back to that later?

35 MS VASCONI: Yes, sure. So we actually already use GPS trackers as part of our compliance monitoring program, and we do that to confirm that the e-waste collected actually ends up at the recycler as we want it to be, and - but we've been doing this for a couple of years and there's been a few challenges that we've had to overcome. So the first is that usage of GPS tracking devices is subject to surveillance legislation in some states. The legal
40 requirements vary obviously between different states, but the use of surveillance devices to intentionally track and record an employee's activity is an offence unless the operator of the system has actually consented, and only in South Australia, Queensland, and Tasmania are there not these regulations in place.

45 So what we've done is we've notified all of our recycling partners that e-waste delivered to them may contain GPS trackers, and we've done this via a

5 clause in our recycling services agreement with our recycling partners, and then when we arrange for the tracker to be transported to the recycler we have to notify our logistics provider as well. That can be quite easy in metro areas because our main logistics provider, they already - the trucks already have surveillance mapping systems built into them, so the drivers are aware of this and have already consented to it, but we still let them know with each delivery that - there - it does contain a tracker.

10 Another thing we've had to work around is that due to the size of the GPS tracker they can't be fitted into all types of in-scope products under the NTCRS, e.g. laptops, and laptops can be some of the more valuable equipment that you would want to track, so we've used them in computers, flat screen monitors, TVs, desktop printers, and your big multifunctional devices, and yes, we've worked out where to fit them inside the equipment, et
15 cetera, so that they can be signalled, and so there's been a bit of challenges but we've been able to work through that, and they work quite well, but it's just to be noted that the NTCRS regulator doesn't have jurisdiction over collection sites, transporters, or recyclers, so it'd be complicated for them to themselves use GPS trackers in states where the surveillance legislation is in
20 place, but obviously there could be a requirement for a co-reg to do this, like we've done already.

25 COMMISSIONER LINDWALL: Or I suppose you could change the surveillance legislation.

MS VASCONI: Well, yes. Yes, you could. I mean, I don't know how though, but - how one would do that, but yes.

30 COMMISSIONER LINDWALL: All right. Having gone through some of the issues with the NTCRS as it stands in terms of potential misuse of that, you would still think that it's had net benefit, the scheme itself?

MS VASCONI: The NTCRS?

35 COMMISSIONER LINDWALL: Yes.

MS VASCONI: Yes, absolutely. Yes, it's diverted from April.

40 COMMISSIONER LINDWALL: Despite the (indistinct.)

MS VASCONI: Pardon?

COMMISSIONER LINDWALL: Despite the (indistinct), yes.

45 MS VASCONI: Yes, sorry. Yes, definitely. Yes, there's obviously improvements that can be made but it's definitely been a successful scheme and has recycled and diverted from landfill thousands of tonnes of e-waste.

5 COMMISSIONER LINDWALL: Is there a way of - well, if we were to
move towards, as we talked about in the draft report having repair and reuse
in there, and I note we were saying that a lot of it gets repaired and reused
overseas or is exported. Is there a - would you be best placed to have it as a
10 pilot scheme or something where they test that it's actually doing something.
You know, Danny, in the previous session, said that he went to an NTCRS
site and got a laptop that still works, so he said that there must be - or he
thought there were things that are still reusable that didn't need to be recycled
or the end of life, so.

15 MS VASCONI: Yes, definitely. I mean, we see that at some of our
collection sites, and sometimes it is - made me feel quite sad that you have to
destroy a perfectly functioning product, because that's what we - you know,
that's what's required under the NTCRS, but yes, definitely there will be
product that comes through that is perfectly able to be reused, yes.

20 COMMISSIONER LINDWALL: Yes. So in terms of the GPS trackers, it's
obviously the surveillance legislation that's a bit of an issue there. So there's
a surveillance act at the federal level but there's also ones at the state levels.
Is that what you were - - -

MS VASCONI: Yes.

25 COMMISSIONER LINDWALL: And when you say "as an employee", I
mean, it's not the employee's personal product when it's - it has to be
surveyed because - surveilled because of an employee's picking it up and
putting it somewhere, and by that action they have to be notified that there's
30 going to be a tracker on it?

MS VASCONI: Yes, because their movements are being monitored,
essentially, yes.

35 COMMISSIONER ABRAMSON: Yes, it's quite complicated, Paul, and it's
all come up in - to be honest in the domestic violence setting. So there's been
quite a focus on the use of GPS trackers for other purposes.

COMMISSIONER LINDWALL: Yes, but not for recycling and (indistinct).

40 COMMISSIONER ABRAMSON: No, but the whole debate - - -

COMMISSIONER LINDWALL: Yes.

45 COMMISSIONER ABRAMSON: That's the context in which the debate
sits.

COMMISSIONER LINDWALL: I see what you mean, yes.

COMMISSIONER ABRAMSON: Yes.

5 COMMISSIONER LINDWALL: That's right. Of course I can see where you're going, yes. Sorry, Julie, have you got some questions?

COMMISSIONER ABRAMSON: Yes, thanks. Carla, I just wanted to ask if you knew anything about the repair reuse program for e-waste in Ontario.

10 MS VASCONI: No, not that much, no. Has that been successful?

COMMISSIONER ABRAMSON: I don't know. That's why we're asking you.

15 MS VASCONI: You're asking me. I do - so the PR - one of the PREs in Canada, we do have calls with them frequently just to, you know, chat about different issues that different PREs might have and get some ideas on how to address them, so it's certainly something I can, yes, ask them about.

20 COMMISSIONER ABRAMSON: Well we'd be very interested and things like we've been talking to you about, the design of the scheme, incentives for the scheme. Those things would be really interesting. Now, the next question, Commissioner Lindwall may have to help me out because I might get this not quite in the right order, but we heard yesterday that there were
25 concerns about double counting. So if we put reuse into the scheme, and you started - you did talk a bit about that, Carla, and some double counting would be inevitable, but what type of things do you think that you could do that would help with that, and you were, I think, addressing part of that, which was to do with the compliance of some of the scheme participants?

30 MS VASCONI: So with recycling, so you are supposed to avoid double counting by using certificates of destruction.

COMMISSIONER ABRAMSON: Yes.

35 MS VASCONI: So you could have something similar for reuse. You could have a certificate for reuse. However, at the moment there's no rules or guidelines on what a COD is or what it's supposed to do, and there's no central repository with, you know, a unique number or a vintage et cetera, so
40 if you had some like that where you could actually have a central repository or a central database where each certificate is actually lodged and retired I think that that would help, and then you'd be able to identify whether or not a certificate was a recycled certificate or a reuse certificate as well.

45 COMMISSIONER ABRAMSON: And Carla, where would those certificates be? Would they be with DAWE or would they be at the state-based level?

MS VASCONI: I think they'd have to be with DAWE, yes.

5 COMMISSIONER ABRAMSON: And what's the reason, that you're aware of, that there's been no movement on, like, having a repository for them, monitoring them? It seems to be a part of the scheme, but from what you're saying it hasn't really had much compliance activity around it.

10 MS VASCONI: That's a very good question we have raised over and over with DAWE. I think the fact - - -

COMMISSIONER ABRAMSON: I should say, I'm not being critical of my colleagues, Carla. I'm just asking from the policy perspective.

15 MS VASCONI: I think a big issue is that we get different staff coming through the office.

COMMISSIONER ABRAMSON: Yes.

20 MS VASCONI: I don't know how many different DAWE people I've spoken to over the five years that I've been in there, so I think it - you do get some staff members, you know, starting to really work on something and then it, you know, might fall by the wayside when they move on. I think another issue is that recyclers - recycling activities are where the poor behaviour
25 often takes place, and they're not captured under the legislation. It's only liable parties and co-regulatory arrangements that are picked up. I think that's a challenge in itself.

30 So when a co-reg or anyone else can raise an issue about a recycling practice with DAWE they don't really have - there's nothing that they can really do. They're kind of - their hands are tied behind their backs, so I think there needs to be, I don't know, some kind of auditing system where recyclers are approved under the scheme or there's some kind of - in the rules there's some kind of set to guidelines or behaviours that recyclers have to sign up to.
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40 Another problem is even though they have to be certified to the standard they don't have to be certified by JAS-ANZ accredited auditors, so that's an issue as well, and then also even though the standard is quite long and thorough and, for example, it talks about - it has a big section around downstream traceability and how you're allowed to calculate your material recovery rate, the actual audit scheme puts a box around or a fence around the recycling facility and they don't ever really - the auditors don't ever really look at the - what happens downstream, so any records or correspondence that a recycler has with their downstream vendors, so I think there just needs to be a bit of a
45 change to the audit scheme itself as well.

COMMISSIONER ABRAMSON: No, that's helpful. Carla, are you putting in another submission to us?

MS VASCONI: Yes.

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COMMISSIONER ABRAMSON: Thank you.

COMMISSIONER LINDWALL: I think what you said, Carla, you know, these types of reforms to the scheme as it currently stands are probably things you'd want to put in before you'd expanded on this.

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MS VASCONI: Yes, because it - - -

COMMISSIONER LINDWALL: And it might be an opportunity to put them in if you're going to expand it, so.

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MS VASCONI: Yes, exactly. Yes.

COMMISSIONER LINDWALL: Okay. Anything else to - I think that's been very helpful to us, thank you, Carla.

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COMMISSIONER ABRAMSON: Just one final question, if that's okay, Paul. We've got a little bit of time.

COMMISSIONER LINDWALL: Yes.

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COMMISSIONER ABRAMSON: Just about reasonable access in regional and remote areas and how we could improve access to the NTCRS in a cost effective way. I mean, it's the problem that we've had all along. You talked about economies of scale, but any ideas you have in there would be very useful.

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MS VASCONI: Yes. So currently each co-reg has to provide a service in a remote or an outer regional town, and instead of four co-regs each providing, you know, not a very good service, it would be better if only one co-reg was required to provide a great service, and the cost was shared across each co-reg, determined by DAWE or DAWE's contractor, and you could, you know, maybe implement the process as to how that could happen. So either a co-reg could tender to provide that service or it could be a waste management company or someone else outside of the scheme who's already based there, but that could be a way of doing it.

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COMMISSIONER ABRAMSON: Although of course I think they'd probably need ACCC approval for some of it, because - - -

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MS VASCONI: Yes.

COMMISSIONER ABRAMSON: But that's fine. I mean, that's an authorisation process for a good reason, so I understand that. That's very helpful. Thank you so much, Carla.

5 MS VASCONI: That's okay.

COMMISSIONER LINDWALL: Is there anything you can say, Carla, about the type of e-waste, and how it changes over time, that you've seen through the NTCRS?

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MS VASCONI: Well, that's actually something we've been talking about recently is you're getting a lot of wireless and Bluetooth devices at the moment, and we're not quite sure how they fit under the tariff codes for the in-scope products at the moment, so we want to work with DOR to get a bit more of an up-to-date list, so I guess that obviously something we've seen. Products are getting lighter, and also, you're starting to get contamination of wearables and more phones and that kind of thing coming through too. And then with - in Victoria for example where there's not a landfill ban for all e-waste - you're getting out of scope products being put into NTCRS collection points whether it's confusion or people don't know where to drop those things off as well. So, I guess it's contamination but with e-waste, if that makes sense.

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COMMISSIONER LINDWALL: Yes, well I mean is a tablet a laptop or is it a phone? I mean it's a big phone or a small laptop, whichever way you want to look at it.

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MS VASCONI: Yes, exactly. Yes so, I think it's just that confusion of different e-waste products finding their way to the NTCRS collection points.

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COMMISSIONER LINDWALL: And if you think about how computer monitors have changed; the old ones are very heavy and they're quite light now, so you're right.

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MS VASCONI: Yes.

COMMISSIONER LINDWALL: So, does that mean we should - because traditionally e-waste is measured by weight if I'm not mistaken, is weight still the right metric given that things have become very light? Actually, maybe volume is a better metric than weight?

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MS CHAMPION: Yes, so the scheme target is worked out firstly by liable party's imports based on units, and then the rules in the schedules by tariff code have a converted weight, and so you multiply the number of units by the converted weights. But that's another thing, those converted weights need to be reviewed regularly because like you say the products are getting lighter and changing for example as well, so that's an issue. And then I guess

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another thing that we've noticed on your point is that TVs and Monitors they used to be those heavy CRT or cathode ray tube monitors and we're seeing those certainly start to decrease over time, and it's your flat panels that are more prevalent now.

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COMMISSIONER LINDWALL: Yes, I remember lifting a number of them. Anyway, Carla, thank you very much for that.

COMMISSIONER ABRAMSON: Thank you Carla.

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MS VASCONI: Okay, thanks, bye.

COMMISSIONER LINDWALL: And next I'd like to invite Adrian Lozancic.

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MR LOZANCIC: Lozancic.

COMMISSIONER LINDWALL: Yes, Adrian, how are you?

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MR LOZANCIC: Good thank you, and I would also like to thank the inquiry for the opportunity to speak with you today. So, I am Adrian Lozancic, a law student at the University of Technology Sydney and I'm here representing the Australian Democrats in support of right to repair. Following thorough consultation with domestic and international partners, and extensive research, we consider that reform in the space is necessary to protect the rights of consumers and save thousands of jobs in the Australian repair industry. Serious systemic issues are present in the Australian repair market with an unfair advantage for OEMs at the expense of independent repair and consumers.

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For today's hearing I will discuss four key issues, the first consumer protection, warranties, standards, and the consumer guarantee. The second, the need for independent repairer, DIY repair and the need to address the barriers to access of repair. The third, the environmental impact of e-waste. And the fourth the global response to the right to repair and why such reform is reasonable and necessary in a domestic context. The focus of my presentation today will be consumer electronics; however, I will delve into issues concerning the industry at a whole when I discuss consumer protection. So, consumers deserve to be protected from industry malpractice, and that's why we propose a series of reforms to the warranty and consumer guarantee system, as well as examining product lifespan.

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The consumer guarantee is a good legal mechanism; however, it needs to be improved. The commission noted that in the 2019 to 2020 period 67,000 complaints regarding the consumer guarantees were recorded. An independent body should determine the reasonable period of time of which a product is covered by the consumer guarantee, and this should be made clear

to the consumer. We support better legal remedies, perhaps tribunals that specialise in warranty and repair, which resolve disputes at a low cost, akin to a more powerful and specialised version of the New South Wales Civil Administrative Tribunal, which should be easy to access and inexpensive.

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Key issues to be addressed; is warranty becoming void as a result of another repair? And if a consumer decides to undertake a repair or an upgrade like installing more random-access memory, upgrading their computer storage, or replacing a damaged screen where no other component is affected, the warranty should remain in place for all other components in the device with the option for a replacement retained in the event of a failure of an original component. Education is imperative to facilitating a right to repair in Australia, we support do it yourself repair and community repair cafes, we suggest that the government provides financial assistance through grants to local councils to facilitate these groups which play an instrumental role in educating the public of their repair options and assisting individuals with repair.

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I would like it to refer to Mend It, Australia who spoke of this at this hearing today, and in their submission, and commend them for their work. In addition, we recommend that the government invest in advertisements informing consumers of their rights under the consumer guarantees, and their option for repair as many are unaware. We also support a rating system for repairability of devices, akin to the star energy system negotiated by the Australian Democrats in the early 2000s. Say a scale from one to five stars, one representing very hard to repair and five representing easy to repair. We could also display the period for which the product would be covered under Australian consumer law on the scale, as well as the life expectancy of the device.

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The rating should be set by an impartial body such as Standards Australia. This is easy to implement and should be present on packaging and at the point of sale, and if online, on a prominent place on the webpage. The Commission did note our support for standards for minimum repairability where certain products would not be allowed to be sold in the Australian market, however our rating system would be the most effective method as it will encourage competition driven repair innovation. There are a few products which groups like iFixit have labelled unrepairable, including the 2012 MacBook Pro 15 inch and the 2013 Surface Pro, these devices have glued batteries and most components are soldered and any attempt at repair will damage the device.

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The sale of such items in the Australian market would be highly detrimental to the consumer, the repair industry, and the environment. These are a small number of highly specific extreme examples of anti-repair conduct and would not affect the most popular consumer devices. These products can be determined by the same body that releases the rating system for repairability,

with a zero-star rating representing a banned product. Again, a zero-star rating would be issued on discretion and where appropriate. Consumers should be entitled to products which last and a major incubator of this is software. Up until recently Samsung offered security updates for their mobile devices for only two years, and feature updates for less which limited the life expectancy of their products. We welcome their recent move to extend the security support to four years and feature updates to three years.

However, these devices should be supported for longer as the end of updates often means end of life, even if the hardware is perfectly functional. While Apple has a dubious record on repairability, they must be commended for their support of the iPhone 6s six years with feature and security updates. Phones and desktops should be supported by security updates for a reasonable time period, like the iPhone's six years, and this should be decided and enforced through a regulatory body. Where it's not possible for manufacturers to continue supporting that device through software updates, users should be able to seek third party security options where appropriate. I will now discuss the issue of barriers for access and why we must strengthen protections for independent repair.

So independent repairers at this time are strictly limited by constraints from the supply of parts and software, in addition to hardware limitations. For Apple iPhones in Australia independent repairers cannot access any parts from the OEM openly at all. While Apple authorised service centres do have access to a limited supply of components, they face restricted contracts which limit the repairs that can be conducted. Apple authorised service applications are not open, so repairers cannot apply for the program at this stage. Apple recently released an independent repair program IRPP. However, while it provides independent stores with some parts it's heavily intrusive with intense non-disclosure agreements, costs, and contractual obligations for independent repair. In addition to access of parts in phone repair, software locking is a major issue that the phone repair industry in Australia faces.

A software lock essentially has the device's IMEI – so that's the international mobile equipment identity – with the serial number of the component that came with it from the factory. If that serial number does not match, the device will display an error which reads – (indistinct) and display message, 'Unable to verify this iPhone has a genuine Apple display,' or, 'Unable to verify that this iPhone has a genuine Apple battery.'

And this prompts users to visit an Apple authorised repairer or Apple for service, even if they already had serviced their product at a third-party repair shop. The issue will appear regardless of the status of the part installed. It could be a third-party, fully compatible part, or it could even be a genuine original part from another iPhone.

5 The issue here is not what part is installed, but who installs it. And in these circumstances, the installer must be providing a commercial incentive for Apple for these misleading messages to not appear. Current software locks for Apple phones apply to the following devices and components. For the battery, the iPhone 10S, and all subsequent models. For the screen, the iPhone 11 and all subsequent models. For the home button, iPhone 7 and 8 series.

10 It's also important to note the incident of error 53, which occurs to the iPhone 5S, which resulted in the bricking, which is the complete end of functionality of those iPhones. We recommend reforms that enable third parties to access a wide range of spare parts without any contractual obligations. We also recommend a ban on anti-consumer and anti-competitive process of software locking, as it gives an unfair advantage to OEMs.

15 Independent repairers' services that are not covered by OEMs. An example is MacBook Pro logic board repairs, where Apple charges \$1,500 for a repair to replace the entire motherboard as an OEM, whereas independent repairers can replace a single chip, which costs as little as \$15 plus labour. This is one of the many reasons why independent repair is important, not to mention competition.

20 There should be penalties for OEMs who mislead consumers about their repair options. To conduct board repairs, independent repairers need an ingredient – the chip – and the recipe – the board view. OEMs are increasingly preventing chip suppliers like Texas Instruments from providing chips like the CD3217, ISL9239, and the ISL9240 for the MacBook Pro to independent repair.

25 These chips are vital to USB-C and battery charging functions. If a replacement cannot be sourced, a repair cannot take place, and the computer won't have power, unless the entire motherboard is replaced. OEMs like Apple refuse to provide these components to authorised repairers too, because they would rather consumer replace a board for over \$1,000 than undertake an inexpensive replacement.

30 OEMs should not restrict nor have a monopoly over the supply of these chips, and reform should ensure access to independent repairers. The use of security chips like the Apple T2, which are system management controllers – SMCs – are problematic, as they can reject components even if they are compatible with the device. These chips are also not supplied to third parties, and are intentionally designed to be difficult to replace.

35 Now, for the recipe; the board view. The board view informs repairers of the location, arrangement, voltage, and types of chips used in a device. It is essential to facilitate repair. While OEMs argue that revealing board views may impede on intellectual property, it is important to understand that many

are created by a third party to measure components in a device. And IP lock prevents other organisations from stealing designs.

5 Board views and schematics should be made available by OEMs, as they are necessary to facilitate repair and do not impede on their intellectual property. Those who provide schematics tools should be protected from prosecution. Independent repair provides an essential service, and are necessary to facilitate competition. It is concerning that the Commission found the electronics repair industry in Australia to be in decline.

10 With 10,000 to 15,000 Australians employed in this field, right to repair reform is imperative. The hardware, software and legal methods used by OEMs are having a huge impact on these businesses, which are often small. That's why reform is needed here, to save Australian jobs and prevent
15 monopolies from forming. This industry should be growing, especially with the increased use of electronics into the future.

20 E-waste is a major issue for Australia and the world. When products cannot be reused nor repaired, they should be recycled. However, much of Australia's e-waste gets sent offshore or ends up in landfill. The Federal Government should invest in the Australian recycling industry. Giving consumers the right to repair will reduce the amount of toxic chemicals entering our waterways and environment, increase life expectancy of products, and result in less products going to landfill.

25 These products contain heavy materials: lead, mercury, cadmium, arsenic, beryllium, palladium, cobalt, (indistinct) and carcinogenic chemicals such as brominated flame retardants. Now, that's a mouthful, and we don't want all those in our environment, where they can cause harm to plants, animals, and
30 humans, potentially causing cancer.

An investment in recycling initiatives will help reduce the amount of chemicals that enter our environment. It should also be remembered that
35 while e-waste is treated, no treatment is 100 per cent effective, and many people still dispose of their products in the regular garbage. The international community has enacted and supported right to repair.

40 Examples include the United States President Joe Biden's recent executive order 14036, as stated by the Commissioner, instructing the FTC – the ACCC of the USA – to target unfair anticompetitive restrictions on third-party repair or self-repair of items, and the European Union's development of design standards through the eco-design initiative and a repairability score.

45 In addition, Steve Wozniak, the co-founder of Apple, expressed his support of right to repair, and publicly explained that if it wasn't for open access to components, Apple couldn't have been founded in the first place. So, these reforms are extensive, effective, and have brought support. International

collaboration further demonstrates that OEMs will not abandon our market if we enact right to repair reform, and all the recommendations we have made are reasonable and evidence-based. So I would like to thank you for your time, and I'm willing to answer any questions.

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COMMISSIONER LINDWALL: Thank you, Adrian. That was very thorough. I (indistinct) you on your thoroughness there. Now, on – well, could I go back to the design – as you say, open source software versus closed software. There's a bit of a movement, isn't there, for open source software? Obviously there is a lot of proprietary software still out there. Would the open source encourage more repair, do you think?

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MR LOZANCIC: I think it would. Open source software would definitely encourage more repair. But in cases where companies like Apple still do use closed source software, we understand that sometimes you need to use closed source software. But we believe that independent repairers should have access to the tools which enable them to I guess facilitate repair with that software.

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20 So, whilst open source software is ideal, we understand that there are some situations where it can't always occur. And in those situations, we believe that there has to be some sort of remedy in place, to enable third-party repairers to still repair that device, if that kind of makes sense.

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COMMISSIONER LINDWALL: Yes, it does. In terms of the claims, or statements made earlier in the day, and yesterday, too, that there are safety and security issues with third-party repair of things like computers, would you care to comment on that?

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MR LOZANCIC: Yes, I would. And again, I've spoken to a wide variety of people who are in independent repair, who are authorised repairers, and people who have had their products served at Apple. I want to make it very clear that there is no significant danger posed by independent repair. The same risks exist whether you repair a device at an OEM, whether you repair a device at an independent repairer, or even, most of the time, if you repair it yourself.

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Indeed, when we look at the most significant cases of 'phone exploding' or 'products exploding,' these were actually by OEMs. Now, I'm not in any way suggesting that OEM repairs are more dangerous, because they're not. OEM repairs and independent repairs are equal, and that's what I want to stress. But it's good to remember that the Samsung Galaxy Note 7, which came to Australia, was recalled for a repair, which was conducted by the OEM.

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45 When that product re-entered the market after the repair, it still blew up, and it actually did cause some house fires. And that product was repaired by the

OEM, so it wasn't an independent repair job. And for the most part, independent repairers do have to abide by regulations and rules and if they do dodgy repairs that - in the extraordinary case, they supply a component which leads to a fire, which is extremely rare, they will be held accountable. And speaking of that, it's also important to consider that people who supply these products, like iFixit - so for instance, if I were to repair a product - like, if I were to replace a battery in my iPhone, if I were to purchase a battery from iFixit, iFixit is responsible if anything with those batteries go wrong, and those batteries - usually they're up to a high standard as well.

Another thing is the whole notion that repairers - independent repairers themselves are this horrible bogey man who don't know what they're doing, it's kind of flawed because a lot of these people that I've spoken to undertake so much work, so much research in understanding the components in the devices, and that's why things like boardviews are necessary as well. So I can't see the logical reason to state that, like, independent repairs will lead to a higher chance of the device blowing up as that isn't the case.

COMMISSIONER LINDWALL: Your example of the board replacement for \$1500 versus - - -

MR LOZANCIC: Yes.

COMMISSIONER LINDWALL: - - - the \$15 chip is a great example, I think. And to be clear on the Samsung Galaxy, that was due to a design flaw, wasn't it, with the battery?

MR LOZANCIC: Yes.

COMMISSIONER LINDWALL: The lithium-ion battery obviously.

MR LOZANCIC: Yes, yes, indeed.

COMMISSIONER LINDWALL: Just for the - because it has to be the battery that blows up. Nothing else on a laptop could possibly cause a fire unless you threw it in the fire, I presume.

MR LOZANCIC: Of course. Of course. And that's the same with any component in it as well. So that - like I said, that was an example where the OEM replaced a battery again and it still didn't work; it still caught on fire. So I guess the point there is that for most of the time incidents don't happen. Most (indistinct) repairs go without - - -

COMMISSIONER LINDWALL: Yes.

MR LOZANCIC: Like, an overwhelming majority don't have that occurring; however, when it does occur it occurs equally with OEM-sponsored repairs,

with authorised repairers and with independent repairers. So there isn't any boom factor, yes.

5 COMMISSIONER LINDWALL: And, of course, as you've noted, your reference to the eco-design initiative in the European Union and so forth. Some products are easier to repair than others and France has got a repairability index. I don't know if you can comment on it particularly.

10 MR LOZANCIC: Yes. So I was speaking to an engineering student from France about it and it really - it's a good idea because it takes into account a lot of factors of the device. For instance, the products - so the expected lifespan of the product is one thing they look into. The repairability of the device. And I believe they also examine software as well. And like I said, I'm not 100 per cent certain of all the components that go into it; however, 15 whilst it's a perfect step in the right direction, there have been certain criticisms made of it by some groups and individuals, including Louis Rossmann from the United States of America, where some products which aren't repairable manage to get high repair ratings because manufacturers manage to manipulate the criteria.

20 So we really should work towards developing a criteria which can't be manipulated. And I want to use the example of the health star rating system where I believe some chocolate products, but obviously being unhealthy, received a 4.5 star rating. So that's an issue there. However, for the most 25 part it's been very effective in informing consumers of repairability, and we definitely support such a measure in Australia.

COMMISSIONER LINDWALL: So could I just clarify, then, because there are two approaches if you wanted to have a labelling scheme.

30 MR LOZANCIC: Yes.

COMMISSIONER LINDWALL: You could for the benefit of harmonisation adopt the one that's already out there or you could develop a separate one 35 which might have less of the flaws of the one out there. Would you - I mean, is it better to go for harmonisation for the sake of harmonisation?

MR LOZANCIC: Look, I think harmonisation would be better, but we - since the European Union is doing it before us, I think we should also have a 40 look and see how the European Union goes with their repairability system, so we can really analyse what are the benefits and what are the flaws. The fundamental thing which I think we should retain is the visual appeal - for instance, one to five stars - because that makes it really easy for consumers to read, understand. So we have to keep it simplistic. A lot of the criteria 45 should still remain in place; however, I really think that we should take time to consider, firstly, who will judge it; and secondly, like I said, how we will really - I'm not really sure - like, how we will really determine - yes - the star

rating. It's a very complex issue and I think we need to invest in a bit of research there.

5 COMMISSIONER LINDWALL: I agree. Julie, I will turn over to you.

COMMISSIONER ABRAMSON: Thank you. Thanks very much, Adrian. You mustn't have too much time for your studies. That was a very comprehensive presentation.

10 COMMISSIONER LINDWALL: Wasn't it?

15 COMMISSIONER ABRAMSON: I just wanted to ask you a couple of issues around alternative dispute resolution because one of the issues you raised is not so much the law, but people's ability to access the law. So I'm interested in your views on alternative dispute resolutions, conciliations, ombudsman. Those type of issues, and then I will ask you another question about one of our proposals.

20 MR LOZANCIC: Okay. So with regards to alternative dispute resolution, I think it's - one of the things that I would like to answer there first is the issue of education because I think despite it not being dispute resolution in itself, it's imperative in enabling people to access these dispute resolutions. So, for example, with regards to the consumer guarantee, a lot of Australians are unaware that the consumer guarantee exists for a period of three years, including myself when my previous MacBook Pro had a bit of an issue, and I
25 wasn't aware of it where I believe that - - -

COMMISSIONER ABRAMSON: I'm not quite sure, Adrian.

30 MR LOZANCIC: Yes.

COMMISSIONER ABRAMSON: I will not get into the legal - - -

35 MR LOZANCIC: Yes, that's fine.

COMMISSIONER ABRAMSON: It's really for a reasonable period of time.

MR LOZANCIC: Yes.

40 COMMISSIONER ABRAMSON: That's what the law actually says.

MR LOZANCIC: Yes, but I mean that the consumers aren't aware that it exists, so aren't aware that there is a clause that states that a product should last for a reasonable period of time because a lot of the consumers I've
45 spoken to believe that after one or two years - - -

COMMISSIONER ABRAMSON: Yes.

MR LOZANCIC: - - - after the warranty period, that's it. They don't know that this consumer guarantee provision exists in the first place. So I believe we do need to have some sort of education campaign on that because that's one thing that I've seen. So yes, definitely for a reasonable period of time. That's what it is, but I don't think that many consumers have access to that information, like easy access to that information.

COMMISSIONER ABRAMSON: The other thing I wanted to ask you is that we have put forward a proposal called a super complaint. So what we're saying is that especially given the circumstances you're really talking about, Adrian, there could be a whole lot of consumers who have a particular problem, but they think it's only them, but through a consumer organisation properly organised they would have a process, like they do in the UK, to bring that to the attention of the ACCC, and then the ACCC would need to look at the evidence and whether there were things they should proceed with. Do you see that as a proposal that could assist the type of consumers you're talking about?

MR LOZANCIC: I definitely think that would be a fantastic proposal, and it also touches on another major issue which is the fact that a lot of the, I guess, issues that are prevalent in right to repair don't just affect one company like Apple. So currently if somebody wants to raise a dispute they raise it with that company itself which doesn't affect the industry practice as a whole. A super complaint system would resolve that. Yes. And I think that the consequences of introducing a super complaint system would be greater education, a more informed public, and a greater incentive for OEMs to not adopt anti-competitive practices.

COMMISSIONER ABRAMSON: Could you unpack that a little bit for me? What did you mean in that regard?

MR LOZANCIC: Okay. So on the super - sorry. Just to clarify, with regards to the super complaints and the disincentive for OEMs to engage in anti-competitive practices?

COMMISSIONER ABRAMSON: Yes, it's the latter comment.

MR LOZANCIC: Yes, yes. So what I mean by that is introducing a super complaint system would mean that if - like you raised, if an issue does appear, like in - like, I'm just going to create a theoretical company.

COMMISSIONER ABRAMSON: Yes, sure.

MR LOZANCIC: Pear company. Pear company which produces a super laptop, and then you've got a banana company which produces an ultra laptop. If somebody complains about the pear company and the super laptop

and if the banana company has the exact same fault, it would really incentivise the other company to, I guess, get their act together.

COMMISSIONER ABRAMSON: Yes. No, I understand.

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MR LOZANCIC: Yes, exactly.

COMMISSIONER ABRAMSON: It's a - - -

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MR LOZANCIC: Yes.

COMMISSIONER ABRAMSON: Yes. It's a good point, Adrian, and one of the benefits of these type of schemes, at least how we see them, is that it picks up systemic issues.

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MR LOZANCIC: Yes.

COMMISSIONER ABRAMSON: So, you know, we've had quite a lot of conversation about ion batteries and things, so no, no, that's very helpful. The other thing I wanted to ask you a bit about was warranties. We've got some proposals, as you know, on the table about warranties, and the first one is that we would have some wording in the warranty which says that you still have your consumer guarantees, that they can't be voided by taking something to an independent repairer.

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But in America, there is actually provisions which outlaw certain conduct in that regard. So just wondering, do you have a view about warranties and the type of proposals we've been thinking about?

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MR LOZANCIC: Yes, I do. With relation to that specific example, I – there are some repairs which when conducted don't affect the rest of the device. Or like, for instance, if a CPU fails in a laptop and if any individual were to replace the Random Access Memory. Those two components are not the same and replacing the Random Access Memory would likely not have any interference with the CPU whatsoever, so we still believe that a warranty should be in place for that part of the device.

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So we do believe that repairs should be able to take place without voiding warranty of the entire device. We do understand that it's unreasonable to expect a OEM to cover a component which was installed by the user into the device under warranty, and that's not what we're asking for. We're just asking for the OEMs to cover any component which they put in the device under the warranty, if that kind of makes sense.

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COMMISSIONER ABRAMSON: No, it does. It does.

MR LOZANCIC: Okay, yes. And, in addition, we are very concerned, and I believe the AAAA raised a concern about this in their submission about this extended warranty business. So, an example of an extended – extended warranties are prevalent in many repair industries, whether that be consumer electronics through Apple and their AppleCare program and car companies to say, okay, look, we’ll give you 10 years extended warranty if you repair your car, or if you get your car serviced at the dealership.

The issue with these is that a lot of the time these extended warranty programs contain the same protections that would normally be covered under the consumer guarantee anyway, and a lot of consumers don’t understand this, I know. I’ll just go back to that. I understand I’ve referred to Apple quite frequently, but they are known to be a serial offender when it comes to any competitor repair practices. So in the field of – in (indistinct) for a three year service plan, a free extended warranty plan. The thing about that is, they will replace a device if it becomes faulty, but the consumer guarantee would cover that anyway.

So in reality, what are you paying for \$100 is only an additional year of phone and technical support. I believe not the warranty and when most people purchase these incentive warranty plans they want the warranty. So there needs to be greater clarification over what an extended warranty actually is, and the differentiation between an extended warranty and what’s already covered by Australian Consumer Law.

COMMISSIONER ABRAMSON: No, that’s great. Thank you so much, Adrian. Back to you, Paul.

COMMISSIONER LINDWALL: Thanks, Julie. I agree on extended warranty. The only thing I might say about the AppleCare, as far as I’m aware, is – sorry, my dog’s playing up – is that if it was accidental damage, don’t they cover it if you break your screen, or something like that?

MR LOZANCIC: Yes, yes.

COMMISSIONER ABRAMSON: (Indistinct) point about that, Paul.

MR LOZANCIC: Yes, that is good and – but I think it’s important, because when they market these plans, a lot of the consumers I know purchase them not necessarily – because I think it’s a great thing to have, to have this plan in case you, you know, accidentally damage your device. Like an insurance plan, and I think that’s perfectly fine.

COMMISSIONER LINDWALL: (Indistinct) in that sense, yes.

MR LOZANCIC: Yes. My main concern exists with the fact that a lot of consumers purchase these plans in the mistaken belief that it will extend their

protection. So it would extend the warranty when it's already covered under the Australian Consumer Law. And for AppleCare, look, I think it's perfectly fine but I think consumers should just be informed that – yes.

5 COMMISSIONER LINDWALL: And as far as your point you made about warranties, I mean, it's – I did exactly the same. The laptop I'm speaking to you on at the moment had a spare bay in it, so I bought a hard disk drive and installed it myself and it works fine. But you're right, if something else
10 broke, it should be still under warranty – well, it is under warranty, or consumer law anyway.

Could I ask, given that – on other question, Adrian, and then I'll let you go. It was a comment from the National Farmers' Federation about parallel importation of spare parts not being allowed for some reason which I need to
15 ascertain, but in the (indistinct) you're talking about electronic (indistinct). Is the parallel importation of spare parts an issue, do you think? And you know what I mean by some getting say an Apple part from the United States directly rather than buying it from the Apple store in Australia.

20 MR LOZANCIC: Yes, it is a significant issue in the consumer electronic space. So, like there are some components which Apple restricts their suppliers from supplying, and these include – sorry, I might just have to take one second to find the exact components, because I've got them right here. I
25 previously discussed the CD3217, ISL9239, and ISL9240, which are chips manufactured by Texas Instruments. These chips are in the MacBook Pro and they're essential for USB and battery charging operations.

So if one of these chips fails, you can't charge your device and the device or the battery won't work. So these independent repairers in Australia can't
30 access these components directly from the manufacturer because Apple tells the manufacturer don't supply to anyone else but us, because that's in the contract. However, these chips do make it onto the market through – through salvaging old computers.

35 COMMISSIONER LINDWALL: Yes. (Indistinct) another ad hoc way of – arbitrary way of getting it, yes. I get you, yes.

MR LOZANCIC: Yes. Yes.

40 COMMISSIONER LINDWALL: All right. Well, that's fine, Adrian. I think you've made your point very well, and thank you very much for appearing today.

COMMISSIONER ABRAMSON: Yes, thank you, Adrian.

45 MR LOZANCIC: You're welcome.

COMMISSIONER LINDWALL: Now, we've got Kevin Arendse and Graeme Baker from the Watch & Clockmakers Association, Victoria division.

5 COMMISSIONER ABRAMSON: Who have been incredibly patient, I have to say. So it's just as well they're in the timekeeping business.

MR ARENDSE: Hi Paul. Hi, how are you going?

10 COMMISSIONER LINDWALL: I've got a good watch on myself, you see.

MR ARENDSE: Just checking.

15 COMMISSIONER ABRAMSON: I do have good watches, but they're in need of repair, so I haven't done anything with them.

COMMISSIONER LINDWALL: So if you'd like to introduce yourselves and give us a bit of a statement, that would be perfect.

20 MR ARENDSE: Indeed. I don't know whether Graeme's on board yet. Graeme, are you on board yet? No. I might get started. Are you there, Graeme?

MR BAKER: Yes. Is that okay, or?

25

MR ARENDSE: There you are. On hold again. All right. What I'll do, I'll get started here anyway. Look, I'll just introduce the – introduce ourselves. Look, my name is Kevin Arendse and I'm the President of the Watch & Clockmakers of Australia, the Victorian division, and I also run my own retail and repair workshop in Heathmont. I've been a qualified watchmaker, a horologist, for going on 30 years now and consider myself well skilled, experienced, and educated to complete the majority of watch repairs and restorations in today's everchanging world.

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35 I've trained other watchmakers, technicians, who are now working for one of the larger high-end watch houses. I remain active in watchmaking groups and circles and continue to educate others and learn from them, and I speak on behalf today of the Watch & Clockmakers of Australia. The hardest thing that we as watchmakers contend with today is the availability, or should I say non-availability, of spare parts for modern and also older watches the clients entrust to us. The restrictive supply of spare parts to independent, qualified horologists is increasing and affects our trade dramatically.

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45 It reduces competition which in turn – which in turn reduces the choice of repairer for the consumer. Independent watchmakers have been slowly marginalised in what brands of watches we're able to repair, due to the spare parts supply. Right to repair is the ability for consumers to have their

timepiece repaired at a competitive price using the repairer of their choice, which ultimately the supply and spare parts, and technical information supplied by the watch houses. About 15 to 20 years ago these were quite accessible to independent watch makers, with the availability of these spare parts and technical information it would provide benefit to the consumers, our industry and the brand houses who are also struggling to keep up with the high demand of repairs. The supply of parts will also build brand reputation and confidence to the consumer as a repair will endorse and (indistinct).

As a consequence of the spare parts supply independent watch makers are forced to spend some time hours looking elsewhere online web, eBay, watch chat groups wherever they can to try and find the same or similar parts required. Sometimes these might be inferior quality parts, they might be second hand, they might generic but to - if we can get the parts, they're usually at a much higher price just so that we can actually complete the job, and this is usually passed on to the customer. This type of situation forced consumers to return their watches to the manufacturer, often very expensive repairs with no option for choice. There is no level playing field.

Often when consumers return the watches to the manufacturer for repair these are sent overseas, usually in Europe or over to Asia, either for a replacement of movements or the repair due to the inadequate timeframe for repair, or lack of experience within the watch houses to be able to complete these repairs in house. The final cost of the repair can be quite high, and the owner of the watch generally has no choice, these repairs can be quite easily completed locally by qualified watch makers provided the spare parts are available. There are many well equipped independent workshops with high skilled and professionally trained watch makers that are still unable to receive parts to repair these high-end watches.

Some of these are the same watch makers that helped build the brand of the watch houses in the past. Some watch houses offer limited supply of parts, others offer no parts at all. One brand will provide, say, the face of the watch or the dial (indistinct) of modern watches, but will offer other parts for the same model. A problem when repairers try to restore a dial is needed, you need to send the whole watch back to them for repair, no negotiation. (indistinct) spare parts supply has affected our industry recently over the last 20 years, (indistinct words) reverse this, and we'll be dealing with many large international companies. The demand for independent watch makers across the world has increased significantly, especially in the last 10 years, as here in Australia.

Trade qualified watch makers are as competent of repairing watches to the same standard as the manufacturer's watch houses. We believe the same as the watch houses; to maintain and resurrect time pieces to factory standards where possible. The supply of manufacturer spare parts and technical information will only build rapport between the watch houses and consumers,

it gives choice and will give the independent watch maker a viable future. Thanks for your time, that's all I have to say. But going on from that Graeme has also got a couple of other things that he would also like to bring forward as well.

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COMMISSIONER LINDWALL: Okay, well let's listen to Graeme and then we'll have some questions. Thanks Kevin.

10 MR BAKER: Yes, good afternoon Paul and Julie. Firstly, thank you for allowing us the opportunity to give a brief outline on behalf of the WCA on the difficulties we face as watch and clock makers. My name is Graeme Baker, my wife and myself run Gold Rush Jewellers in Bendigo. I've been a watch maker for over 50 years, and it is a trade I wish to see continue so many other young people can have the same satisfaction and enjoyment in going to work each day. Could I just deviate one second before, just to add a little bit here on what we as watch makers do. Kevin and myself have been listening to this for the two days, and you will probably say, 'Wow, great dedication.' But as watch makers we've been at the bench, we've been working, and what I find really fascinating about this trade is that today I was working on a pocket watch that was made in 1863, and the customer brought it in to me and said, 'Can you tell me anything about it?'

25 Well, what I will be able to tell him about that particular watch is it was made during the American Civil War and it came out to the goldfields, either Bendigo or Ballarat because he has a connection with Ballarat as well. So that's the fascination we have with watch making. I'll get onto parts in a moment, but we as watch makers are really passionate people about our trade, we look forward to going to work, we enjoy it, there's nothing more satisfying than taking a watch - whether it's old or new - and repairing it so it keeps time, and the customer goes away satisfied. One thing I would like to ask, and this is a question I centrally get, if I get a watch in and I know I won't be able to get the parts people say to me, what about - we have legislations and it's restriction of trade - now why doesn't that apply to your trade? I can't answer that. Julie may have some indications on that, and what's the different there in the right to repair? Are you able to enlighten us on that Julie? Like why isn't the right to repair, to obtain parts, a restriction of trade?

40 COMMISSIONER ABRAMSON: Well, there actually are some of the provisions which deal with competitive behaviour and the refusal to deal, to be honest. So, it kind of does lie within that position of the law, but the way I see it is unless the ACCC sees something that it needs to take on for you, and I know that there's some litigation overseas has been pursued, the remedies might be there for you - and I'm not expressing a particular legal opinion - but they're not accessible to you just simply because of the way you do your day jobs.

And the issue for us, or one of the issues, it's not that we're unsympathetic to this, the issue is about consumer harm and the breadth of consumer harm, so that's kind of one of the issues which is probably - and I couldn't speak for the ACCC - but that would be one of the things they think about in broad sweep of things, in terms of their resourcing. So, it's not for me to give legal advice but I would have thought that some of those provisions around restrictive and refusal to deal would be something that could be further looked at. I was just being practical about your ability to do that.

10 MR BAKER: Look we're still a very small organisation and we don't have the resources or the funds to take on these big Swiss companies like - you're really talking huge litigation. But I thought I would just ask so that I can pass that back to people when they do ask me. Just going on to spare parts; what do we want? Basically, we want access to parts. Now what we require when we say parts, we want case parts, so that the outside of the watch, we want mechanical parts, electronic circuits, technical bulletins, and parts information including part numbers. It goes without saying, like for a fair and reasonable price. Now, since the major companies have started to restrict parts, parts have gone up exorbitantly.

20 A part that may have cost \$20 can now - if you can find it - be up \$150 to \$200. That means that we have to pass that on to our customer. These parts are readily manufactured by these companies, but once they are restricted, you have to search the internet to try and find them. The costs are passed on to the consumer, and if we look at that watch and say, 'I'm not going to get those parts.' They do have to take them back to the manufacturers. I know of someone who rang a major manufacturer the other day with a watch looking for quote, they said it's \$90 for the quote, it will have to go back to Switzerland, and there's a minimum charge of \$2,000 for anything that goes back to Switzerland. So, this particular watch we have repaired the same model. I don't do it anymore, because I can't get parts, and the normal repair on that would be around \$600.

35 So that's the difference now, with restriction on parts. The consumer is suffering because of that. I'd like to go on a little bit and just outline why or how the restriction of parts impacts on our trade, and how it affects future trade training. Any trade unable to access the latest technology and spare parts is going to wither and die. They're basically - these companies are cutting off any future for our industry.

40 If we can't get parts, we can't repair, we go out of business. So they're restricting our livelihood, and it's making it very, very difficult for the small independent watchmaker. It seems that the more restrictive the large companies become, the less they wish to engage with local industry, and the less they contribute to trade training, which is the future of our industry.

Now, I am not aware – I see Ross is on there, and he may be able to give a bit more information on it, but I'm not aware of any of the large companies contributing to TAFE in Sydney. I stand to be corrected on that, but TAFE in Sydney is our only trade training school. And because – the average age of watchmakers is now over 60.

They are not taking on apprentices as readily as they would have in the past, because they put in all the effort to train them, and the big companies will grab them, send them off to Switzerland for a six-month training course, and the person doing the training has lost that watchmaker. Now, that is a major problem. We're just not getting any support from these large companies. They're not contributing. I say to people, 'Take a walk along Collins Street.' Now, Julie, you're in Melbourne, I understand?

COMMISSIONER ABRAMSON: I am.

MR BAKER: Yes. I would go down to Melbourne quite regularly, obviously, before COVID and all the rest of it. And I did some – little bit of thinking about it. I came up with 12 stores selling luxury watches just in Collins Street. Now, that doesn't cover the rest of Melbourne, and I'm sure it's the same in Sydney.

I could only find one of those stores that will supply parts. The rest, they either do it in-house, and many of them bring in watchmakers now from overseas. I'm aware – one of the big companies did put a proposal to the government to bring in five watchmakers over the next seven years. That was before COVID, of course. But this is the type of thing where – I know it's not called the 547 visa now, but – it has a new title, and I'm not sure what it is.

But this is what is happening, that we – we have the facilities, we have the expertise to train people here. But the big companies seem to want to bring in their own people, or to keep all their training in-house. In Australia, we are highly skilled, qualified professionals. Our members have completed apprenticeship training or internationally recognised – or have internationally recognised qualifications.

Australian trade training is of the highest standard, thanks to TAFE in Sydney and to the lecturer there, Trent Firth, who does an amazing job. A number of graduates from the Sydney TAFE have gone on to work in Switzerland, and indeed as trainers at WOSTEP in Switzerland and around the world. Now, WOSTEP is the Watchmakers of Switzerland Training and Education Program.

This is the – I was going to say industry gold standard, but we don't say that anymore. This is the industry standard in Switzerland. So our watchmakers are very, very capable. They're very well accepted overseas because of the

training they've had. So I can't understand why the larger companies, Swiss companies here do not support our industry.

5 COMMISSIONER LINDWALL: We will need to ask some questions soon.

MR BAKER: Sure. Sorry.

10 COMMISSIONER ABRAMSON: Graeme, I think you can take it that we do understand very clearly the skills base of your members. And we had a lot of discussion about (indistinct), but we understand the skills base.

MR BAKER: Yes.

15 COMMISSIONER ABRAMSON: Just in terms of what's happening overseas, clearly this is a commercial practice which is occurring across the world, and we're aware that there's some litigation which is on foot in the UK. So we're quite – well, it's in Switzerland, but it's a UK person bringing the claim.

20 MR BAKER: That's right.

COMMISSIONER ABRAMSON: So we're quite interested in what's happening in that space.

25 MR BAKER: To be quite honest, I think it has been held up because of COVID. Ross may be across it more than I, if Ross is available. Basically, Cousins is a large material house in the UK. One of their main they sold was Omega spare parts and ETA, which is part of the Swatch Group. They're both part of the Swatch Group. They have restricted parts to material houses like Cousins.

30

Cousins decided that they would take them to court on this, which would be an incredibly expensive thing to do. They've had two steps forward, one step back, I think. And because it's being – the hearing is being held in

35 Switzerland, I think Cousins will probably be very lucky to win, because most countries are parochial. Let's hope the judges are fair and even-minded, and say, 'Why don't you just sell them the parts? Let everyone be able to obtain parts. Do that around the world. I think there would be an awful lot of money defending any decisions big companies have taken.

40

COMMISSIONER LINDWALL: What about in the United States? Because obviously, the United States would be the largest market for Swiss watches in the world, I would imagine.

45 MR BAKER: I think China is now, but, yes.

5 COMMISSIONER LINDWALL: Well, take United States, but also China. The United States brought in right to repair activities quite extensively recently, too. Have you heard of anything – because often, we can benefit in Australia from other activities overseas. So, in terms of availability of spare parts by luxury Swiss watchmakers in the United States, has that been - - -

MR BAKER: It's the same as here, is what I understand. They're keeping everything in-house.

10 COMMISSIONER ABRAMSON: Go ahead, Kevin.

15 MR ARENDSE: Just going back on what it was about the UK, I did follow that up earlier on today as well. The (indistinct) have been held up, and I think they are due to come out in August. So we're not too far away from that. In America, it's exactly the same as what it is here as well. The spare parts supply is dwindling everywhere. There's not a place in the world where you can get parts.

20 COMMISSIONER LINDWALL: Now, the spare parts, are they patented? I'm wondering whether someone else could just manufacture them.

25 MR ARENDSE: There are some companies that do, and – but when you're dealing with a particular brand, you want to keep the genuineness. You want to keep original parts.

COMMISSIONER LINDWALL: The value of (indistinct).

30 MR ARENDSE: Absolutely. I don't like to mix and match, and it's – I think we've all got morals as well, and if I'm fixing up a high-end watch, I want to keep the original parts, and so do my clients. But if you have no choice, then you have to look at, what else can we do? Now, as Graeme mentioned earlier, the Swatch Group own ETA, which is - - -

35 COMMISSIONER LINDWALL: They make the movement (indistinct).

40 MR ARENDSE: So you might find, one brand would have the same movement as another brand, but you can get that brand's parts, so you can actually use those parts into this watch. So it's about knowing what is available, and how you can manipulate that, I guess.

45 COMMISSIONER LINDWALL: I understand where you're coming from. I was also going to ask about whether 3D printing is something that's been thought of in the industry, in terms of small little parts, something that I would've thought would be – very precise parts have to be manufactured to very (indistinct) tolerances.

MR BAKER: Yes. Look, I think it'll be many, many years before 3D printing comes into watchmaking. The tolerances are just too fine. I think 3D printing would have to improve enormously. Just throwing back to America, I do know that Rolex had offered to buy back all the parts from people who had - from material houses and suppliers. They weren't offering as much money as the people could get by selling them online, so I'm not sure how successful it was, but when you're also asked the question about are there generic parts of that available, there are certain parts available, but because there are so many different watches, you know, watchmaking has been going for 500 years and look, in the last 20 years it's accelerated.

There's different movement manufacturers come in. There's different calibres. There's variation on calibres from automatics, day/dates, all those things, so it would be impossible to get all the parts for all those watches, and the only ones that would have them are the manufacturers.

COMMISSIONER LINDWALL: No, I hear you. I mean, and it's not very good for the customer because, I mean, I've got an Atmos clock which is working fine but I was told that if I needed it repaired it'd have to go to Switzerland. It'd be at least four months before I'd get it back.

MR BAKER: There is one person in Melbourne doing them. You would have to contact him to see if he's still doing them. I'm not sure - you're in Sydney - you're in Canberra, are you?

COMMISSIONER LINDWALL: No, there's nothing wrong. It works fine and I don't want it repaired, but I'm just - something - - -

MR BAKER: When you do there is one person, but most of them do go back to Singapore, yes.

COMMISSIONER ABRAMSON: Graeme, can I just ask, is it true of all - I have a grandfather clock, so is it a problem in other areas of your profession or is it really an acute problem in watches?

MR BAKER: It's more an acute problem in watches. It's a funny thing. Watchmakers and clockmakers just about divide down the middle 50 per cent.

COMMISSIONER ABRAMSON: Have I created a terrible faux pas?

MR BAKER: No. Look, we're called Watch & Clockmakers of Australia, but yes, some people say "Look, you do watchmaking till your eyes start to go and then you go on to clocks". That's basically it. My passion is watches. I love watches. I don't have the same passion for clocks, but with a clock parts can be made on a lathe because they are much larger, so because all of our members are highly skilled, those doing clocks are quite capable of doing

that. So unless it's a really new, very unusual, and Paul, having the Atmos clock, that is one of the very, very few, very unusual beautiful clock. I love them, Paul. I love to sit and watch them, but they really are a specialist clock and that is why no matter what I think, you know, there's going to be a
5 limited time on spare parts for them because of the way they operate. They operate on the changes in atmospheric pressure, so they are specialised.

COMMISSIONER LINDWALL: Yes. No, I appreciate very much the skills that your occupation have. It's just phenomenal and I couldn't imagine
10 having the - holding my hand so still. It's like being a surgeon really.

MR BAKER: And we give a two year guarantee when we're finished, so, if only the surgeons or - - -

COMMISSIONER LINDWALL: I've got one question, I guess a final question. It's about - I mean, it seems obvious, doesn't it, why would the company, Swatch Group in particular, do this, that they think they can make more money? But then again, it's not entirely clear, if you make it more
15 difficult for a repair you might turn off potential customers, and the Swiss industry - I remember a number of years ago - I'm old enough to remember
20 the introduction of Quartz watches and how the industry in Switzerland was worried that it would all collapse.

MR BAKER: Yes.

COMMISSIONER LINDWALL: But there's been a resurgence since then and you get all sorts of - you could spend \$200,000 on a watch if you wanted to, have Grande Complication or something like that.

MR BAKER: Yes. Yes, a million dollars plus, yes.

COMMISSIONER LINDWALL: And so they've done quite well, but I'm not sure the strategy of trying to drive out independent repairers is in their own interests really.

MR BAKER: We fail to understand as well. We're the backup, really, there. It's not just that. There's a lot of people who have been and dealt with these large companies and they don't like the attitude. They just say "Look, I really don't care how much it's going to cost. I want you to fix it", and we
35 have to say "Well look, if we can get the parts, love to", you know, "Love to do your watch", but I can't understand their logic. You would have to talk to them about it. We are, as I've said before, a highly skilled group. We're highly trained. It's not as though we're, you know, backyard boys. Anyone that takes a good quality watch to, you know, a backyard operator will get
40 what they deserve.

45

COMMISSIONER LINDWALL: Exactly, yes.

MR BAKER: We are the qualified Watch & Clockmakers of Australia, and we take pride in our job.

5 COMMISSIONER ABRAMSON: Graeme, can I ask another question? And
it's a bit of a strange parallel, I'm sure you'll think, but in the case - there's a
very important copyright case in the US (indistinct) where it turned out that
the owner could actually ask for the schematics of the plane because that was
10 actually part of his purchase of the plane. Is there any scope for a person who
owns a watch to go to the watch companies and say "I own your watch. I
want this part", and then supply it to the watchmaker as opposed to the
watchmaker asking for it directly?

MR BAKER: Look, I have heard that and it's been put to be before. It's very
15 - it would become very difficult and very time consuming. I think that would
be the biggest problem. The legalities on whether they would supply a - so if
I said "Look, this watch needs a new mainspring auto reverse" or whatever.
If you go along and you get me these (indistinct) parts, would they sell them
to them? I don't know, but I've had to strip that watch down. I've got to then
20 store it so we don't lose any parts. It becomes a - it would be a very difficult
way of doing it, and from my experience I think the answer from them would
probably be no.

COMMISSIONER ABRAMSON: So your remedy, if there was to be a
25 remedy, has to be that the parts would be available to the independent
repairers, as opposed to the consumer?

MR BAKER: Absolutely.

30 COMMISSIONER LINDWALL: At a fair and reasonable price.

COMMISSIONER ABRAMSON: At a fair and reasonable price.

MR BAKER: Yes.

35 COMMISSIONER LINDWALL: I think we hear you very well, and unless,
Julie, you've got any other questions, I think - - -

COMMISSIONER ABRAMSON: No. It's been a very interesting inquiry,
40 because although I do notice your work, I don't actually think I've spoken to
clockmakers and watchmakers before, so thank you very much.

COMMISSIONER LINDWALL: Well I've been to - and I've had a few
things repaired. I mean, I've got an 18th Century French clock as well, and I
45 know clocks and watches.

MR BAKER: Yes.

COMMISSIONER LINDWALL: So thank you very much, Graeme, and - - -

5 COMMISSIONER ABRAMSON: No, and thanks for making the time for us.

COMMISSIONER LINDWALL: And (Indistinct) there too, so we acknowledge Ross as well.

10 MR BAKER: Could I just say one more thing, just before we close?

COMMISSIONER ABRAMSON: Of course.

15 MR BAKER: Look, in your final report could you be really brave and set a precedent and just try and recommend that they supply parts for us, because everywhere in the world all the watchmakers are looking for a precedent to make these companies supply parts? I know we're only a small percentage. I know we're way down here in Australia, but it may be a foot in the door for the rest of the world, and you know, we'd love to think that if we could get that chink open it would roll on to the rest of the watchmakers because we're
20 only a small group. We're a very tight group, and we would love for Australia to lead the world in something like that, so I thank you both for hearing us out. It's much appreciated.

25 COMMISSIONER LINDWALL: Graeme, thank you, and we will seriously talk about this.

30 COMMISSIONER ABRAMSON: Thank you. Yes. No, we will. We understand the issues and you've been very articulate in putting forward the members' issues, but we will look at it.

COMMISSIONER LINDWALL: Okay everyone. Thank you again for that.

35 COMMISSIONER ABRAMSON: Thank you.

MR BAKER: Thank you.

40 COMMISSIONER LINDWALL: That's the end of today. I always, as usual, will ask if anyone else wants to say something who - they are allowed to now, anyone who hasn't said something or who wants to rebut something that's already been said; something like that.

45 MR HARRIS: I wouldn't mind - just a couple of points I've noted throughout the day. David Harris.

COMMISSIONER LINDWALL: David Harris. Yes, hello David.

MR HARRIS: I'll admit straightaway that I work for Sony Australia. I noticed a number of points I agree with throughout the day. Some, I think, were kind of rubbishy or just too broad-based. But I'm doing this from a consumer electronics point of view, so not a car person, not a watch person. I agree with the watch people, by the way. So the discussion moved from right to repair to right to reuse. So there was a couple of points around that and the NTCRS. Currently the NTCRS is basically funded by the manufacturers paying a levy on their imported weight.

There was the comment about taking product out of the chute prior to it being crushed and sent off to be reused as individual materials. I don't have any worries with that provided it didn't get to the chute on the back of the NTCRS that we are paying for because as part of that, the co-reg parties we have to pay have to get a certain quota of weight, and if you use their facility to bring the weight to you, then you take it before counting, you're basically stealing the weight.

COMMISSIONER LINDWALL: Yes.

MR HARRIS: That's what came there. The one size fits all across all the industries - obviously when people are presenting, they're presenting their own industry, but it doesn't necessarily come across that for all people presenting, and one size won't fit all for all the industries, for sure. The discussion of cars, farm equipment and electronic equipment, they have large differences and using third-party to pay for repairs servicing of cars during the warranty period is a different discussion to the need for you to take your TV to a third party during the warranty period. After the warranty period, if you're paying for it you have the right to take it where you want. Authorised repairers.

In our industry we have a close relationship with those we authorise. They are - because of the more and more reliability of our products from our manufacturing point of view, we're trying to get less faults happening and with less faults become less repairs, and their work is less and less. So we try to facilitate as much work their way as possible, but of course only when faulty. So when it goes out of warranty obviously we prefer them to do our work because (a) they know what they're doing, and we can support them in it. There have been some third parties that the customer's come back to us and said X, Y and Z, and we've said, well, we can't support that third party in the way you want us to because we don't know their expertise or otherwise.

We train, we support and everything our authorised repairers, including taking lenses are one of the type of repairs. We actually purchase tens of thousand dollars' worth of equipment to align the lenses and station them at a couple of our authorised repairers. Now, that's for lenses. The other things - a couple of comments. Some parts cost - by the repairers, the parts costs can go up. I know there is a practice amongst consumer electronics repairers that

they inflate the price of the part because that's where they make their profit because a lot of the time they don't put on their full labour because people think they're being ripped off if they're being given the full labour costs. So it's the margin on the part where they stay afloat. That's out of warranty, of course. Now, I should also note the difference between restricting part supply to who can get the part compared to is the part available at all.

COMMISSIONER LINDWALL: Yes.

MR HARRIS: So there's two difference. Let's give you an example of a part which is - doesn't stay around for long; let me say that. Panels for flat TV repairs. We might have a model one year, and by the time the next year's model is reproduced the actual technology in the panel has changed significantly so that it's not compatible with old years, and you only have whatever parts you've put aside and estimated will last you X years for that product. And you can't remanufacture that part because the specialist you've purchased it off has changed all his jigs and he's moved up to the new, improved panel type. So although someone says they can remanufacture parts, I'm sure some industries and some parts, that is fairly true, but it's certainly not true for all parts.

COMMISSIONER LINDWALL: Especially for rapid technological change like you just mentioned, yes.

MR HARRIS: Yes. Software updates, a requirement. Now, the requirement for software updates will vary extremely depending on the product you're talking about. Apple phones came into it. Phones get updates all the time, yes, fine. Let's talk televisions. TVs now run on software a lot. A TV used to have software embedded in a chip. It was very simple system software. The chances of changing it for a software issue, I am only aware in my history with Sony as an example, where an old CRT TV had to have its chip changed because the software needed to be updated. If the chip ever got changed for any other reason, it wasn't software update, but now the TVs are basically computers.

COMMISSIONER LINDWALL: Yes.

MR HARRIS: Multihookup and software update. Now, the example of the iPhone needing software update to keep it up to date to keep it useful doesn't translate greatly into the TV industry; however, now that the TV is connected to the internet, a TV bought back in 2014 - at that time there were certain security protocols for streaming services. The streaming services have moved on and improved their security for copyright reasons of the content. Once they move past the protocols that were in the 2014 set, you can't necessarily update the software to cope with it because even if you could, even if the developers could go back that far and reinvent the wheel for you, the hardware won't cope with the new need for the security arrangements. So

keeping the software updated for all products across the board for a certain time is quite a large discussion topic, in my opinion.

COMMISSIONER LINDWALL: Okay, yes.

5

MR HARRIS: And supply of chips - there's pros and cons to that, and I can see where the gentleman was coming from, but I can tell you there are cases where chips will not be supplied to the point where I know of a chip that we can't even get out of our factory, and it's not a complex chip; it's a relatively simplified chip; however, it contains proprietary algorithms from Dolby, and Dolby have a rather - in my understanding, a large ironclad contract about where that chip can be supplied to, and it can't leave the factory. Luckily that chip doesn't need to be changed a lot, but if you have a need for it you have to send the board back.

15

You just replace the board, send the old board back to be refurbished because that chip cannot leave the factory by contract. So supply of the chip - there will always be times where that chip will not be suppliable for a number of reasons behind it. And cheaper parts by eBay, I can understand that.

20

Cheaper parts by eBay, sometimes - in fact, I would suggest in most instances - is because the storage costs and possibly production costs of where it's coming from are from emerging countries and may be also sometimes are counterfeit. Maybe you're not getting what you're saying. I'm not saying all times by any stretch of the imagination.

25

COMMISSIONER LINDWALL: Yes, I understand.

MR HARRIS: And there was one more thing I had here if I can find it again. No, I can't find it offhand. But that's some of the points I've been noting down through the thing. So as I said, I agree with some points.

30

COMMISSIONER LINDWALL: Yes.

MR HARRIS: But you also have to keep in mind, some of the points expressed - people were making a broad-brush statement which does not apply to all industries. I can see where the farmers and - and if you're doing a mechanical repair on a farm you can - I personally can see how - yes, I can see why you're doing it, and the safety aspect - I think the safety aspect is more along the lines, from my point of view, if you're trying to repair a power supply in one of our TV sets, we don't supply individual parts on that board; we supply the whole board.

40

COMMISSIONER LINDWALL: Yes.

MR HARRIS: One of the reasons is safety; and the TV sets and a number of things - AC adapters - they are covered well by safety regulations and they have to be constructed in such a way for safety. In fact, that's another one.

45

Someone was saying you can't open them to repair them. Let's take the AC adapters for instance.

UNIDENTIFIED SPEAKER: (Indistinct words).

5

MR HARRIS: Sorry? Part of the reason that AC adapters are not openable in most instances or have very secure screws on them, let's say - security screws, but mainly sealed - are for safety and the requirement that you can't get at them when they're dropped and various other things, so - - -

10

COMMISSIONER LINDWALL: Yes, I understand. AC adapters, yes. Okay.

MR HARRIS: Yes.

15

COMMISSIONER LINDWALL: Now, you've made some good points, David. I mean, you shouldn't assume that everything should be generalised across everything obviously, and your points I've written down here. So thank you very much for speaking up today.

20

COMMISSIONER ABRAMSON: Thank you.

COMMISSIONER LINDWALL: Does anyone else want to say something before we close today? In which case I think I will adjourn today. We resume tomorrow in person and virtually at the Rydges Hotel in Canberra, 9.30 am. So you're all welcome to appear at that obviously, and thank you, everyone, and thank you to Max for the transcript today and we will see you tomorrow.

25

30

COMMISSIONER ABRAMSON: And the teams for putting it all together.

COMMISSIONER LINDWALL: And the teams, yes.

35

COMMISSIONER ABRAMSON: So thank you very much. Thanks everyone.

COMMISSIONER LINDWALL: Bye.

40

MATTER ADJOURNED

[5.01 pm]



Australian Government
Productivity Commission

PRODUCTIVITY COMMISSION

RIGHT TO REPAIR - PUBLIC HEARING

MR P LINDWALL, Commissioner
MS J ABRAMSON, Commissioner

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY 21 JULY 2021

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COMMISSIONER LINDWALL: Good morning everyone, welcome to the public hearing for the Productivity Commission inquiry into a right to repair on the day of the 1933 that Wiley Post became the first person to fly solo around the world in his Lockheed Vega aircraft called Winnie Mae, a little
5 trivia. My name is Paul Lindwall the Presiding Commissioner for the inquiry and my college commissioner is Julie Abramson, and she is in lockdown in Melbourne. Today's hearing is in Canberra, so I'd like to welcome any members of the Ngunnawal and Ngambri and pay our respects. The inquiry started with a reference from the Australian Government on 29 October last
10 year, we released an issues paper on 7 December and have talked to a range of organisations and individuals with an interest in the reference.

We released a draft report on 11 June and have been receiving post-draft submissions and welcome further submissions, preferably by 23 July. We
15 are grateful to all of the organisations and individuals who have taken the time to meet with us, prepare submissions and appear at these hearings. I'd like to also acknowledge Ana Markulev who was the team leader who delivered the draft report, and then her first baby, and she is of course on maternity leave. The purpose of these hearings is to provide an opportunity
20 for interested parties to provide comments and feedback on the draft report, which is this document here for those who haven't seen the hardcopy, which will assist us in preparing our final report to be provided to the government by 29 October. Following these hearings in Canberra - this is the last of the hearings - that's the end of the hearings at the end of today.

25 We will then be working towards completing the final report, as I said, which the government has up to 25 sitting days before it has to release the report under our act. Participants and those who have registered their interest in the inquiry will be advised when the final report is released by the government.
30 We like to conduct all hearings in a reasonably informal manner, but I remind all participants that a full transcript is being taken. For this reason, comments from the floor, or the virtual floor, cannot be allowed but at the end of the day's proceedings I will provide an opportunity for anyone who wishes to do so to make a brief presentation.

35 You're not required to take an oath but are required under the Productivity Commission Act to be truthful in your remarks. Participants are welcome to comment on the issues raised in other submissions, or by other participants at hearings, the transcript will also be made available to those who participated
40 and also will be put on our website following the hearings. . For any media representatives attending today some general rules apply; there is no broadcast of the proceedings allowed, and taping is only permitted with prior permission.

45 And for those that are in Canberra to comply with the requirements of the Commonwealth Occupational Health and Safety Legislation you're advised that in the unlikely event of an emergency requiring the evacuation of the

building, please listen for instructions over the emergency warning system. There are two types of tones which may be used, the alert tone followed by the evacuation tone, in the case of the evacuation tone please evacuate directly out the door here turn to your right and turn to your right again down the stairs. If you are unable to make the stairs, please advise one of the wardens or myself. The National Press carpark is the assembly point - sorry no, it's at the back of this building near the church on Fitzroy Street, near the back of the hotel is where the assembly point is.

Participants are invited to make brief opening comments which will allow us the opportunity to discuss matters in greater detail. I would also like to ask all online observers and participants who are not speaking to please ensure your microphones are on mute and turn off your camera so as to ensure minimum disruptions. And I think that's it, so now I'd like to welcome Anthony Rosborough from the Canadian Repair Coalition who is presenting online today. So, Anthony if you are able to - and I might look carefully at the camera plus also you and give us an introductory statement and introduce yourself.

MR ROSBOROUGH: Certainly. Well good morning Commissioners Abramson and Lindwall, thank you so much for providing the opportunity for me to share my thoughts all the way from Canada, which is quite far away from Canberra, but similar in sound I suppose. So, I'm really thankful to see such a strong emphasis on the right to repair in Australia and I thank both of you and everyone who has participated in this for your work on this. I'm a doctoral researcher at the European University Institute in Florence. My research focusses mostly on intellectual property and its relation to human agency. So, the right to repair has been a large part of my work to date, and although a few years junior you could say I am very much kindred spirits with Professors Leanne Wiseman and Matthew Rimmer.

I'm also a practicing lawyer and faculty member here at the law school here in my hometown of Halifax, Nova Scotia where I currently am speaking to you from on the other side of the world, so apologies if I'm a bit weary eyed. But yes, more recently I've founded the Canadian Repair Coalition which is an organisation focussed on bringing together repair advocates across the country to achieve right to repair policy reforms, and so thank you again for having me join you. My submissions this morning are primarily focussed on pages 155 to 183 of the draft report, and they're intended to accomplish two main goals. The first is to provide a perspective from Canada on the efforts towards the right to repair so far, as well as our approach to policy reforms in this regard.

And the second is to respond to the information requests at 5.1 in the draft report in relation to technological protection measures or TPMs and embedded systems. So that's sort of an overview of what I hope to speak about today, but I don't know if you have any questions?

COMMISSIONER LINDWALL: No, that's perfect. Do you want to speak to them now or would you prefer us to ask questions on them?

5 MR ROSBOROUGH: Maybe I'll go ahead and speak about them.

COMMISSIONER LINDWALL: Yes, I think so. Yes.

MR ROSBOROUGH: Feel free to interrupt me at any point.

10

COMMISSIONER LINDWALL: No, I don't think that's needed.

MR ROSBOROUGH: So just a brief comment I'd like to start by drawing some comparisons between Australia and Canada with respect to the right to repair that I think are important for this discussion. So firstly, Australia's copyright reforms and policy reforms over the years has followed a similar trajectory to Canada, in both cases our federal statutes, out governing law are structured similarly with similar purposes and objectives, and with the exception of Quebec of course in Canada both countries follow a similar legal and parliamentary tradition. So, particularly in the case of TPMs both countries have followed the same approach to the wording in the legislation, and both inclusions in the legislation are as the result of international trade agreements which is an important detail. Lastly, just on the similarities, both countries possess sort of similar social and geopolitical dynamics with respect to the right to repair. So, both countries feature very remote communities which often have delayed access to repair, resources, and parts.

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And on balance, it could be said that both countries are sort of importers, if you will, importers of OEM manufactured goods that are subject to repair restrictions. So, without boring you to death about the similarities of our two great countries, I just thought I would try and set the stage with that. As for what Canada has been doing to date, I think our most notable development on right to repair is the private member's bill, Bill C272, which seeks to amend our Copyright Act's protection for TPMs.

30

35

It would essentially create a new exception for circumventing TPMs, where the sole purpose is to diagnose, maintain or repair a product in which a computer program is embedded. So it's focussed very specifically on products with embedded computer programs. So – and the case, of course, also, of third-party service providers who would be offering the tools to circumvent TPMs, it offers an exception for the same purpose.

40

Importantly, on the second reading of the bill, which is where it sits now, waiting to go committee, the parliamentarian who introduced – Mr Bryan May – he made a remark that I think is important for some of the comments I have on the draft report. He said:

45

TPMs may work to prevent the repair from being completed or beginning in the first place. Many vehicles and appliances are not able to be repaired without entering some form of reset code or modifying the code to accept a new part that was installed.

5

And so, unlike Australia, I should say, Canada has not engaged in public consultation similar to this. So, in many ways, you are in the future, not only literally, but substantively as well. So, as I said, the bill is now set before committee, and we have yet to see what will happen from here. We're

10 expecting amendments and witness testimony that will speak to the merits and potential pitfalls of the legislation.

15 COMMISSIONER ABRAMSON: Can I ask you a question, which I should know, but I'm assuming that this is all federal law. So, it's like in Australia. So, one of the things we've observed with America, which I'm sure you'll speak about at some stage, is that a lot of it is state-based. But this is clearly national law.

20 MR ROSBOROUGH: That's right. So our approach to copyright in Canada is very much analogous to Australia.

COMMISSIONER ABRAMSON: Yes, thank you.

25 MR ROSBOROUGH: There are some differences, in the sense that Australia has the technological – copyright regulations which govern TPMs in different ways. We don't follow this approach, but all else being equal, it's apples for apples. Do you have any other questions about what Canada has been up to?

30 COMMISSIONER ABRAMSON: I'm just interested – we've consulted a lot, Anthony, with people who specialise in IP. And one of the big issues that's been raised with us – and you did speak to it – is our international agreements, so things like TRIPS. And given your background, I'm just really interested in how that argument is playing out in Canada.

35 MR ROSBOROUGH: Right. So, as I mentioned, in both cases, the protections for TPMs came about as a result of international trade agreements. Though the exact wording found in, for example, the United States-Australia Free Trade Agreement versus the (indistinct) trade agreement, which now has too many names, but one of which is the Canada-

40 US-Mexico Agreement, sometimes referred to as NAFTA 2.0. It has all kinds of names. But you know the one.

COMMISSIONER ABRAMSON: Yes.

45 MR ROSBOROUGH: The wording is slightly different, but both free trade agreements permit new exceptions to TPM protections in certain circumstances. And in that case – so on that level, I think there are some

similarities here. My interpretation of the Canada-US-Mexico Free Trade Agreement is that it's slightly more flexible, in that it envisions more robust exceptions than the one that, as I read it, is in the United States-Australia Free Trade Agreement.

5

That's up for debate, of course, but – the argument has come up in our discussions with our – what's called Industry, Science and Economic Development Canada, which is our competition authority. The (indistinct) regulate intellectual property – yes, pretty much intellectual property and scientific development. They have raised these concerns, that new exceptions to TPMs may conflict with our international trade agreement, but again, no definitive answer to it.

10

And when pushed and asked, 'Which provision is it that it may conflict with?' there's not a very – well, there hasn't been a very definitive answer to that question. So, my reading is that there is ample room to carve such an exception out. It's been brought up, I suppose, but it's not a (indistinct).

15

COMMISSIONER ABRAMSON: Yes, thank you.

20

COMMISSIONER LINDWALL: Did you want to continue, sorry, Julie?

COMMISSIONER ABRAMSON: No, Paul. Over to you.

25

COMMISSIONER LINDWALL: Anthony, did you want to add on anything more, or shall we go to questions?

MR ROSBOROUGH: I do have some comments on the draft report if you're interested in hearing them.

30

COMMISSIONER LINDWALL: Please, (indistinct).

MR ROSBOROUGH: Sure. So I think the approach – Canada's approach to right to repair, in terms of focusing on TPMs and embedded systems, frames the context in which I read the draft report. And on that basis, I think what I noticed when I read the draft report was that there's a very strong emphasis on the role of TPMs in restricting access to repair information.

35

So, then, based on this focus, it discusses the potential application of, for example, the fair dealing doctrine, as well as an existing repair exception found in the 2017 Copyright Regulations. And I think, for the most part, this approach and this focus places most of the emphasis on the protected materials under copyright law, rather than the TPM itself.

40

My concern is that by focusing so closely on the ability of TPMs to restrict access to repair information or other materials that are protected by copyright, the broader repair implications posed by TPMs may not be

45

sufficiently addressed. So, in some ways, the report needs to look more closely to the nature of embedded systems and Internet of Things devices, in my estimation.

5 And so the reality is that TPMs can be very broad in scope, and they're defined the same way, more or less, in Canada and in Australia. The Act defines them in Australia as any technology, device or component which controls access to a work. But it doesn't say that they can only control access to a work. They can also control access to other physical components of
10 devices or products; just sort of latent in their design.

So they can control, for example, the physical functioning of devices or equipment. There is one example of Apple's error code 53, where devices were able to be detected if they were attempted to be repaired by an
15 independent repair person, and they would be bricked, or completely disabled. In fact, in 2018, the Australian Federal Court awarded close to \$7m in damages for that.

So this is one example of the potential uses of TPMs that can prohibit repair. There's also the classic case of the activation of replacement parts. So we've seen this with agricultural equipment, where a new part will have to be activated by the central computer in order to be operable. So, these are uncopyrightable aspects of physical objects, and they're not works protected by copyright.
20

25 But nevertheless, they can be controlled by TPMs through the TPMs' protection of computer programs. So this kind of a strange cat and mouse, where there's an asymmetry of protection. The TPM is defined very broadly to include all sorts of things, but the exceptions are defined very narrowly for
30 certain purposes. So this interpretation of the draft report is really what struck me as being a concern in terms of the broader right to repair trajectory.

So it's worth reiterating that protection for TPMs under the Copyright Act are independent of any infringement of copyright. It's a standalone legal regime, and so this sui generis legal regime requires an equally comprehensive set of exceptions and limitations. In my opinion, I think relying on fair dealing or a similar fair use concept would be insufficient, because what we're talking about here is not necessarily works protectable by copyright, but other things that are incidentally affected in a product or device as a result of a TPM.
35

40 COMMISSIONER ABRAMSON: Anthony, I should remember, because I am also a trained lawyer, but could you explain the sui generis point that you just made? Do you just mean that they're alike or something? Can you remind me?

45 MR ROSBOROUGH: They tried to tell us in law school not to do this anymore, but occasionally we use Latin. It's a unique, of its own kind law.

So it's in the Copyright Act, as it is in Australia and Canada and other countries. But really, it has very little relationship to the purposes and objectives of copyright. We're talking about physical objects. It should be in the realm of trade secrecy or patent.

5

COMMISSIONER ABRAMSON: I should remember these things. Leanne was very helpful reminding me about the exclusion law in contracts, but I have to say, Anthony, my legal skills are quite rusty these days. So, thank you very much for that.

10

MR ROSBOROUGH: You're welcome. So the draft report envisions really two potential avenues forward in terms of TPMs. So it looks to the existing repair TPM exemption in the 2017 regulations and says, well, you know, maybe this could be interpreted liberally to encompass repair activities; and then, second, it envisions a new exception for sharing and reproducing repair information and users - sorry - by users and third parties. So unfortunately I think - as you see in the case of embedded systems which can be completely controlled by a TPM, neither approach really addresses the problems in terms of the functioning of a device. So this is because both solutions focus really only on circumvention for the purposes of accessing copyright material.

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20

COMMISSIONER LINDWALL: Copyright, yes.

25

MR ROSBOROUGH: So I think overall I would urge the commission to review the permitted exceptions and limitations to TPM exceptions as found in the United States - sorry - in the United States-Australian Free Trade Agreement. And so this is at article 17.4. That provision of the agreement allows for additional exceptions to permit non-infringing uses where TPMs can be shown to have an adverse impact in a demonstrated review proceeding heard every four years. So the free trade agreement - - -

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COMMISSIONER ABRAMSON: Anthony, are you saying that we need to go back and - I'm just interested in your view about how you would remedy that. Now, clearly part of it is you're talking about the international agreements, but clearly you have in mind a particular way in which you would put something in the law. So I'm interested both in you exploring a bit further about what you were about to say about the agreements, but also about your practical view about how you would resolve it.

40

45

MR ROSBOROUGH: Absolutely. So given the pace of technological change and the inability for a government at any point in time to envision how TPMs may be used in the future. My suggestion is that Australia take advantage of this provision in the US-Australia Free Trade Agreement and have a review-like process similar to the United States Library of Congress where it reviews, sort of, case by case blanket exceptions based on particular products or certain purposes, a certain class, and conducts that, you know, periodically every three or four years. So that would be my suggestion, and I

suppose where I was going with it was that this was envisioned by the free trade agreement. It's certainly permitted.

5 COMMISSIONER ABRAMSON: But what would it look like, Anthony, in terms of where you get to a solution? So we've got quite a lot of text there about the way in which the provision is crafted. So leaving aside the mechanism to change, how would you change it?

10 MR ROSBOROUGH: So I think I would - I mean, it's sort of funny to think of me crafting Australian law, but I think that it needs to focus on not merely the subject of TPM protection; it needs to be - the exception needs to apply to circumvention of TPMs rather than, you know, the ability to access certain things protected by TPMs.

15 COMMISSIONER ABRAMSON: Yes. So you're arguing for a broader interpretation, and I'm inviting you to be bold, so don't feel that you can't comment on Australian law, Anthony.

20 MR ROSBOROUGH: No, I'm just worried that you may ask me to recite it in detail, and, you know, it wasn't my field of study, so - - -

COMMISSIONER LINDWALL: So you basically want to say, Anthony, that we should use article 17.4 in the US free trade agreement - - -

25 COMMISSIONER ABRAMSON: Yes.

30 COMMISSIONER LINDWALL: - - - to specifically say that it is perfectly fine to - and I'm not a lawyer - circumvent TPMs for repair purposes in a very broad sense, and that would apply whether they're copyright or not copyrighted or whether they're patented or whether they're whatever, basically?

MR ROSBOROUGH: Exactly. And - - -

35 COMMISSIONER LINDWALL: Someone has dropped out.

MR ROSBOROUGH: A lot of flexibility in terms of certain - - -

40 COMMISSIONER LINDWALL: Could you repeat that? I missed the last 30 seconds of what you said because it dropped out.

45 MR ROSBOROUGH: Sure. I'm sorry. I said I suppose the beauty of it - and that's an interesting word to use because I'm not sure anything about TPMs is beautiful, but the beauty of this approach is that it would enable Australia to have a lot of flexibility in the way it approaches exceptions. So you may find that a blanket exception for repair in certain industries isn't feasible or you may find that certain types of TPMs can be classified

differently than others, and so you could have an exception that applies for repair for those types of TPMs. For example, embedded systems.

5 COMMISSIONER ABRAMSON: Sorry, Anthony. I think there are two points. So the first point is what we've been talking about which is the breadth of the exception, and the second thing we will think about, Anthony, with the team is how we would do it in the primary legislation because it has got to be the two things. You can open it up, but you've still got to have something in the law which reflects what it is that you're trying to achieve.

10

MR ROSBOROUGH: Precisely, yes.

15 COMMISSIONER LINDWALL: Okay, Anthony. Could I ask, what happens if you can't circumvent a TPM and how would that work in Canada, too? So all of these changes, and even in our report, of course, are based upon the fact that someone could circumvent a TPM and then provide the information to other third parties, but what if it's physically - well, it's impossible to because it's a very secure encrypted product as well as there's a trade secret or something, so no one has disclosed it in any way?

20

25 MR ROSBOROUGH: I think in these cases - and we've had similar situations, of course, in Canada and scratched our heads about what do we do, and quite often the discussion leads to competition authorities. This is, sort of, the limits of where intellectual property protections can - you know, they can't provide positive (indistinct) you can't compel - I suppose you could, I mean, but you might find difficulty compelling a manufacturer to provide the tools through copyright to circumvent to TPM, particularly in light of international trade obligations which require that you confine exceptions and limitations to, you know, certain situations.

30

35 And my interpretation would be that that would go beyond more or less all of those that you see in all of these international trade agreements. So you could look then at the ability to circumvent a TPM as - to use competition language - an essential facility for participation in a secondary market. And I think there's not a lot written about this. I've attempted to address the subject in some of my writing, but the relationship between TPM circumvention and competition (indistinct) idea of a central facility. I think there's a lot to be thought of there, but certainly the notion of intellectual property being an essential facility has been addressed in the United States and Europe. I'm not sure that provides you a very clean answer, but - - -

40

45 COMMISSIONER ABRAMSON: No, we have provisions in our law which talk about essentially - not called an essential facility, but that's a really interesting line of argument, Anthony.

MR ROSBOROUGH: Well, I mean, you know, ultimately if - you cannot participate in a follow on or secondary market without the ability to circumvent that TPM.

5 COMMISSIONER ABRAMSON: Yes.

MR ROSBOROUGH: And this is where the repair and kind of innovation boundary becomes more prominent in the case of industries that rely on interoperable technologies, for example. This is where we really have to look
10 to the anti-competitive effects of TPM - - -

COMMISSIONER ABRAMSON: Yes.

MR ROSBOROUGH: - - - more so than purely the repair and, you know,
15 circular economy effects of TPMs.

COMMISSIONER LINDWALL: Yes. Yes. No, I see what you mean.

COMMISSIONER ABRAMSON: Yes.
20

COMMISSIONER LINDWALL: Anything that you would like to say about
- because one of our - earlier this week we had a person testifying on medical
technologies and mainly the protections there were patents rather than
copyright, and I assume what you're talking about here would apply equally
25 to things that were patented in some way or other.

MR ROSBOROUGH: Yes, exactly. And this is where, you know, the issue
of TPMs becomes, you know, one of many in terms of the use of intellectual
property to preclude competition. In the case of medical equipment, I mean,
30 you have - maybe different than purely a market-based argument for why
these protections should have some kind of limitation. I mean, in the case of
medical equipment, of course, there's a public interest argument; there's a
national security argument; there's a public health - so in that case I think the
justifications for interfering with the exclusive rights of intellectual property
35 become even more prominent than purely market imbalances.

COMMISSIONER LINDWALL: This was a particularly - the person who
testified was principally about a pandemic or some public health emergency
whereby - I think his Apple was changing sleep apnoea machines into
40 ventilators, for example.

MR ROSBOROUGH: Right.

COMMISSIONER LINDWALL: So - - -
45

MR ROSBOROUGH: I think the pandemic has shed light on a lot of these sort of dependencies and centralised control over physical technologies in this way that can have a lot of harmful effects.

5 COMMISSIONER LINDWALL: Yes. Now, is there anything else that you wanted to mention, Anthony?

MR ROSBOROUGH: I just wanted to conclude with maybe an addition to the healthcare perspective. A brief remark about the social and educational importance of repair. So far, the right to repair movement has been
10 occasioned by strong arguments from environmental and economic perspectives, and of course in healthcare as well, but I think it's worth a look at the importance of repair for technological literacy. So, in my experience - just as a personal anecdote - I had someone reach out to me in the last couple
15 of months who operates a program technological literacy to indigenous youth in Canada. And they said to me, 'Anthony, this is not just an issue about market fairness, or consumer protection, this is an issue about the decentralisation of power and teaching, sharing education and human knowledge.'

20 And so, one further similarity between Canada and Australia is our ongoing efforts towards reconciliation with our indigenous peoples. And so, I think that, viewed in that context, we can look at repair as something that involves experimentation, research, and knowledge dissemination, rather than as
25 something purely as utilitarian or market based. And so, I would urge the commission to consider the importance of repair not only for its obvious benefits, but also to decentralise power and to share knowledge in a way that benefits us all.

30 COMMISSIONER LINDWALL: Okay, no that's a good point.

COMMISSIONER ABRAMSON: Paul, could I ask some questions?

35 COMMISSIONER LINDWALL: Please, go ahead Julie.

COMMISSIONER ABRAMSON: Anthony having - you've raised a broad and important point - I'm going to take you back to the narrow again if I may.

40 MR ROSBOROUGH: Sure.

COMMISSIONER ABRAMSON: Manufacturers have often raised with us that there are security and safety concerns regarding the TPM issue, and I'm just interested in your view of that.

45 MR ROSBOROUGH: Well, I mean, my personal view of it is that the more open a platform generally the more secure it is in many ways. I think if we think of innumerable technologies that have become commonplace and we've

learnt how they work, that sort of ability for users to become testers and challengers of the technology ends up benefitting it. And I know that's probably a very tired talking point from these three meetings, but I would agree wholeheartedly with it. And I think, this is a very specific example, but
5 there was the Linksys WRT54G router - it's an internet router - and you can google the story about. It was a router that was released by Linksys and it had on it proprietary software, they alleged, that was built on the Linux platform.

10 And because it was built on the Linux platform unfortunately Linksys realised that they had to disclose the source code for it, against their will. And it ended up being an invitation platform, it was originally laden with security risks which users fixed on their own, and then used it essentially as a development tool which spurred all sorts of innovation. So, I think the
15 argument that closing down repair is good for the public interest in some way - and particularly in the case of safety and security - I think we should challenge that assumption when we're talking about this. This argument often comes from companies which produce products that explode randomly on airplanes, which catch fire, I mean I think security and safety I think is
20 always better off when it's decentralised to some degree, and we all have an understanding of how these technologies work.

COMMISSIONER ABRAMSON: Thank you Anthony, I just wanted to ask one other point. Fair use and fair dealing; so, we put two options in to deal
25 with the copyright issue, fair use of course I'm sure it's the same in Canada, it's a principles-based regime, and the commission has argued for that in the past. The other thing that we've looked at is a fair dealing exception, so it would be crafted as an exception for the purposes of repair. Do you have a view about either of the options, and which might or might not be preferable?
30

MR ROSBOROUGH: Again, I think my concern, with looking at fair dealing and fair use, goes back to my comments about embedded systems, and that if the subject of this discussion is on the works protected by
35 copyright, we're missing 90 per cent of the repair issue. Having said that, I think fair use has obvious advantages in terms of being an open norm, it allows us to tailor new exceptions based on different factors. I think there are obvious advantages to that in the context of technology that is constantly and more quickly developing, rather than the rigidity of fair dealing which I know that in Australia and in Canada we're both kind of stuck with sometimes.
40

COMMISSIONER LINDWALL: Yes.

COMMISSIONER ABRAMSON: Thank you, back to you Paul.

45 COMMISSIONER LINDWALL: That's good, I mean your point about software is well taken, because I know a bit about cryptography and of course open-source software for inscription tends to be a lot more secure because of

the ability for everyone to test it for its vulnerabilities, rather than it being a trade secret or something. Now, could I ask whether Anthony - because we've got a couple more minutes - have you got any comments on things that are unrelated to intellectual property, in particular where the right to repair movement is in Canada in terms of product labelling, there's a product labelling scheme for example in France but I'd be interested to know just where - from your knowledge of Canada's movement to have a right to repair.

MR ROSBOROUGH: Certainly, so one difference between Canada and Australia, and correct me if I'm wrong, is that our consumer protection law is provincially regulated, so it is fragmented somewhat. Most provinces have an analogous framework, but it's still separate acts in each of the provinces. This creates challenges for sort of uniform rules at the consumer level for right to repair. We've had some efforts so far towards amending consumer protection acts in the provinces, with varying success. Ontario, our largest province - most populace, I should say, province - had an attempt I think in 2019 to amend its consumer protection act to require manufacturers to uphold warranties on products that had been repaired by an independent repairer.

This was met initially with a lot of - a lot of people sort of came out of the woodwork and responded with a lot of criticism of it, suspiciously. You know people who up to that point seemed to have no interest in the subject, which the conclusion is - among most people - is that there was a lot of lobbying effort to quash it, and it was successful. So that bill sort of died on the order of paper. A counter argument you hear is that it was introduced by an opposition member of the Ontario legislature without reason, it was doomed from the beginning. Either way it's shown that there's at least some resistance to those reforms

On the more positive side we've seen in Quebec a much more sort of populist approach to consumer protection, and they've had great success in getting a piece of legislation forward that will require manufacturers to uphold warranties for one, and to ensure that their products last for a reasonable lifetime. So, I don't know if it's the case that Quebec is perpetually inspired by France, but in this case, they seem to have taken a page out of that approach. And they haven't gone as far as product labelling in the same way, but they're definitely the forerunners of a kind of consumer protection approach to repair.

This again, I think, can be distinguished somewhat from the ability for an individual to actually carry out a repair. I think the consumer protection side is sort of - the information that's provided to you at the time of sale and your rights as a consumer to do with a product - to have someone else repair it. So, there's some distinction to be made there, but we have yet to see other provinces take up a similar approach, that's what's been happening so far.

COMMISSIONER LINDWALL: No, that's great. Well, I think Anthony that's much appreciated, and unless Julie has anymore comments?

5 COMMISSIONER ABRAMSON: I have one which is really left field, but Anthony you look like you're up for a challenge. It's about the Ontario e-waste scheme, do you know anything about that? It's been mentioned to us a few times.

10 MR ROSBOROUGH: I know a little bit about it, but I'll do my best to respond.

15 COMMISSIONER ABRAMSON: Thank you, just generally, we'll look into things ourselves. But just, you know, the experience of being a Canadian and you talked about Ontario being the biggest province, so we're just interested in what you know about it.

20 MR ROSBOROUGH: So, I know that it's novel among the provinces, though I'm not terribly sure of its successes at this point, sorry I'm not terribly familiar.

25 COMMISSIONER ABRAMSON: No, I asked you outside your field of inquiry, but look that's been really, really helpful Anthony, because you're encouraging us to think more broadly about the issue. I'm not sure of the time difference but we've probably inconvenienced you, so thank you so much.

MR ROSBOROUGH: Thank you very much for having me.

30 COMMISSIONER LINDWALL: Thank you very much Anthony, take care.

MR ROSBOROUGH: Take care, have a great day.

35 COMMISSIONER LINDWALL: Thank you, you too. Alright. Well, it's 10 past. Is Yasmin there? Yasmin was due to be here in five minutes' time, so it's probably a couple of minutes early. I can't see who is on Zoom.

40 COMMISSIONER ABRAMSON: No, I can't see on the screen, that she's on the screen yet, but I'm sure Bonnie – no, I've just got a message from Bonnie that we haven't got Yasmin yet.

COMMISSIONER LINDWALL: All right. We'll wait a couple more minutes, then, because we did say quarter past 10, and we're not quite there yet. Hello, Yasmin. Are you online?

45 MS GRIGALIUNAS: I am online. Can you hear me?

COMMISSIONER LINDWALL: Yes, I can.

MS GRIGALIUNAS: Wonderful.

5 COMMISSIONER LINDWALL: Sorry, I've got a screen on one side and a camera there, so I look a bit odd. That's the way it is. Would you mind introducing yourself, and perhaps – and give a bit of an introduction about what you would like to say to us today?

10 COMMISSIONER ABRAMSON: She disappeared. She was there. Back again.

COMMISSIONER LINDWALL: Hello, Yasmin.

15 MS GRIGALIUNAS: Sorry. Hello again.

COMMISSIONER LINDWALL: That's all right.

20 MS GRIGALIUNAS: I'm not quite sure what happened then, but we are back.

COMMISSIONER LINDWALL: Well, you probably didn't hear me then. I was just saying, would you mind introducing yourself, and just give a bit of an opening statement, and we'll move on to questions, if that is all right with you.

25 MS GRIGALIUNAS: Yes, that's perfect, thank you. My name is Yasmin Grigaliunas. I am the CEO and the founder of the World's Biggest Garage Sale. We are a profit-for-purpose organisation, and we opened Australia's first and only fully operational circular economy precinct in Brisbane back in
30 April 2020. Since then, we have scaled from six staff up 33 team members, with 50 per cent of our staff actually coming from disadvantaged or underprivileged communities.

35 So we provide jobs, and we are a profit-for-purpose organisation, not to be mistaken as a charity. We exist for the circular economy, and, as part of our precinct, since having a permanent space, which was opened in our third year of business – we're just about to celebrate four years as a company this year – we ensured that our first space really lived and breathed the principles of circular economy, which fiercely includes the right to repair, and it's
40 something we've been very strongly passionate about since opening.

Really, I guess, from (indistinct) through to a whole-of-system problem or opportunity, the right to repair is something that we don't see in isolation for our business, and we see it significantly in tandem with other responsibilities
45 of the circular economy, including the extended producer responsibility. And we're seeing some physical evidence of that uptake with partners such as Officeworks, who are currently one of our largest partners.

5 We at the moment physically take in items that need repair and renewal in the office products category with Officeworks. And for us, what we've been able to see, transform, is from a pilot system many years ago, through to, now, production. So we're taking what we call surprise chain, and we're turning that into supply chain, and using materials and parts that not necessarily are identical in brand to the items that are actually flowing through our system.

10 We feel, certainly as representatives of circular economy, and a very loud and proud voice of the right for repair, there's opportunities that are being missed, and we're seeing them on the ground every single day in our centre, whether it's (indistinct), clothing, any materials, noting that the World's Biggest Garage Sale is actually an enterprise that is not specialising in one product stream.

20 So we see fridges, computers, T-shirts, dresses; all might need the smallest repair, or, in some cases, the largest repair. And we have enquiries currently coming to us nationally from people asking us to repair their microwave, fridge, laptop, dress, desk, chair, and so on. And really, what we're seeing is a demand for these circular economy precincts across the country, because consumers are hungry for the capability to prolong the life of their existing items.

25 And they're also shopping with more consciousness around wanting to make a choice where an item might be able to be disassembled easily, and then reassembled, or harvested for parts, so that those parts might otherwise be used in another product and material stream.

30 We joke about the word 'Okea,' which, internally, our business has created, where we take a product from a brand like Ikea, where a customer might drop off an item that they think is useless, and they no longer have a need for, and it needs repair, and rather than crush it and send it off to a landfill facility, our team will design the product and the part from other materials, and, in some cases, Officeworks materials, to then complete the item, which is made from two source materials from two different suppliers, all through a creative design-led process, which is a systems change.

40 So we're really looking for systems change, and what we try to do at World's Biggest Garage Sale – and I believe very successfully – is we get to show the impossible is possible. And because we don't mind blending materials from multiple source supply chains, we have an ability to take the blinkers off, to crush the silos of competition, and to actually take a co-opetition, collaborative approach, because the materials on ground in our precinct are actually – all the work has already gone into them, so we want to use those items as repair supply chains, so that not only in our circular economy precinct, but in other locations across this country, and even as a supply chain

material where spare parts are made available for customers to do their own repairs, we're really looking at encompassing education as a very strong value proposition, to ensure that sustainable end of life for products is achieved, and that the higher value proposition of a product, from its first life through to its multiple life, is recognised and realised as a very capable and consumable opportunity for this country.

I think Australia leads the way when it comes to getting our hands dirty. We're really good at getting stuff done, and I feel that we're in a wonderful position, particularly with the support at government level, to ensure that these ground-up opportunities are coupled with policy, and enabling to have influence around doing things differently, because of the (indistinct) we get to see on the ground.

I feel that, as I wrap up the conversation around the right for repair, I would like to really just represent the voice of the consumer. They desire it. We have thousands of customers every single year talking to us, with a repeat customer base of over 30 to 40 per cent most weeks. Customers are recycling themselves. So enterprises like ours with a strong commitment to sustainability, when they're looking for prolonged life and extended life of items either currently in the system or future items that are designed better. And really one thing that's vitally important, and a wonderful demonstration of success, is organisations - the big, what I call stability. So people like Officeworks. Stability coming together with agility - organisations like ours - to actual equal capability.

And it's a little formula that we use internally at our business. We created it because what we're trying to articulate is that stability and agility, when they come together they do result in new capabilities. And we're seeing that with Officeworks, who now work with us to ensure that the spare parts sitting idle within their own warehouses are now resource streams for our organisation to actually repair products that would otherwise not end up back in the ecosystem. So, if it can be done with a difficult material like cracked or chipped or imperfect furnishing items and office products, then surely we, as a nation, can start to take that information and the education around it to be able to start to design on purpose the ability to provide information about materials used in a product, where they're sourced from, what parts do we need, what is the spare parts list and can we get access to those spare parts.

Understanding the life cycle and the environmental cost of making that product in the first place, and how might we do more onshoring and creation of spare parts and supply chain of those materials made from non-virgin products here in this country. And then, of course, reparability. It's something that we're really passionate about, and we'd like to see the good old-fashioned values of old times coming back to new, where there are repair centres and repair opportunities, and we're tapping into - this is the one thing I'm super passionate about - not true, I'm passionate about lots of things but -

there are so many idle people right now with knowledge of how to sew, grow, repair. I come from a technology background where products used to be pulled apart and repaired. And we just have lost the art of that skill.

5 And I would like to see initiatives taken at government level where those knowledge, wisdom creators who have that capability can start to teach the younger generation how we might repair and renew and remodel products made from non-virgin materials within our ecosystem. You know, we think the novel materials need to be built and very durable. And moving forward
10 this country is in an amazing position. We have the knowledge, we have the humans, we have the capability. And now, for me as a founder, and one of those crazy entrepreneurs who believes that things can be done even when most people think that they can't, I think that we've got an opportunity to do some testing. Rather than too much formalisation around the theories of
15 what we could do, can we blend that formalisation with a little bit of (indistinct) and can we get our hands dirty and draw on those who are prepared to do so, so that we can learn, and then we can teach, and then we can scale.

20 COMMISSIONER LINDWALL: Okay, well thank you very much for that, Yasmin. Very thorough presentation. Could I ask for a start - you've got a circular economy precinct, which, if it wasn't for Covid, we probably would have been able to visit, unfortunately we can't at the moment. How do you compare the precinct to what we would call a repair café. Is it like a super
25 repair café, or something more than that?

MS GRIGALIUNAS: Yes, definitely much more scaled. And I suppose one thing we heard from our customers over the years is that they really just wanted a one stop shop. Like, somewhere where they go and take
30 everything. And so within the precinct the very nature of the inputs coming in is across the entire sector of materials sourced from community and corporate. So, it could be - all the materials flow in and then we have different departments that work with the different product chains. So we have an electrical department doing electrical remodel, repurpose, rebuild,
35 test and tag. We have a chair and repair facility, where wheels and bases are changed over and re-covered and reupholstered. We have a carpentry area, or a workshop, where items are actually built using sourced materials of pallets and wood and composite products that would otherwise be landfilled.

40 And we also have a resell retail facility where customers can actually consume the products - come and visually see how we prepared and repaired items. So I suppose in a lot of ways it is like a bit of a super-centre. And we see - that we've got an upholstery and textiles facility within our operation as well. So we're actually now working not only with manufacturers, but also
45 with, you know, of course from your rags - because we rag trade a lot, obviously - but - we don't personally, but Australia does - we send a lot of products off for rag trading. But we do kind of a rags to riches textile repair

centre as well, where items are actually repaired for consumers. But also remodeled and reshaped based on materials that are maybe not suitable for repair as well.

5 So I think it's - we see a repair café as a complimentary product within our circular economy precinct, and we think that as we scale these facilities and capabilities, that each community across this country already has those people out there wanting to do the doing. So it's about actually bringing all the doers together to actually bring that to a super-charged, super-power
10 facility, where it's almost like a super-centre of new - you don't go to buy new stuff, you go to buy old stuff. But it's so much more than an - like, people have called us an op-shop in the past. And if you come to our facility, we're anything but an op-shop. It's an absolute retail, resale experience, that's like going to a shopping centre, but where everything is not new.

15 COMMISSIONER LINDWALL: Okay. No, that's fantastic. And obviously it requires good partnerships with organisations, as you said with Officeworks in your case. But one of things that have been said to us by a regional equipment manufacturer is that they worry about safety and security
20 of products being repaired in places like individuals or repair cafés. So, I appreciate your comments on that, because that's been a claim that's been made a few times to us.

25 MS GRIGALIUNAS: Absolutely, it is certainly a theoretical risk, and an absolutely practical risk as well. And, as an enterprise, it's something that we take very seriously. When it comes to manufacturing products, we ensure that we have all the right systems in place to be able to manufacture a product with qualified professionals where it's being remanufactured. And I think that we underestimate the capability of people within this country. I mean,
30 we build houses every day, and there's no risk with houses. We construct buildings every day and we mitigate against that risk.

And I think when you bring design, engineer, manufacturing and, of course, the consumer together, it's amazing the capability to be able to create
35 something new. And instead of us having to do it and rely on sending our designs offshore to be manufactured for us, where I would argue that the same risk exists, as long as we implement and integrate standards here - and I do feel that that's an opportunity for government to step in and assist - then those standards can be standardised to allow for more people to be able to
40 safely repair, model, renew, rebuild products, so it becomes a significant value stream within the economy.

COMMISSIONER LINDWALL: Yes, and now, Yasmin, of course we've also heard that - and we've observed too - that a lot of products are more
45 difficult to repair than other products. Obviously the product design makes an effect upon the reparability of things. In the case of France, it's introduced a product labelling scheme about reparability. I don't know if you

have any comments on that, or how you would see something to improve the ability for things to be repaired.

5 MS GRIGALIUNAS: Yes, I really do see that that is a significant opportunity for our country. I feel that as a consumer myself - and I'm a
conscious consumer - that that scheme - the ability to understand and visually
see how easily repairable my product is, it would help me make a decision
based on where I want to spend my money. And I think that the more we can
10 educate our consumer, the more we will see a momentum growth of circularity, which is then drawing on less resources, which is of course then ensuring longevity of our entire environmental ecosystem. And I'm more of an activator than an activist, and a producer than a protestor.

15 So you won't often hear me use negativity around this entire opportunity. I think that there's a lot of hot air that gets tatted about in relation to why we can't do things, or why we must do it better.

20 But ultimately, I think that there's enough global support and information around the need to educate consumers, for (indistinct) to trust a consumer that they're going to make decisions that's right for the environment, but also right for the manufacturer. And I would say also that it doesn't necessarily need to start with the big guys and the big girls, because sometimes turning a Titanic is much more difficult than steering a tugboat.

25 So, can we practically support smaller businesses to integrate and implement these systems that then help us drive change into the bigger businesses? And you'll see organisations like Ikea and others now are putting labels on their resale products, and talking about how and where that source material came from. I think that the more we can see it, the more we can be it, and I would
30 absolutely encourage visibility of that, and put a call out to all manufacturers, that, no one wants a Kodak moment, and Kodak didn't change, and we talk about the taxi industry as well, and didn't change.

35 The only constant right now is change, and we all need to take a bit more of a Sniff and Scurry approach, referring to the book 'Who moved my cheese?' than a Hem and Haw approach, where we're trying to hold on or clutch on to old systems. Change is coming whether we like it or not, and I think that the more positive and proactive we can be about sharing the information that lies under the hood of many of these products right now, the more open and
40 collaborative we are, the more, I believe strongly, and can prove it through our own customer experience, you will gain more customer loyalty and repeat customers if you could just let them under the hood a little bit more, and give them a little bit of capability and control, to make better choices.

45 COMMISSIONER LINDWALL: Yasmin, I'll ask one more question and turn to Julie. Do you have any comments about the regulated schemes and the unregulated schemes on product stewardship, and could you talk

generally about product stewardship? In Australia of course we have the NTCRS, the National Television and Computer Recycling Scheme, which, in our report, we've recommended that it be broadened to include repair and reuse, as well as recycling. So did you have any particular things you would like to comment on that?

MS GRIGALIUNAS: Yes, I do. I think there's been a lot of trending terms around circular economy, product stewardship, and even the word 'waste.' And I was at a women and waste and resource recovery breakfast this morning here in Brisbane. But what I see is, around product stewardship there's a very broad scope of what people believe that it is.

And I think there needs to be more education around it, more articulation around exactly what it means, and then a refinement of each of the encompassing opportunities within product stewardship. So, I agree and support your suggestion of including repair in all product stewardship schemes. And you could argue right now – and we were recent recipients of the Banksia Foundation's award, the Minister's award, for the environment, for our work with Officeworks.

You could argue that that product stewardship scheme that we run with Officeworks, it's very – started very informal, and now it's a more formalised partnership that's across the nation. You could argue that the lessons learnt in that could then feed and fuel into other opportunity product schemes. And perhaps instead of, again, us just each looking at our own product stewardship scheme, all novel or very materialised, each of us has the information that we need right now in order to create a system that is replicable and scalable within product stewardship across every product category within this country and beyond.

And Australia could easily be exporters of products in the future that we're re-manufacturing here in this country if we got our product stewardship schemes more closely aligned and operating, again, more in a collaborative and cooperative approach and manner.

COMMISSIONER LINDWALL: Thank you. Julie, can I turn to you now?

COMMISSIONER ABRAMSON: Thanks. And thank you very much, Yasmin. Like Paul said, if we were allowed to travel, we would absolutely have come and had a look at your premises. I wanted to ask you some questions about warranties, and I'll talk you through the proposals that we've got there, because one of the issues that – a barrier to repair is that consumers think that they will void their warranty, and therefore they have no rights.

Now, it's quite clear that the consumer law guarantees are not affected by independent repair. And what we've recommended in the report is that there should be text in a warranty, stating that entitlements to consumer guarantees

under consumer law don't require consumers to use authorised repair services or parts.

5 But in America, they even actually go further than that, and they actually contain – actually have provisions which contain terms that require consumers – (indistinct) requiring consumers to use authorised repair services or parts to keep their warranty coverage. So, we've proposed one step, but there is a further step, so I'm interested in your views.

10 MS GRIGALIUNAS: I think – if I take my experience from when I was working in a technology company, and we had a service centre where customers would be encouraged to bring their technology back, and we would pull it apart, repair it, and renew it again and put it back out into the economy. Sometimes you wouldn't be able to get the exact branded parts
15 that – you would find an additional part that would function the same way.

And warranties would also be provided. I think that a warranty is required for consumers to feel safe and secure. But I do feel that it doesn't need to go back to the source material, of, who was the supplier in the first place.
20 Again, I think, as a brand, if we took a view of, begin with the end in mind, and I'm a brand, and I'm a giant brand, and I sell my product, and I make it repairable, I would be encouraging repair centres to be educated and articulated well on the repair of my products, so that more of my products could continue to flow through the ecosystem, not only in the primary
25 market, but in the secondary markets as well, with the secondary market being the largest growing market in retail across the country and the world.

So, for me, I would always, as a manufacturer, be looking at how might I have a great brand reputation as a secondary market supporter. And I feel
30 that the best way to do that is not to try and be the big giant that owns everything, and everything must come back to me, or you void a warranty, but absolutely encouraging training and creating toolkits, and more opportunities for small businesses to be able to expand their portfolio or range of products and service offerings, being able to have my sign on the
35 window that says, 'I'm an authorised repair agent for this brand.'

And my warranty stays, whether I get it repaired by Joe Bloggs down the road or Mary Smith out the back. I think that there's an untapped
40 opportunity for small businesses to thrive, with manufacturers being able to support proactively a very different, and perhaps Frankenstein style approach to letting go, but it almost slowing down to speed up.

Can we take a slowing down to speed up moment around the repair opportunities? And no one wants – I can imagine in the future, if we're
45 creating this – if the government's recommendations are so proactive like that that that there's opposition for it, what will happen in the future is, we'll just have big warehouses with tonnes of products sitting idle, because we've

got a backlog of people able to repair these items, and we'll end up dumping them, and those dormant products are part of the real problem right now in the circular economy.

5 We've got to get these things out of the warehouses and into the hands of those users. Rather than just making more product, we need to make more – make – make repair of product more feasible and viable, by ensuring that warranties are supported. Otherwise, consumers will go and buy new. And we're not encouraging a consumer to make a secondary choice if we don't
10 design a system that supports them to feel trust within the brand.

COMMISSIONER ABRAMSON: Yasmin, thank you. That's a broad policy response, which is very helpful. But I'm also being quite precise here. I'm interested in the experience you have in your organisation of consumers
15 coming in, and whether they say to you, 'I'm a bit worried, because I got told that I wouldn't have my warranty.' So I'm just asking about your direct experience.

MS GRIGALIUNAS: Our direct experience is, we respond to the customers' concerns proactively, by offering a returns policy on any product purchased
20 from our business, whether it's warrantied or not, or otherwise. We have a policy that if something ever goes wrong, you can always come back to us, and we will replace or repair your product at no cost to you.

25 And as a business, that's how we respond, because we know that when you're buying a secondary – or a product that has been repaired or rebuilt, there is definitely some, 'Does it come with a warranty?' And we actually have a warranty response template that we humanise. We don't use it as a template, but we humanise it, which basically puts to rest any consumer
30 concerns that if they buy a product from us, they have no rights.

And understanding that the Australian competition and consumer law requires us to provide that warranty, we are very upfront with our consumers, to proactively say, 'It's as safe to buy from us as it is anybody else, and we
35 honour (indistinct).'

COMMISSIONER ABRAMSON: Yasmin, if you're going to give us another submission – and I'm making (indistinct) a view here – that would be very helpful, if you could give us some information about that. The other
40 issue I want to ask is your business model, and you may not want to tell us that in a public forum, but it's about insurance, because one of the big issues has been around – we've talked about warranties, so it's the insurance that sits behind it, and we've noted that a lot of the sort of social enterprises, that they have a relationship with another organisation that provides them with
45 that cover. How do you provide that insurance?

MS GRIGALIUNAS: We're really fortunate to work with an incredible insurance organisation. We pay for insurance, so we have all the right insurances. We have our insurance assessor come out and do an inspection of our facility, again noting that we're very risk averse, and it's one of - it's quite an expense for us to have that right insurance, but we have insurance across every required category to ensure that if ever - and here's why. Like, with their ethical brand and we care a lot about our brand reputation, and the last thing we want is a consumer to be, you know, inadvertently experiencing something terrible with their product.

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Our insurer ensures that we handle products that allow us to be able to repair and re-commerce, I guess you could say, the materials. And we have all the correct policies in place to ensure that our organisation is protected, but ultimately that our consumers are protected and that we as a business - you know, touch wood - should anything ever occur - and I know that we're not - there's no guarantees in life. Just like any business, something could go wrong, but we have all the right mitigations in place.

And I suppose in a lot of ways that's why we took a profit-for-purpose model, because we knew as a not for profit and a charity that there would be so much more restriction in what we would be able to give consumers, and consumers were saying this is what we want, so we designed our business model around being able to have the practical capabilities to act as a commercial entity but to ensure that community and commitment and social enterprise was at the core of everything we do.

COMMISSIONER ABRAMSON: Look, that's very helpful because as I think Paul said earlier, some of the claims put to us are around safety and security, so that's very helpful. One final question. In terms of breakdown of products, what are the most popular things that you do get consumers wanting fixed or repaired just, you know, in general terms?

MS GRIGALIUNAS: In general terms, believe it or not, it's actually furniture.

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COMMISSIONER ABRAMSON: Yes.

MS GRIGALIUNAS: Furniture is huge. Recovering chairs and a lot of other chairs, so office chairs, outdoor chairs. We get a lot of reupholstery requests and we also - we get a little bit of electronics, but most people still feel that electronics are disposable, and one thing we have yet to do is really ramp up our marketing around the capabilities we have with electronics, and predominantly because we know the floodgates will open and it would create a wave of demand that we right now wouldn't have the staffing to be able to deliver on.

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For us, you know, as a social enterprise we're raising capital to scale our business, so for us there's a few chicken and egg things we need to do before we could go to market and say yes, we can repair these products proactively. But if we were to not stimulate the market, the market just brings furniture, mostly household products. We do get a lot of requests around clothing and the mending and ability to have circles of education for sewing has been a real erupting opportunity, in particular the last six months.

COMMISSIONER ABRAMSON: Yasmin, I disclosed yesterday in response to a question that I know how to (indistinct) I'm not saying I would do it, but we did have that conversation yesterday. Look, thank you so much. That's been really helpful.

MS GRIGALIUNAS: Thank you.

COMMISSIONER ABRAMSON: Back to you, Paul.

COMMISSIONER LINDWALL: Thanks, Julie. Yasmin, just one more question about skill availability. Of course Australia does have skills shortages. Unemployment rate is relatively low even due to the pandemic, and you said you had 33 people employed in your circular economy precinct in Brisbane. I'm just (indistinct) about the ability to get people for your type of work and how easy is it. How easy have you found it, and if you wanted to scale up, how could you do that given - I mean, I don't know. If you look at our report on page 66 there's a very good graph showing new electronics prices versus repair of prices and, of course, new products tend to be capital intensive, built in factories so they're quite efficient in building things. So repairing obviously is fairly labour intensive, so I would like some comment around that type of thing.

MS GRIGALIUNAS: It's very labour intensive, and if you looked at dollar for dollar you would not make it as a decision. I will guarantee you that almost all products will cost more to repair than to repurchase. For me, to answer your skills shortage question first, there is no shortage of people wanting to get involved in re-educating themselves around all things circular economy, and right for repair is very much included in that lifecycle. And, you know, we've not gone to market at all to hire staff; they have all come through referrals or people shopping with us who have become interested parties who then come in and learn how to rebuild a base and create this product.

But I feel that there's a value that's difficult to measure, and that is in the actual value of building the human. So we always say we're in the business of building people and then people build our business, and absolutely we need to replicate in scale, and there's a commerciality requirement around that for a business to be able to be self-sustainable and sustaining. At the start you might not - it's like any start up. Like, you might not make a lot of

5 money at the beginning, but if you invest early, then what you will see in years from now is not a skills shortage. I think that anyone can learn how to sew; anyone can learn how to repair. These skills are not the shortage. The shortage right now is the perception of, you know, I guess, the ecosystem, that it's actually worth doing.

10 And the reason it's worth doing is because if we don't, there's going to be an Earth shortage in the future, and I think that we need to sometimes invest now to be able to take the longer term. Begin with the end in mind. Well, the end in mind for me is that we're actually using more non-virgin source materials to remanufacture products in the future. Well, to do that it means we're going to have to strip back some products and get our eyes on the prize to understand what's needed in order to get repairability scalable, and it requires upfront investment right now.

15 Investment of time, investment of tools and investment of team, and that's a shout out and call out to any smart investors out there that software as a service and tech companies, absolutely invest in them, but get involved with these messy companies on the ground that are physically handling products because we're not only building businesses that are scalable; we're building people, and the cost on the future health system when you get to give people jobs and give them something to do in life that's valuable is actually going to be a future-saving cost in other departments across the country.

25 COMMISSIONER LINDWALL: Well, thank you very much for that, Yasmin. I think that's perfect. We're on time. So thank you for speaking today and - - -

30 COMMISSIONER ABRAMSON: Thank you so much.

MS GRIGALIUNAS: Thank you.

35 COMMISSIONER LINDWALL: - - - we much appreciate it, and take care and we hope to come and visit you some time.

MS GRIGALIUNAS: Yes, please do. Thank you so much.

COMMISSIONER ABRAMSON: Thank you.

40 COMMISSIONER LINDWALL: All right. We will now have a 15-minute break and resume at 11 o'clock with the E-Waste Watch Institute.

45 **SHORT ADJOURNMENT** [10.48 am]

RESUMED [11.03 am]

5 COMMISSIONER LINDWALL: Okay good, well we'll get started. So, John and Rose, would you like to introduce yourselves and give a bit of presentation and then we'll have some questions after that?

10 MR GERTSAKIS: Yes, thank you. First and foremost, thank you to yourselves the Commission, for its good work in undertaking this inquiry and producing the draft report. My name is John Gertsakis and together with Rose Read we founded the E-waste Watch Institute a couple of years back. It is a timely and necessary inquiry during a period where Australia is facing a variety of waste related challenges, so we appreciate the opportunity to present here today and share some of our insights, our experiences, our views. E-waste Watch is a not-for-profit organisation focused on projects that can accelerate electronic sustainability, stewardship, and circular solutions across the supply chain, and achieving this through collaboration.

20 E-waste Watch believes that the draft report covers many of the relevant issues associated with repair and product durability, including a right to repair. The draft has identified, we believe, key issues, impacts and proposed solution, some of which are noteworthy and should be pursued with vigour. Especially those related to consumer labelling and the benefits of a star rating scheme to better inform consumers and driver greater desire for repairability outcomes by producers and brands. The Commission's draft recommendation to look more closely at how reuse and repair can be further improved for e-waste is also to be commended. We do however believe that the Commission's work is not done yet, it is not finished, there is more to do, and that the final report must address several key issues that have been either overlooked, underestimated, or discounted for various reasons.

30 And so, we offer the following comments. While the Commission has noted that the right to repair is a multifaceted policy issue it can do much more to approach the issues in a coherent manner that acknowledges the interconnectedness between consumer law, design, durability, and e-waste generation. A sidelines approach to these issues will fall short of the necessary policy reforms required. At a time when the Commonwealth Government, State and Territory governments and many local councils are developing and pursuing circular economy policy plans and investments, it's vital that the commission reflect these initiatives in their analysis and recommendations.

45 Why? Because one of the key tenants of a circular economy is to prolong the life of products, components, and the materials from which they are manufactured. This is not blue-sky policy ambition; it is hardwired into more and more policies and programs worldwide in both business and in government. Yet this is not adequately reflected in the Commission's analysis, in our view, or its recommendations. The term appears only once as

part of a broad overview, it appears a few more times in the full report, which I'm still wading through. But the importance of a circular economy, and the role of repairability and durability is absolutely critical.

5 The point here is that alignment with government policies is essential, these
policy reforms currently in play include attention to specific work by the
Commonwealth on repairability, durability, reusability - especially for
electrical and electronic products, or as I'll call them today e-products.
Specific work on the role of design to better delivery measurable circular
10 economy outcomes, and specific work on the opportunities to implement
interventions across the product life cycle, and across the supply chain to
avoid and reduce waste arising from e-products. So, there's a lot of work
going on at the moment at a Commonwealth level that needs to be reflected
in the finalisation of the Commission's report.

15 E-waste Watch would encourage the Commission to look again at the 28
recommendations in the government's review of the Product Stewardship Act
and ensure that they positively inform the final recommendation in the
Commission's report. All of these recommendations are being adopted by the
20 Commonwealth and should not be overlooked. An area of concern; E-waste
Watch is very concerned to see that the commission concluded that because
we had well-managed landfills that the impacts associated with landfilling
waste are not significant or worthy of greater attention. Firstly, this is not
entirely correct, New South Wales alone is running out of landfill space. So,
25 the imperative is to ensure e-waste is diverted from landfill, that's essential.

Secondly, this observation fails to acknowledge the above-mentioned circular
economy policies being developed, or that are in place. And the need to
prolong the life of products; keep them circulating in the economy. A well-
30 managed landfill being an acceptable solution to managing e-waste is a bit of
a 1990s view of how to manage our recourses that go into e-products, many
of which are scares or non-renewable. Thirdly, only TVs, IT equipment and
mobile phones are adequately addressed through national consumer friendly
schemes and programs in Australia. Australia has a relatively poor record
35 when it comes to managing a range of other e-product categories, especially
solar panels, lighting products, many small appliances, some white goods,
power tools, batteries, scientific and medical equipment, toys, and a range of
other consumer electronics, including microwaves, vacuum cleaners etc.

40 In other words, we only have some solutions to some parts of the electrical
and electronic equipment range. Our point is that the total body of e-waste,
and electrical and electronic products in Australia, is not managed effectively
in Australia at present, and that repair and durability is part of the solution to
addressing many of these e-products. Ask any local council in Australia and
45 you will quickly discover that desktop analysis of the problem does not
match their everyday management of the e-waste stream in Australia, and the
confusion is of cause for consumers, rate payers, house holders, businesses in

those municipalities. In short, the multifaceted aspect of reparability and durability must better address the issues of circularity and the interconnectedness of product life extension and other interventions that can avoid waste from e-waste in the first instance.

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Our policies must not reflect an ambulance chasing approach of less harm, amelioration, and questionable incrementalism. This inquiry highlights that repair and product durability is a critical opportunity for Australia to move forward in addressing waste avoidance and reduction from e-products. It's also an opportunity to ensure an aligned and coordinated approach alongside the very important work being undertaken by all levels of government in Australia to transition to a circular economy. We can't afford to use yesterday's assessment methods, or yesterday's assumptions, to address tomorrow's issues and impacts related to e-products, e-waste, and how to solve some of the challenges. And thus, the importance of the Commission making sure it produces a report recommendation that reflects 2021 and beyond. Ultimately the E-waste Watch Institute is driven by three key questions; are we doing enough? Can we do better? And what are the solutions beyond recycling?

20

And this is where reparability and durability kicks in. We would strongly encourage the commission to adopt these three questions in finalising the report. Again, we thank you for your fine work in the draft report and would be happy to take questions in addition to Rose Read maybe adding some comments as well.

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COMMISSIONER LINDWALL: Well thanks John. Rose, did you want to add comments before we ask questions?

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MS READ: Just a couple of points, Paul, thank you. And also, I would like to acknowledge the traditional owners of the land I'm on, the Gundungurra people here, and past, present, and future elders. Firstly, just congratulations, great to see this is the Productivity Commission's work, excellent, really good. The analysis is excellent, and John has highlighted the positives and some of the areas which need further work. I just wanted to reiterate; the labelling on product durability and reparability will go a significant way in raising and driving greater repair and ensuring more accessibility to repair, so I think that's a big plus. The comments about landfills and the need to integrate with what other states and territories and the commonwealth is doing, there are three states: the ACT, South Australia, and Victoria ban e-waste from landfill. Western Australia is in the process of looking to ban e-waste in their state in 2022, 2023. Queensland is about to start an e-waste action plan, which E-waste Watch is involved in, and the option of using a landfill ban is a way to manage e-waste, so I think as John has mentioned, landfills are not an option for e-waste. And in terms of moving onto improving the management of e-waste there's a - you know the GPS tracking is one useful tool - but I think in terms of trying to drive repair and reuse we

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5 need to look at different aspects of - the current e-waste collection schemes aren't necessarily set up to drive repair or reuse, or necessarily incentivise. Whether that's the exact - is the place to start, to drive that - I think we need to think more openly about that, and look at, you know, understand how products get from A to B and how you can stop them being thrown in the bin in the first place. And intervene there rather than - or else intervene in terms of trying to recover and pull out parts and components before they are recycled. So, they're just the three points that I wanted to raise.

10 COMMISSIONER LINDWALL: Thank you, Rose. I appreciate those comments. Obviously when we look at a whole report there's lots of aspects that we've looked at, across a number of areas. And they each have a legislative issue. So, I agree that it's important to look at it from cohesive, coherent manner, but in the end if you're going to address a whole lot of things, they'll have to be seen through different prisms. Otherwise I don't think that there's a clear legislative framework that you could otherwise achieve. But we'll look at that more. I'd like to ask a bit about product labelling. Could I start with that first? Now, there is a product labelling scheme for reparability in France.

20 Should we adopt the French scheme, if you know much about it, or should we have our own scheme? And what are the benefits and the costs, or the merits and demerits, of having a coherent worldwide product labelling scheme for reparability and durability, versus Australia going its own way?

25 MR GERTSAKIS: Maybe I'll start off on that one. I think there's a need to make sure that whatever takes place, or is developed in Australia, works in the Australian context. Having said that, we do need to harmonise. Many of the producers, brands, manufacturers, are developing product for a world market. And therefore some degree of harmonisation there is important. So rather than say do we copy the French, or not, I'd rather start from a point of work closely with industry and look at existing labelling programs, existing compliance infrastructure in Australia. And the example here is - a very successful one, I would add - is energy star rating labelling in Australia, and water efficiency labelling Australia for certain product categories. Programs developed in close collaboration with industry.

40 Compliance infrastructure working to certification standards. I would be looking to Australia to learn from what the French are doing - it's early days - what's working, what's not, and other labelling programs. But really to not add another labelling program from the ground up, but to look at how we work with the existing energy star, water efficiency, as it relates to the product categories that it's relevant. So, I think that's particularly important. The infrastructure is there. The compliance (indistinct) are there. It's about the relevant standards that would have to be developed. And this is where we could look to the French and learn from them. But also again making sure

that we work closely with manufacturers - OEM suppliers in Australia - in the development of that solution.

5 COMMISSIONER LINDWALL: Now, in terms of the labelling, of course labelling has a cost and you would - if you want to have a labelling like this, you would want to have it to influence the customer at the point of sale, presumably. So, it would have to be on the physical device in the shop, as well as online presumably. Are you confident that there is a benefit of
10 having a labelling scheme in Australia on reparability and durability, and that the individual consumer would - it would influence their behaviour, in terms of what they buy?

15 MR GERTSAKIS: Yes, we're very confident. We're very confident because if you use as a baseline the evolution of energy star, water efficiency, and how that has played out, and the role it plays in the purchase of those goods over time - it hasn't happened overnight. Those programs have been in place for a long time. But what's key here is - and it's not just about doing a label. It is about the marketing, the communications, the consumer
20 education associated with that. It also provides brands and suppliers an opportunity to differentiate in the marketplace around their performance. So, quite confident. And it's an obvious area where the cost is (indistinct) being internalised in the purchase of a new product. And that's where labelling kicks in. Rose?

25 MS READ: I think there's - I'll draw your attention - there was a consumer survey done late last year Passion and - John, was it - - -

MR GERTSAKIS: The Power and the Passion.

30 MS READ: The Power and the Passion - where 2000 survey conducted by the Bravery and Republic of Everyone, which really shows a significant shift in consumer behaviour and consumer expectations of their brands. They expect brands to be socially responsible, and environmentally responsible. And that includes being able to repair or to have recycled content, or have
35 different (indistinct) you know, so - and I'll share the - I'm happy to forward that link through and that report. Because I think it's a very insightful report. And, you know, the EPAs of New South Wales have been doing consumer surveys on willingness to, you know, environmental consumer behaviour and that - or, consumer behaviour from an environmental perspective.

40 And, you know, we are seeing a significant shift where people are actually prepared pay more for product that are doing - that have a social good and environmental good to those. And, you know, that is, you know, up to, you know, anywhere between five to ten per cent more on the price point.

45 MR GERTSAKIS: The other point, if I may - it's not the consumer label in isolation. The consumer label is an opportunity to leverage new drivers for

5 new product development. So, it's about giving the consumers choice between Product A and Product B, and what different brands are doing to design those products to have a longer life span, to be more repairable. So there is a direct connection between the purpose of that label to both educate and inform, but also to drive design improvement, engineer - and product development engineering improvement.

10 COMMISSIONER LINDWALL: Now, you could go further of course and have minimum design standards for reparability in Australia. That would, of course, potentially mean that a lot of products that are sold in Australia would no longer be able to be sold. Would you argue for such a - quite a - a substantial change in what would - if we had that type of approach?

15 MR GERTSAKIS: I would propose that solutions in this space be developed with key stakeholders. With the brands, with consumer and environment groups, doing that collaboratively. So that would be my view - is that collaboration on the development of those responses is really, really important.

20 COMMISSIONER LINDWALL: Now, what about - and one the previous participants - yesterday, I think it was - spoke about government procurement policy, as well as cooperation procurement policy. In other words, in terms of laptops and so forth, that they minimise - they have in the procurement policy a requirement for reparability and also a minimum life span. What do you think of that? Is that something you would advocate?

MR GERTSAKIS: Yes, absolutely. Rose, over to you.

30 MS READ: Yes, I think procurement is a very effective way, and probably one of the most effective ways government can influence. And I would strongly recommend that greater emphasis is placed in the procurement policies on durability, requirement for reparability, in - you know, electronic products being purchased. Yes, I think that's a really important thing. Yes, just the other point - just going back to the point before about minimum design standards. I think, you know, you need to look at - there's some minimum principles that need to be applied at least. And, you know, I support John's comment in terms of anything would need to be developed in collaboration with the affected industries.

40 But, you know, there are - the product either has to be recyclable - fully recyclable, fully compostable, and repairable and reusable. So there's some very clear minimums that have to happen there. By simply doing that, we'll also raise the bar.

45 COMMISSIONER LINDWALL: Okay.

MR GERTSAKIS: A couple of other points in relation to that - the Environment Minister's Priority List talks about electrical and electronic products. There are specific actions in there. One of the specific actions is around design for durability, reparability, reusability, recyclability. So, again, there is context there. There is an objective there. It's a priority action in the e-product space that highlights the significance of this issue. The other point of (indistinct) procurement to highlight, if it wasn't highlighted yesterday - and from my own direct experience in working with business - if there's a group of customers that big brands, OEMs really take notice of in certain categories, are big buyers, fleet buyers, those in government or big cooperate entities buy 1000, 2000, 5000, whatever they might be. Phones, laptops, dishwashers in the tearooms, whatever.

The minute you have a procurement process that really deals with reparability, durability, et cetera, recyclability with those fleet buying tenders, you will start to see change. That's in addition to what the general consumer market is saying and wanting from parts, but fleet buyers and the role of procurement there is a great opportunity to really influence and bring around change. And a lot of that is really about how to get positive procurement going in government and to make sure that environmental and social objectives are genuinely integrated.

COMMISSIONER LINDWALL: Okay. I should turn to Julie now otherwise we will run out of time for her questions.

COMMISSIONER ABRAMSON: No, that's all good. Thank you. John, you said that our approach to a number of the recycling is piecemeal and you referred to the television and recycling but said there were a lot of other things. Like, how would you deal with that given the way that the product stewardship schemes work at present?

MR GERTSAKIS: Look, this is a really important area of work, Julie. I think this is where we do need to look at what are the outcomes we want to achieve for e-products; what are the other categories that aren't yet covered; how do we look at - you know, the question might be, you know, do we expand the scope or do we develop new measures, new programs for certain areas. You know, the issues and brands, for example, associated with small products, small appliances, might be very different to how we want to deal with televisions, big IT products, et cetera. But I believe there is great scope to make sure that we look across the range of e-products, everything that contains a battery, has a cord, and what that means.

You know, we're at a great point here with your inquiry and what the Department of Agriculture, Water and Environment are doing to take a fresh look at how we deal with e-waste and to avoid it in the first place across those different categories, but the time is certainly right to look at how we deal with a whole lot of products - electronic (indistinct words) - that are

currently going to landfill or being dumped or not being reused and repaired. And again, my point - and I'd underscore this - is that the solutions to this, both at a policy level and an operational level, need to involve the producers, the manufacturers and the environment consumer groups. But it is producers and brands that can redesign products, reengineer them. It is - they're a key player, so - - -

COMMISSIONER LINDWALL: No. Thank you for that. One of the other issues is the availability of recyclers. And I know we've spoken to you about this, so I absolutely get your point about the circular economy and about design, but thinking about where we are now and the products that we have now, especially things like solar panels. What are your views about what we could do in terms of the recycling industry?

MR GERTSAKIS: I'll start off and Rose can add to this. But, you know, we have the recycling modernisation fund. We have the modern manufacturing fund to invest in companies to develop, to commercialise, to train. There are government investment programs there that can support the creation of additional infrastructure to deal with this. The one thing I would add, Julie, is that sometimes I think this capacity issue is brought out as a bit of a red herring. You know, if there is a reliability of supply, of feed stock, of electrical and electronic products to go into a process, the investors will come. If there is certainty there, the investors will come. If there is certainty there of the feed stock and volume, the technology and recycling repair processing businesses will come. So I'd be very cautious about automatically accepting that we've got a capacity issue in Australia.

COMMISSIONER ABRAMSON: Rose. Thanks, John.

MS READ: Yes. No, just to build onto that, there's probably - you know, John talks about certainty of supply and that does drive investment by recycling companies. So there's a couple of triggers that really do that, and one of them is banning the export of unprocessed e-waste would be a really good start; and then the other thing is actually expanding the scope of the NTCRS to include all e-waste products. It was very clear that by - the NTCRS did a - had had a significant impact on growing e-waste recycling in Australia, but it was limited to TVs, computers and their accessories, but you went from 18 per cent to 64 per cent recovery, collection of that suite of e-waste.

But that only represents about 10 to 20 per cent of electronic products put onto the market. So if you expanded the scope of the NTCRS to include all electronic products, then all of a sudden there is a huge volume and there is more need. And if you run that in parallel with a ban on exporting unprocessed e-waste so there is an incentive for companies to do secondary processing to start to recover the precious metals to deal with the plastics

here in Australia, you know, there is an opportunity. And there are companies that are out there.

5 There's, you know, companies like Glencore who are looking at a whole range - who have - or Nyrstar or - and then we have our own steel industry who wants to go into green steel and have more steel going - you know, scrap going into their facilities. So they are two triggers that will - in addition to, you know, any additional funding - you know, seed funding the Commonwealth can provide to help with cap X expenditure. So there's - so
10 yeah, that's what I would suggest.

COMMISSIONER ABRAMSON: One thing - I might struggle a bit here so I will rely on my fellow Commissioner Paul because I'm about to ask you an economic question, and, of course, I'm actually a lawyer. But it's just about
15 the baseline evidence for the cost benefit evidence behind the product stewardship schemes. Are you able to provide us with some further detail on that? So like the economic data that sits behind it. You can take it on notice if you want to.

20 MR GERTSAKIS: And there is information that we can send you. But again, the - this is a great question for the Commonwealth environment department given all of the regulatory impact statement work that was done for the NTCRS, really quite important. So - and also the willingness to pay work that was done, the choice modelling that was done to underpin a
25 decision to intervene with the regulatory instrument there. And there was a lot of work done there by PwC around the economics of the benefit there.

COMMISSIONER ABRAMSON: Thanks, John.

30 MS READ: The other aspect with the cost benefit analysis is also looking at carbon emissions reduction and avoidance which is not really probably taken into account or wasn't taken into account very well back when the NTCRS was developed. But, you know, it's very clear. You'll see from the New South Wales waste strategy and sustainable materials that they're looking to -
35 they recognise that recycling and recovery of these materials has significant carbon emission reduction benefits, and these aspects need to be costed into that, especially given that many European countries - or Europe is looking to charge for tax on imports with - carbon tax on imports and so on, and so - and the US is looking at something similar. So, you know, we need to build those
40 emissions reduction benefits of recovery and reuse and durability into these cost benefit analyses. And this is about moving forward in our economic thinking and not using 1980s economics.

COMMISSIONER LINDWALL: Yes.

45

COMMISSIONER ABRAMSON: Thank you. Thank you very much. Back to you, Paul.

5 COMMISSIONER LINDWALL: We've spoken - or you've spoken a lot about e-waste. E-waste, of course, is growing more rapidly than general waste, but it's still a small percentage. Is there anything particular about e-waste that you focus on particularly rather than the general waste stream? Like, you're in favour of a ban on e-waste in landfill, but not necessarily a ban on general waste disposal in landfill even though there's hazardous waste in e-waste as well as general waste.

10 MR GERTSAKIS: Our focus is on electrical, and I'll try and - I'll leave it to other organisations - - -

COMMISSIONER LINDWALL: Okay.

15 MR GERTSAKIS: - - - or Rose might comment on other product classes. However, again, we need to be careful we don't reduce things to a sort of tonnes-type view of what the problem is. Electrical and electronic products contain scarce and non-renewable materials, rare earths, precious metals. It's not about whether it's a small volume or a large volume. We've got to look at
20 the various fractions, materials, substances that go into these products and, again, in line with circular economy thinking, we've got to recover these materials and keep them circulating in the economy. They're scarce or they're non-renewable. The current known stock of copper that we know of
25 in the world is about 30 years. You know, if it's not a small amount or a big - going to landfill is irrelevant. We need to get that material back and use it in the production of new goods. So again, caution around it's a small waste stream; it's a big waste stream.

30 MS READ: And I think the other point is the amount of embodied energy that's in those materials to create those products is massive. The effort to mine, to refine, to process, to manufacture is massive, and to simply put that back in the ground is not appropriate. And the hazardous waste is, you know - the hazardous materials in those - the ability to manage those is quite good and, you know, I think with appropriate e-waste collection and controls
35 around that, such as the Basel Convention and so on, limits and controls - ensures the appropriate management of those materials - those hazardous materials.

40 COMMISSIONER LINDWALL: Okay. No, that's fine. I don't think I have any particular other questions. Yes, about solar panels. Now, in our report citing evidence from Victoria, by 2035 the largest component of e-waste will be solar panels. So what is the best way of repairing and reusing and recycling solar panels, do you know?

45 MR GERTSAKIS: Well - - -

MS READ: Yes, Paul, I think it is a massively growing waste stream. And, you know, there is a lot of work that needs to be done - a lot of those panels can be reused, repurposed, and there needs to be some sort of incentive to try and drive that. The other part is also setting up a recycling process. And
5 similar to, you know, we don't want to see these panels being packed up and exported offshore. So, once again, banning export of unprocessed PVs would be a part of the regulatory reforms that could help drive greater recovery, reuse, repair and recycling of those systems. And - there was a third (indistinct) I was going to say, which I've lost.

10 MR GERTSAKIS: If I can just add one (indistinct) what we really need, what Australia needs in this space, is a national product stewardship program for solar panels that addresses issues of product life, reparability, et cetera. Organisations such as the Clean Energy Council, the Smart Energy Council,
15 have been looking at possibilities and solutions here, but it is - it's very, very timely and necessary that we have a national scheme for solar panels. And that, again, procurement is key here. Where are the organisations that are building these, you know, utility scale solar farms? You know, you don't have to do terribly much in terms of (indistinct) at the procurement stage
20 making sure there is a product lifecycle management plan associated with the volume of PV coming out at end of life. Both to deal with reparability or recyclability.

COMMISSIONER LINDWALL: (Indistinct) - - -

25 MS READ: (Indistinct) - sorry.

COMMISSIONER LINDWALL: No, please.

30 MS READ: No, and that also applies for, you know, solar installers at a residential level. You know, there is various certifications that approve someone to be an installer, and they need to have an end of use or repairable or reuse pathway for the panels they're taking off a house. And it is a requirement for - we do need a national product stewardship scheme for PVs.
35 It does need to bring together both the SEC - Smart Energy Council and the Clean Energy Council - together with government need to work through collaboratively and to drive solutions - to identify the key problems and the solutions. And there would need to be some form of regulatory framework to drive it, given the number of companies and organisations involved in both
40 bringing panels into the country, installing them, and removing them and so on.

COMMISSIONER LINDWALL: Okay, well I think that's the time for us now. SO, thank you very much, John and Rose.

45 MS READ: Thank you very much.

MR GERTSAKIS: Thank you very much for the opportunity.

COMMISSIONER LINDWALL: Okay, thank you.

5 MS READ: Yes, thank you very much for the opportunity. Well done. Bye.

COMMISSIONER LINDWALL: Could I now invite Ben Rice who is in person here in Canberra.

10 COMMISSIONER ABRAMSON: That's kind of exciting. Because Ben's the first in-person person for the three days.

MR RICE: Well, I have to say it's very exciting for me as well to be out of the house and about, so (indistinct).

15

COMMISSIONER LINDWALL: So, Ben, the camera is up here.

MR RICE: Great.

20 COMMISSIONER LINDWALL: And you can see Julie there. So, you do tend to move your head one side to the other a bit.

MR RICE: (Indistinct).

25 COMMISSIONER ABRAMSON: Hello Ben.

MR RICE: Hello.

30 COMMISSIONER LINDWALL: But if you'd like to introduce yourself and say whatever you'd like to tell straight after that.

MR RICE: Certainly. Thank you very much. So my name is Ben Rice. I'm the Executive Officer of the Australian Digital Alliance. I'd like to begin by acknowledging the traditional owners of the land where the ADA is based, here in Canberra, the Ngunnawal people, on behalf of the ADA I'd like to pay respects to their elders past and present and emerging. I'd also like to thank the Commission, and the Commissioners and the Secretariat for inviting us to speak today. The ADA would really welcome this opportunity to provide some evidence to the Commission's inquiry into some issues associated with the Right to Repair.

40
45 The ADA is a non-profit coalition of public and private sector groups, formed to provide an effective voice for public interest perspectives in copyright policy. Our members include universities, schools, disability groups, libraries, archives, galleries, museums, research organisations, technology companies and individuals. Our objective is to advocate for copyright laws that provide reasonable incentives for creators and innovators,

while supporting the wider public interest through access and dissemination of knowledge and information. The comments that I will make today will be limited to the copyright issues outlined in the Commission's draft report. And, in particular, the economic and societal benefits associated with pursuing copyright reforms that improve access to repair information.

At the outset I'd like to acknowledge and endorse the submission made by Griffith University. In particular, we emphasise the point made in that submission that many consumer goods that require repairing do not directly interfere with the intellectual property of manufacturers. But despite this, what we see time and time again is manufacturers continuing to cite the protection of IP as one of the key reasons for their opposition to a right to repair. Our position is that intellectual property laws should not be operating to prevent smart consumer product or good from working or from being repaired. Broadly, the ADA supports the introduction of a fair use exception under the Australian Copyright Act, or as an alternative of second best approach, the introduction of a fair dealing for the right to - a fair dealing for repair exception.

There's a large body of evidence contained in at least eight governmental reviews, spanning the last 23 years, including the Productivity Commission's own review in 2016 of intellectual property. These reviews have all established that flexible copyright exceptions would provide benefits to users and consumers, whilst maintaining strong and substantial protections for copyright owners. So, I'll go through some of the - the two suggestions that were made in the Commission's draft report to introduce an exception that would allow reproduction or copying for repair. So, under Australian copyright law, as the Commission knows there is currently no exception that permits reproduction for the purposes of repair. The best practice model globally for a flexible future-proof copyright system is fair use.

Fair use allows the use of copyright material, as long as they are fair, and sets out factors that courts and users must weigh up when determining whether a particular use falls within the scope of the copyright exception. Fair use has been adopted in jurisdictions that lead in technological development worldwide, including the US, Singapore, South Korea and Israel. And, again, I'd note that the Commission has previously recommended the adoption of fair use in its 2017 Intellectual Property Report. Other independent international studies have also looked at the experiences that countries that have adopted fair use have had. And what these studies have confirmed is that fair use is associated with higher revenues in high technology industries without an increase in litigation or harming the revenue of copyright intensive industries, such as publishing and entertainment and consumer manufacturing as well.

What we consider is that an additional fair dealing exception for repair would be the second best option. As shown by many of the studies over the years,

5 fair dealing exceptions are not able to adapt to the new technologies and changes in consumer behaviour in the ways that a flexible, future-proofed copyright exception like fair use would be able to. We'd particularly like to draw attention to draft report's suggestion that fair use is less certain in some ways than fair dealing. The Australian Law Reform Commission in its report in 2012 and 2013 has examined this claim in great detail, and what they concluded was that fair use is no less certain under Australian - is no less certain than Australian's fair dealing copyright exceptions.

10 Research by scholars in the US has shown that up to 80 per cent of fair use cases in the US are confirmed on appeal. And what we'd submit is that this is hardly evidence of an uncertain or unpredictable doctrine. What evidence from the US has also shown is that industry best practice guidelines can be adopted. They can provide users with more confidence when relying on
15 exceptions like fair use. These guidelines have been even relied upon by industries like the insurance companies, and the insurance sector. And there is no reason why similar guidelines couldn't be developed here to guide consumers and manufacturers as well.

20 Independent analysis of the experience in Israel has shown that there is no appreciable increase in litigation resulting from the adoption of fair use. What we can also suggest is that should the Commission recommend the introduction of a fair dealing exception for the purposes of repair, that additional fairness factors would most likely need to be adopted, and these
25 would need to be examined more closely and in greater detail, if that is the option that the Commission chooses to go forward with.

I will talk a little bit about the proposal to amend copyright laws to allow
30 repairers to legally access information hidden by TPMs as well. So, as the Commission is aware, manufacturers' use of TPMs is a key barrier to reparability due to the fact that Australian copyright law generally prohibits the circumvention of TPMs. It's common for TPMs to be used globally to prevent the use of generic replacement parts, and in an attempt to restrict independent repairers from accessing software that's essential to diagnose or
35 run machinery, even when that machinery has nothing to do with copyright or the creative content.

40 Legal action has been brought in the US under the anti-circumvention provisions seeking to prevent the manufacture and sale of universal garage door openers and generic printer cartridges, purely because these items have recognition software built into them. As the Commission knows, US law was amended in 2018 to permit the circumvention of TPMs in order to fix and maintain lawfully acquired consumer electronics. Although the amendments only apply to certain categories of devices and must be renewed within three
45 years. So in Australia under our current Copyright Act, it's a criminal offence to circumvent the TPM to access copyright content without permission, even if the use you wish to make of the protected content is legal.

5 Regulation 40 of the Copyright Regulations 2017 sets out a number of
exceptions to this prohibition, which includes certain permitted uses by
disability groups, educational and cultural institutions, as well as the making
of interoperable products. However, it does not currently include
circumvention for the purpose of repair. And what the effect of this is, is that
currently it's unlawful to circumvent a TPM for an otherwise lawful purpose,
unless a specific TPM exception applies. This has the effect of extending
copyright owners' rights, enabling them to prevent otherwise legal uses, and
10 essentially creating a right of access. So, for these reasons we would submit
that it's an imperative that any new fair use or fair dealing for repair
exception be matched with an exception permitting the circumvention of
TPMs if this is necessary in order to rely on the new right of repair exception.

15 I'll touch briefly on the issue of contractual override protections as well, that
we greatly support (indistinct) Copyright Act. Copyright exceptions are
fundamental to defining the boundaries of the grant of copyright. They
provide certain public benefits, determined by democratic means. And we
would submit that (indistinct) contracts and EULAs should not be able to be
20 used to rewrite the copyright balance that parliament has deemed appropriate.
And we would strongly support the protection of all exceptions against
(indistinct) by contract. Thank you very much.

25 COMMISSIONER LINDWALL: Thank you very much, Ben. That was
excellent. I'll ask a couple of questions and then turn to Julie. Firstly, what
happens - obviously the purpose of having the exception in copyright law is
to allow repair to happen if we were to go to a fair use or fair dealing route.
What happens if the TPM is not able to be circumvented, or the repair
manual is not able to be copied because you can't get access to the original
30 any way, because it's secret or something like that?

MR RICE: Do you mean in a practical sense?

35 COMMISSIONER LINDWALL: In a practical sense, yes.

MR RICE: Well, practically I think what we've found the experience being
is that it becomes either impossible, or very difficult, to access that repair
information. Either needing to go directly to the copyright owner, or the
owner of the product. And you're essentially beholden to the process that
40 that person or that organisation sets in place to get around either the TPM or
to provide access to that material. And so we don't have a huge amount of
direct or anecdotal evidence from consumers that have had this, but certainly
the problem is real and exists there.

45 COMMISSIONER LINDWALL: So I guess in terms of - see, an alternative
approach would be some sort of positive obligation on the manufacturer to

provide diagnostic equipment and circumventer to TPM. Would you then still need to have the copyright law changes?

5 MR RICE: Certainly even if there was a positive obligation to provide that sort of material, it would still technically be a copyright infringement to reproduce and copy that material.

COMMISSIONER LINDWALL: Yes, okay.

10 MR RICE: Theoretically without the direct permission of the (indistinct).

COMMISSIONER LINDWALL: Now, noting that the US does have fair use as an exception - and I understand that the US Free Trade Agreement with Australia prohibits it pretty much - how would we effect the change? I mean we've articulated in the report a bit about it, but I'd like your view on that.

20 MR RICE: Yes, certainly. So, both the ALRC and, again, the Productivity Commission, have gone into detail about how that change could be effected. I think, in particular, it would be unlikely for a case to be made against the introduction of that sort of exception, given that the US and these other jurisdictions do already have this copyright system in place. And also under the - in terms of TPMS - under the Free Trade Agreement, there is a mechanism in place there for review of TPM obligations and how those would be rewritten and implemented.

25 COMMISSIONER LINDWALL: Okay. And earlier testimony spoke about the need for some sort of similar exemption, or exception, to things such as patents and trademarks and so on. Do you have any comment on that?

30 MR RICE: No, the ADA is primarily concerned with copyright reform and copyright aspects of the right to repair. So, I can certainly provide any information in more detail that you'd like. But I'd need to get back (indistinct).

35 COMMISSIONER LINDWALL: That's fine. Julie?

40 COMMISSIONER ABRAMSON: Thank you. Ben, I might get some of the technical detail wrong here - it's quite a complex area - so just bear with me on this. Earlier we heard some testimony which said that actually what we're proposing with the TPM changes was too narrow. And there was a whole conversation about embedded software, and we were encouraged to look more broadly at the issue. So, I'm just interested in your views on that.

45 MR RICE: Sorry, Julie, if you wouldn't mind just elaborating a little bit on the embedded software part of that. I missed the testimony from earlier, apologies (indistinct).

5 COMMISSIONER ABRAMSON: That's all right. The point was made to us that the way that we've crafted how you would be able to deal with the TPM issue - this is a general point, Ben- was too narrow. That we should have actually - we're not thinking about the broader issues here, we're just looking at a very narrow exception. So it's your view on that.

10 MR RICE: Yes, well I'd certainly - I could go into a little bit more detail and probably provide the Commission a closer look at what is being proposed - -

COMMISSIONER ABRAMSON: Yes, you can take it on notice, Ben, if that's easier. And also we can put to you the comments that were put to us and ask you to respond in your submission, if that would be easier for you.

15 MR RICE: That would be fantastic. And certainly we've made previous submissions to the ACCC's inquiry into aftermarket sales of agricultural machinery, where we've looked at the issue of TPMs, (indistinct) in greater detail. So I can certainly provide some more of that information as well to the Commission.

20 COMMISSIONER ABRAMSON: That would be really helpful. The other thing is you mentioned that US copyright scholars, who had made some commentary about fair use and its ability to be used - so I'm just kind of interested in you expanding a bit on that. You made the point that it's really not that uncertain, which of course is everything that keeps being put to the Commissioner - oh well, it's all too uncertain.

25 MR RICE: Sure, well I think even without having to look at US scholarship, you know, there's a wealth of evidence here that our own governmental agencies - the ALRC, the Copyright Law Review Committee, and previous iterations of the Attorney General's Department, studies conducted by Mr (indistinct), research by Deloitte Access Economics, that have all found that fair use is no less certain than having fair dealing exceptions in place. And, in fact, there are broader benefits that are associated with flexible copyright exceptions where the trade-off is - the value increase there is certainly worthwhile.

30 COMMISSIONER ABRAMSON: Thank you, Ben. The final thing which I'll also ask you to take on notice, lest the Commissioner make a fool of herself with her understanding of copyright law, is that you noted that there's no anti-circumvention exception for repair, but we're interested to know what you think of our identified repair exception in regulation 40, and we're happy for you to take that on notice.

35 MR RICE: Sure, absolutely. Again, we've made previous submissions to the ACCC, so we'd be certainly happy to provide all of the technical detail on that as well.

COMMISSIONER ABRAMSON: Thank you. Thanks very much, Ben.
Back to you, Paul.

5 COMMISSIONER LINDWALL: Ben, look, I have been at the PC for a
while and we've put in a number of reports that have recommended, well, in
the case of the books report, parallel importation of books. Obviously you
mentioned the IP report about a fair use exception, and they've been
consistently blocked by - well, not accepted by government, and my
10 observation is a lot comes down to books, as in the publishing industry in
particular, so I'm asking you, is it possible to craft a fair use - and I'm a non-
lawyer - fair use exception which excludes the publishing industry in
particular but would still address all of the issues we're talking about, right to
repair? If the government was so minded to do so.

15 MR RICE: If the government was so minded to do so, I don't think it would
make sense to create a fair use exception that was - that specifically carved
out industries like the publishing industry, and I think to go to your point,
what we see as a bigger problem around the introduction of fair use and the
20 sort of - the conflict that arises there, is not so much a lack of understanding
but a situation in which messaging from some sectors can be quite strong and
is actually - sort of overrides the message that we would get from individual
authors and creators, and so I think what we've found here in Australia is that
particularly the publishing sector is quite a loud body and has a lot of sway in
25 these conversations.

But the conversations that we have with individual authors and creators, who
actually would benefit from these exceptions like fair use, and would rely on
exceptions like fair use to create more works, are certainly far more positive
30 and supportive of having these - that sort of flexibility in place.

COMMISSIONER LINDWALL: Well, from my perspective fair use is a
sensible way forward. It has been proposed by the Commission, and like the
original debates about tariff reduction, sometimes a good idea takes a while
35 to get through and one hopes that perhaps government in some time will be
adopting something like that, but I'm not saying that's where we're going in
this report. That's my just personal view right now, having said what we've
done in the past. So, Ben, thank you very much, unless you've got any final
points.

40 MR RICE: No, just again, thanks very much for inviting us to speak today.

COMMISSIONER LINDWALL: Thank you very much for your appearance
today.

45 COMMISSIONER ABRAMSON: Thanks a lot, Ben. Thank you.

MR RICE: Thank you.

5 COMMISSIONER LINDWALL: Much appreciated. Thanks, Ben. We've now got Ari Bouras from Interactive Pty Ltd. And Ari is online, if I'm not mistaken.

MR BOURAS: yes, hello, I'm here, but I'm told that my video is not able to work because the host has stopped it.

10 COMMISSIONER LINDWALL: I think it will be able to - - -

COMMISSIONER ABRAMSON: That's all right.

15 COMMISSIONER LINDWALL: They'll switch it on shortly.

MR BOURAS: Here we go.

COMMISSIONER ABRAMSON: Yes.

20 MR BOURAS: Here we go. Hello.

COMMISSIONER ABRAMSON: One of our control mechanisms, Ari.

25 MR BOURAS: No, that's fine. Not a problem. I'm not offended.

COMMISSIONER LINDWALL: So, Ari, if you could introduce yourself and give a little bit of a presentation, that would be perfect.

30 MR BOURAS: I will, thank you. Thank you, firstly to the Commission and to the Commissioners in general for this opportunity. I say that on behalf of Interactive. What I intend to do over the course of my presentation, which I'll try and keep relatively short, will be specific - talk specifically around some issues in our industry. Broadly you'd call our industry as IT, but there are particular elements of IT that I'll touch on, and as advances in technology
35 manufacturing now means that there - the full spectrum of consumable products, be it for home or for business purposes have, or will in the future have, a form of IT hardware or microchips, and therefore microcode and things of that form inside them, all the way from, say, toasters to heavy
40 machinery to cars and whatnot.

There probably is a broader application for the items and the issues that I'll raise through my presentation, but I'll keep it, through the course of it, specific to the sort of IT equipment that we deal with on a day to day basis. What I intend to do is explain quickly who we are, the key issues within our
45 industry, our observations, concerns, and thoughts, and I'll aim to share with you what we hope will be for you some clarity regarding some of those

items, some of the subject matter, and as I said, I'll try and complete with plenty of time for you to ask questions.

5 So, I'll kick off quickly with who Interactive is. We were established in 1988. We're a privately owned Australian multiservice IT provider. We employ more than 550 staff across Australia. The key element of Interactive's service offering is - or a key element, and it's the historical one, and so it was the first offering that we had and continues to constitute about 50 per cent of our activity, is what's broadly called hardware maintenance services which, for 10 the most part, involves the repairing, servicing, and maintenance of customer services - servers and IT hardware and their related machine code (indistinct). I'll explain further what machine code is.

15 We provide those services to our customers across a range of vendor products, so most larger IT or even smaller IT manufacturers you can think of, we service their products for our customers. We employ our own IT engineers, have done for over 30 years, and we have a large amount of spare parts in our warehouses in metro, regional, and remote locations for all of the hardware that we repair and maintain. So, that's part of our service offering and as a result we typically can promise and deliver equal or better service 20 levels than anyone in the market, and we are the largest non-manufacturing company provider of these services in Australia.

25 So often a manufacturer, let's say - I won't use a name but you can think of one of the large ones, will provide these services and offer them to the market for themselves and sometimes for their competitors. We're the only one who provides these services, of our size, that is not also a manufacturer. Interactive's customers include government departments, agencies, hospitals, health care services, ambulance services, not-for-profits, utilities, transport 30 companies, telcos, financial services insurance organisations, media outlets, et cetera. So we offer this - - -

COMMISSIONER LINDWALL: Anything not a consumer?

35 MR BOURAS: As a general - yes, we don't - if someone wants to they can, but most people don't hold the sort of IT in their home that we service, but if they do and they want to we would do it for them as well. So we have contracts for small businesses, as small as a fish and chip shop that for whatever reasons seem to want to have their own - for the way they run their 40 business want to have their own IT hardware, and I think historically one of our oldest customers is an ice cream parlour, all the way to the largest companies in the country.

45 So, in terms of some of the background, I just want to explain quickly what I'm talking about when I speak of machine code because it's sort of the key tenet to a lot of what I'll mention. So you'll hear the term machine code or firmware, and for clarity, what machine code is, well, when I talk about, is

5 I'm referring to all the code that's provided for a machine and included in that (indistinct) machine's firmware and its micro codes. So inside the machine - so the machine can be, as I said, in our industry, any device. It will have within it, within - usually it's the chip that sits within that piece of equipment as a general rule, there's a thing called micro code. So you don't see it. It's not like software that you interact with, and the word firmware means the same as machine code, and those two terms are used interchangeably.

10 COMMISSIONER ABRAMSON: Ari, could I ask you - I was listening very carefully but could I just ask you to repeat that definition that you have for - -
-

MR BOURAS: Yes, sure.

15 COMMISSIONER ABRAMSON: Yes.

MR BOURAS: Yes, so machine code - in simple terms, machine code sits inside the hardware.

20 COMMISSIONER ABRAMSON: Yes.

25 MR BOURAS: So - and it usually sits inside the chip. There is usually a chip, or two or three or four, or many inside various types of hardware, and usually is embedded in that hardware. So it's not something that you interact with as a user.

COMMISSIONER ABRAMSON: Yes.

30 MR BOURAS: It sits inside the hardware, and it exists to help the hardware to function, but yes, it is not something you as a consumer would know that it exists.

COMMISSIONER ABRAMSON: Yes, thanks.

35 MR BOURAS: Okay, and in the industry it's often referred to as firmware, and the reason for that is to create a distinction between code that is software, that - the way consumers think of software, and it's called firmware because it deals with the firm elements of what you're utilising, the hardware.

40 COMMISSIONER ABRAMSON: Yes.

45 MR BOURAS: We wish to highlight concerns relating to the conditional or restricted supply of access to updates of this firmware for microcode and the ability to attend to those updates for some major IT hardware companies. And we've made those observations. The ability to update the firmware throughout the useful life of the device is an essential input, or an element, to the provision of our hardware maintenance services for our Australian

customers. And to be clear, we're not experts in maintenance in our industry. I'm primarily referring to repairing or fixing a device that's no longer working.

5 So, a digital lock - I'm just going to talk now - and I see in your report you talk about digital lock, so I'm going to use that language.

COMMISSIONER ABRAMSON: Yes.

10 MR BOURAS: From our perspective, in the past few years we've observed a number of IT hardware companies or manufacturers implementing or seeking to implement versions of what I think you would refer to as a digital lock, as a way of seeking, it seems, to control or limit access to updates to firmware or microcode. At a high level we've observed instances where the customer
15 needs to enter into a direct hardware maintenance (indistinct) contract with that company, as opposed to third party provider like ourselves, as the only way to practically access updates to this firmware. And just so you know, the life of ten years firmware could be updated on a device more than annually.

20 It is typically considered in our industry to be a fix to what is essentially a bug. So the microcode has been informed in a certain way. It was intended to try and ensure that the hardware operates optimally. And for whatever they've noted there's something they could do to update the microcode, or the firmware, so that it works better than it did when it was first implemented
25 in the hardware. So what's the impact of this? This conduct effectively tries to tie the ongoing functionality and performance of the hardware, or equipment, to the acquisition directly with the manufacturer only of maintenance services. So, therefore, it significantly restricts the customer's access to firmware updates, and therefore their ability to access something
30 that is critical for the hardware to work and for them to operate their business. Or if they're not a business, just to operate their agency or their organisation.

The conduct essentially precludes customers from being able to self-repair.
35 So, keep in mind some companies - small or large, or organisations, government agencies - will have their own engineers. They don't even need a company like ours, or the direct input or assistance of a manufacturer, they hire IT engineers. They can also not access the firmware. As well as obviously, from our perspective, precluding competition in the market.
40 Because whether it's the customer or a third party supplier such as ourselves, without being able to access the firmware we can't implement - without access to the firmware updates - we can't implement those updates and therefore get the benefit of that.

45 In essence, what this does is it ties the supplier - the key input to the supply of the hardware maintenance services - from the provider directly, or the manufacturer directly. So, in doing so, what these manufacturers have, or

5 seem to intend to do, is to attempt to create a form of a monopoly for the repair and maintenance of hardware that they have produced. And the impact of that is simple - what is likely to occur eventually is that the prices for maintenance and fixing would go up, whilst the service levels (indistinct) lack of competition would of course go down.

10 We've observed that what manufacturers are doing in terms of their attempt to justify or explain the conduct is to make representations regarding intellectual property rights which we don't consider to be in any way reasonable or correct. Again, firmware is a specific type of computer code that is installed within the device. And it provides a low level control of a device's hardware. Some devices, such as computers and servers, which is what we're involved in, receive essential firmware updates over the entire lifetime of the device. And those updates are provided for a number of reasons. Primarily (indistinct) fixes. Sometimes they also attempt things like security issues as well as, you know, effectively what the hardware was built to do, it's not able to do it because the microcode is not quite right. So, it fixes those performance issues.

20 And what the microcode or firmware is intended to do is to help the hardware strive for 100 per cent error-free operability. Now, during the life of the device these updates are only installed to provide enhanced hardware operability, as I mentioned. They cannot, and they do not, create increased capability. Such as, for example, increase in speed. A piece of firmware or microcode cannot make something physically do something other than what it was built to do. And I'll now start giving you a bit more detail on those distinctions. So, in other words, firmware is better characterised as a tool which is used to ensure the hardware is operating in a manner that it was originally intended and built to do.

30 It cannot enhance or improve what is, in our industry called, a piece of tin, or hardware. Now, this contrast - and that's why we use the term, 'firmware,' more regularly than microcode - this contrast with software - that as consumers we consider software - is important. Because, with software - which is something that you use, you interact with - you know, those pretty pictures and the processes that you use when you use different types of the software - from a computer game, to an Excel spreadsheet to an Access database, to whatever it might be - when a piece of software is updated you see the benefit. You utilise that benefit because the product itself is the software.

45 So when you get an update for software, often it can enhance - or will enhance - the software's capability, what the software can do. But firmware cannot enhance hardware's capability. It is a very important distinction. Now, I go back to some of the justifications that have been used, or where we see, you know, potentially being used in this area. Which is to say, well, there's an intellectual property right here that we need to protect. We, the

5 manufacturer. Because the firmware update we say is an enhancement. And that is not correct, because it can only fairly and reasonably be characterised as a fix to a known problem inside a devices firmware, or microcode. It cannot - I say it again - alter or enhance IT hardware, or IT devices, or any device that has some technology component that requires firmware in it.

10 It is physically impossible to change the hardware because of an update to firmware. Therefore to present it as anything more than a fix - as some kind of enhancement - is just not genuine. Now, I appreciate people can blur reality with Hollywood. And if you watch movies like the Avengers, or Christopher Nolan films or the Transformers movies, maybe you can conflate the two somehow as something that they are not. But in the reality that we live in, a piece of microcode or firmware cannot suddenly change the physical existence of a piece of hardware. It cannot make a piece of hardware inside your computer or serve as something other than what it is. 15 To suggest that it can is, quite literally, a fantasy.

20 Therefore, what are our concerns and what sort of action do we see available - I suppose, in the first instance, to the Commission. As indicated by your draft report, it seems that this conduct may be occurring - and, worryingly, may soon become the norm - because these types of right to repair issues are not the subject of bespoke regulation under the CCA or the ACL, which are broader in their existence and drafting, and therefore they don't specifically address the circumstances that I've detailed today. It's not uncommon I 25 know for the law to be catching up with technology - which is probably one reason why we're having this discussion today - but, of course, we must continue to strive to do that.

30 I'm not going to make too many grand statements, but that's just one that I note it's not something that we should be perplexed by that it's happening, but as we see this sort of behaviour, we're encouraged - and we wish to obviously encourage the Commission - to seek to attend to the existence of this sort of behaviour with, where possible, some more specific legislation. We've got serious concerns regarding the existence and the potential impact 35 that this conduct poses on both competition for the supply of these services, and for customer choice, including the customer's ability to do their own fix. And therefore not only does it remove self-repair, it removes the competition.

40 The driver of restricting access to firmware appears pretty simple to understand. By monopolising, potentially, the repair of maintenance for a particular product that a manufacturer makes, what it does is it doesn't just create some form of loyalty, what it does is it increases the market's perception, potentially, of the value of that manufacturer's stock, or it's general value in a market place, because it ties to one off purchase and yearly 45 revenue. And for those of you who are economists and strong in understanding the machinations of what we broadly call the market, annuity revenue is the flavour of the month and has been for some years. And so

what manufacturers seem to be wanting to do is to tie these 12 to 24 and 36 month maintenance or fixed contracts to the one off purchase that was historically the driver of their business model.

5 From our perspective, the ultimate impact of this on a consumer competition is likely to be the following - consumers are, or will be unable, to repair and maintain their own IT hardware or devices. Third party providers such as ourselves will have to eventually exit the market, or we'll just go out of business. Consumers, therefore, will lose choice of repairer. Service levels
10 inevitably in that circumstance would decrease, and (indistinct) will conversely - which is unfair - would increase. Also there would be an increase in the downtime of critical IT infrastructure as a result of all that, and therefore the negative impact on systems and the related services into the community would increase. Because this is - again, these aren't just services
15 for private enterprise. They are services that are critical for government agencies and not for profits.

And, as a result of all this, e-waste will increase because two things happen - parties like, such as ourselves and consumers - if we can repair IT hardware,
20 we are more likely to - what's called in the industry - sweat the asset. We will try and keep these assets for longer. Manufacturers have points in time where they say, 'We now consider that item to be obsolete and no longer repairable,' and they can choose when to stop providing service for particular bits of hardware that will drive consumers to have to buy regenerated fleets
25 of product. Or if it's just one server that they have sitting in the corner, in any event they will have to throw the old one away and replace it with a new one, because companies like ourselves - and a large chunk of our business - is providing service for hardware that the manufacturer no longer wishes to provide service for themselves.

30 And, again, if you're wishing to and have the skills to self-repair, as long as you can access the firmware updates you can do that. You can attend to the hardware component and also attend to the firmware component yourself. We suggest the ways to address these issues include legislation that expressly
35 requires the manufacturers to openly provide unrestricted access to firmware updates. For consumers and users and third party providers, regardless of whether the consumer has a repair contract with that manufacturer directly or not. Amending copyright laws I think was being touched on prior to my presentation - to enable consumers and third party repairers to access, copy
40 and share firmware and related updates and remove any form of right for a digital lock to prohibit that access.

And to prohibit manufacturers' warranties from being voided if consumers do not use the repairers and spare parts specified directly from the manufacturer.
45 That's the summary of the - or that's the conclusion - and I'm open to questions.

COMMISSIONER LINDWALL: Thank you, Ari. No, I fully understand what you mean by firmware. I mean, for example I've just updated the firmware in my Roland digital piano, and I also did it for my Canon Digital SLR. But they were freely available. So what you're saying is that it's
5 become more common that manufacturers are not providing free firmware updates. Is that what you're saying?

MR BOURAS: Yes, we're seeing that trend. And as I say, it is becoming more lucrative for them than it perhaps was, or more important for them to be
10 seeking annuity revenue in the market, so they tie the two together potentially.

COMMISSIONER LINDWALL: And in your category of repairing servers and computers at businesses, which type of area are you most seeing that
15 issue arising? Is it in the servers, or - - -

MR BOURAS: It's primarily in the server business.

COMMISSIONER LINDWALL: So that's things that a consumer would normally not buy. So, for example, I've updated firmware in my laptop computer, which I assume businesses would buy those type of things too. I'm wondering if this is something they think they can - excuse the language
20 - screw the businesses more than the consumer?

MR BOURAS: Yes, this probably ties to the earlier point that I made at the start of my presentation. Like any behaviour, it starts somewhere. And so to your point - whether it's because of the lure of also the annuity revenue that that would bring. But also, of course, as you lock down the ability to self-repair or use a third party to repair a product, you determine the lifespan of
25 that product. So, it would drive two things - it would drive the behaviours around replacing existing hardware with new hardware, because you don't sweat the asset for as long, but also the driver is the annuity revenue of repair.

To the point you've made though, it would always - as it always has, I think - started with the more lucrative end of the market, and then once it becomes - if we allow it - once it becomes the norm then it will trickle down - I don't want to use some form of an analogy like (indistinct) trickle-down economics - but essentially it will trickle down into, most likely, into the rest of the
30 market, and over time it becomes the norm.

COMMISSIONER LINDWALL: I can understand that. Now, what about - you've mainly spoken about firmware updates here, which are provided by the manufacturer. What about other things that you might do in your
35 business to repair and maintain servers, et cetera, for - I would imagine you might, for example, switch out memory or change hard discs and that type of stuff as well. Is that part of your - - -
40

MR BOURAS: Yes, we haven't - for the purposes of what - there's obviously only a certain amount of time, and we'll probably put some more into our (indistinct) written report to you - but we haven't to date had too many difficulties around accessing, let's say, spare parts. Because we've
5 been in the game for so long, and there are multiple entry points for us here internationally to get access to them. Or also I'd say manuals and the type. So we haven't had that problem to date. However, we note that in other parts of the industry that is a problem.

10

COMMISSIONER LINDWALL: Yes, okay. No, that's good. And I get your point about firmware not being able to improve - obviously a bit of hardware has a certain capacity. If it's a CPU it can only go so fast. I mean, presumably I'd suppose, a firmware could be used to throttle the performance of a piece of hardware - make it lower performance than it's designed for.
15 But I'm not if you ever observed that happening. I mean, you see it in the automotive industry where, say, a motorcycle will be detuned by the firmware to prevent it operating at full capacity. And then people try and get around that to try and increase the performance of their motorbike.

20

MR BOURAS: Look, we're - anecdotally we've seen - or we've heard of instances where firmware - and there's software, obviously from an operating way of perspective, that can do certain things as well with respect to how the hardware functions. But primarily what we look at is the firmware
25 component. And obviously I think Apple, for example - and this is not my view of Apple - but, you know, they, I think - in terms of their operating environment as opposed to the firmware - there were claims made that they were doing certain things to decrease that. That's not currently a concern for us. We've heard anecdotally those things, but that isn't currently front of
30 mind in terms of our concerns.

COMMISSIONER LINDWALL: No, all right. Julie?

COMMISSIONER ABRAMSON: Thank you very much. And, Ari, can I
35 thank you. You made a very complicated issue for a non-computer person easy to understand. So thank you for that. I wanted to ask you a question to which I probably know what your answer might be, but it's around the competition issue. Because if a substantial player in the market is using that power in a way - in this case, in a refusal to deal - there are arguments that
40 the competition provisions actually catch that. So, I'm aware of some of the issues might that, you know, you have to have consumer relationships with the players in the market. But I'm just interested in what you think might be defective about those competition provisions, or is it just an access to justice type issue?

45

MR BOURAS: There's possibly a bit of the latter. But the reason I've made that point around the intellectual property claim is that the justification that

we have seen - it's limited to date in terms of how much it's happening. And even within the manufacturers themselves who have indicated that they will - or they've started to do this - they have particular products to do it with. They are making the claim which I have attempted to debunk, which is that
5 an update to firmware has an intellectual property right component to it, because it's an enhancement.

COMMISSIONER ABRAMSON: Yes.

10 MR BOURAS: And I think they are therefore - if someone was to run that, and I won't - I'll just have to be careful how I put this, but if someone was to run that argument, in my view they are looking to find gaps in the legislation to operate within.

15 COMMISSIONER ABRAMSON: Yes.

MR BOURAS: And they are - if I was to be harsh, they would be running what I would call a George Costanza defence, and if you convince yourself of something, well - and so if you can convince yourself that a firmer update
20 can do something other than what the laws of chemistry and physics say it can do, well then, you run that argument, and I think, you know, just looking at it, just observing it from what we can see, someone, someone who's thought they were really clever, came up with that some time ago as a way around some of the legislation you referred to you, and we have - and we'll,
25 in more detail in our submission to you, and if nothing is done to push back against that then effectively, you know, the horse may bolt at some point.

COMMISSIONER ABRAMSON: Ari, that's a very helpful explanation. You not doubt are in contact with colleagues overseas in Europe and the US.
30 Are they experiencing the same problems, and you can take this on notice if it's easier, and what might be some of the local solutions to that? Because it's usually - if there's a big provider, they're usually behaving that way right round the world; it's not a particularly Australia problem, so interested in your views on that.

35 MR BOURAS: For those that have attempted it in the last, well, less than a decade now, it is usually from a global - it's following in Australia a global edict in terms of that behaviour.

40 COMMISSIONER ABRAMSON: Yes.

MR BOURAS: And so in some jurisdictions they've had less of a difficulty running some of the justifications - pardon me - for that behaviour. As much as, you know, I say in express terms we don't have things that deal with it, it
45 seems, within our suite of legislation, there is enough to - there is enough that's meant they've had to do more than nuance their behaviours in Australia, but they have attempted to find ways to at least play it out here. We are

seeing it the States, obviously under the Biden administration, some attempt to sharpen up where they - what their posture is. Of course they've got a very different legal structure there and I don't profess to understand the difference between each of the states and their federal legislation, but they, I think,
5 recognise that they sit behind jurisdictions like ours and elements of Europe, but it's a fairly inconsistent - whereas I see - it seems that the globe is, or, you know, countries across the globe are starting to intersect more consistently in areas like privacy, it seems only recently that this - and it's probably been driven more at the - what you would call the consumer end of the right to
10 repair that the international community seems to be, again, intersecting more consistently around this topic, but I think we are still very much behind the technology.

COMMISSIONER ABRAMSON: Thank you, Ari. One final question if I
15 may, Paul. It's a bit of a technical competition question. It's really about the primary market, because when you talked, I think, about other parts, it was obviously you could swap things in and out, but the firmware is a proprietary thing so I'm making an assumption here that there are only a few major
20 players in that primary market and that's - because we're thinking about market power here.

MR BOURAS: Yes, so let me try - I'll explain it with a few bits of
information perhaps. As there's been a move broadly to - you might have
25 heard in the market, to cloud and software as a service products - - -

COMMISSIONER ABRAMSON: Yes.

MR BOURAS: There are certain applications - so from our perspective,
there are certain applications that still, for whatever reason, are best placed
30 what's called - in what's called an on-premise solution. So you maintain the server either in your environment or you have a third party. We also provide what's called private cloud solutions to people, where they can either move their own kit into a cloud or we provide them - we build a cloud for them,
35 and a cloud is just a glorified form of what's called - traditionally used to be called a farm or an IT environment for someone.

You can have it yourself or you can give it to someone to build for you or
house for you, and in those instances those applications, they can only - you
40 can't move from them, and you move from them on a decade by decade basis, if ever. Historically they're not something that - even the IPs nowadays, there's a bit - there's something you can - that you can run in the cloud which we probably never thought would be possible years ago, but there's certain applications that still haven't ended up in that sphere of technology.

COMMISSIONER ABRAMSON: This is a structural issue, from what
45 you're saying, Ari.

MR BOURAS: Yes.

COMMISSIONER ABRAMSON: Yes.

5 MR BOURAS: So there's only going to be certain players that are providing
a certain type of hardware that that software can only work on the way we
want it to work, okay? So there are certain applications that you just can't
move to the cloud effectively, is what I'm saying, and you can't replace them
with software as a service option. Not surprisingly, that is the type of
10 hardware that is being targeted first, because that has got a sustainable tail in
it from a maintenance perspective.

COMMISSIONER ABRAMSON: And you've got the - you've got a lock-in.
It's a lock-in.

15 MR BOURAS: So if you can achieve - you could, as a manufacturer,
achieve an ability to lock the access to firmware, if I have this critical - and
it's critical - they're critical applications. They're not - you know, they're not
so you can build Excel spreadsheets. They're usually HR applications or
20 workflow applications, and they're things that government departments
would never want anyone to know about even exist, right?

COMMISSIONER ABRAMSON: Yes.

25 MR BOURAS: And it's also a great - also from a cyber security perspective
often it might be considered better to run those sorts of applications on
(indistinct). So, it's this sort of - and it might not be the most expensive
hardware in the world either, but it's hardware that is somehow connected to
business activities where there would be a tail attached to that hardware and
30 you are unlikely from a business process perspective to - your IT department
is unlikely, in the next five to 10 years, to say "Hey, you know what we
should do? We should go the cloud on that."

COMMISSIONER ABRAMSON: Yes.

35 MR BOURAS: And so therefore you need that hardware. You'll always
need that hardware. That is where they are targeting first, and if they can get
their wins there, logically, and I'm not going to present these people like
they're the devil, but if you just think commercially, if I can get my win there,
40 if I can justify control of the fixing of that hardware and therefore people
needing to secure themselves, buy an insurance policy basically every year
that if something goes wrong they've got a guarantee from me that I'm going
to fix it within whatever period of time, and they pay me a chunk of money
for that, and the way to do that is to say, well, the only way you can access
45 firmware updates, which will ensure the operability of your hardware for the
life of the product - the only way you can do that is if you buy hardware
maintenance services from me as well.

5 If I can do that at this top end then I'll figure out what I'm going to do with
the rest of the product mix, because with a lot of that product mix, for
example if you look at the laptops a lot of us are using, most people go
through them in three years, and the warranty period might be somewhere in
that period of time. Rarely are people worried about that type of work on
these devices, but it's still applicable there. It's - and who knows where
10 devices might go over time. There are - we're seeing in the car industry
we've moved to larger periods of time for warranty and for how long you'll
sweat an asset. E-waste is an issue.

15 Manufacturers - some manufacturers might start moving towards a laptop
that, you know, could last - should last 10 years, will always be updated,
whatever it might be, and so that behaviour could move back into all kinds of
parts of the market. Again, this issue of firmware, to the point that has been
made also by members of the Commission, as technology moves more and
more into general consumer goods, and when we say consumers it could -
just the cards could cost you a few hundred thousand dollars - these sorts of
behaviours, if they become the norm at the top end of the technology that will
20 permeate most likely through the rest of the market.

And so the concern is absolutely for us as a business the direct impact on us,
but we can see very simply, because of what we do, the broader impact that
this could have on the market.

25

COMMISSIONER ABRAMSON: Ari, this has been really incredibly
helpful testimony, so I'd really encourage you to put in a submission if you
have the ability to do that.

30

MR BOURAS: We will be.

COMMISSIONER ABRAMSON: No, that's - it's been very, very helpful,
thank you. Back to you, Paul.

35

COMMISSIONER LINDWALL: Thank you, Julie. Just a couple of quick
things, Ari, before we conclude. One, what's the usual reason for firmware
updates to be provided?

40

MR BOURAS: There's two instances where you would normally do it.
Usually the organisation that's - so the manufacturer has had feedback over
time, usually during that warranty period or soon after it, that there are some
issues with the firmware.

45

COMMISSIONER LINDWALL: Yes.

MR BOURAS: And so they're fixing the firmware. Those things can be
performance, they can be security related in more recent times, but essentially

5 what they're doing is they're just updating the firmware so that the hardware is better at doing - you know, maybe the hardware's heating up too quickly. Maybe, you know, it's not sort of - I'll use layman's terms - it's not sparking up the way that it should. Maybe there's a security risk that they hadn't realised as part of the way that the items have been configured and its interaction with the microcode. So essentially what you're doing is you're updating the microcode so it can do its job better.

10 COMMISSIONER LINDWALL: Better, yes.

MR BOURAS: The other reason you'll sometimes do it, or you'll need it, is if there's been a - if you haven't been updating the microcode or the firmware and then, let's say, a hard drive fails, and then you go to install new hardware, you'll normally need to do - you'll need to patch up, basically, to a certain level of firmware, and so if that's now restricted you can't change out those elements of the device.

20 COMMISSIONER LINDWALL: No, I understand. All right. No, that's good, and one final quick question. Have you seen any - because one way a manufacturer might be able to extract a different approach here is by providing, through a subsidiary perhaps, the - retaining the ownership of the hardware and then of course it's like you're leasing the product from the manufacturer rather than buying it. Have you seen any movement in that type of space?

25 MR BOURAS: Well we don't but we would probably be precluded from conversations against those. So I can say to you, having in my previous life, and for those of you who are involved in government funding for government agencies, there was a real push in the - say, in the 2000s, the earlier 2000s to late - so before 2010, for these - - -

30 COMMISSIONER LINDWALL: Outsourcing?

35 MR BOURAS: Yes, or operational type leases rather than right - so for large pieces of equipment. I was in the health space, so you know, new MRIs and whatnot. It was - it had become fashionable for whatever reason, on the books, to have them as operational leases. In those instances the - there would be a maintenance contract that would often be tied to that lease for whatever - I can't remember exactly what the policy reasons were for that. Then we moved to a model before I left health - so in that instance let's say a company like ours wouldn't see - - -

40 COMMISSIONER LINDWALL: Yes.

45 MR BOURAS: We wouldn't be involved in the procurement. A tender would go, we wouldn't get invited, and if we did we'd look at it and think, well, it's got nothing to do with us.

COMMISSIONER LINDWALL: I understand.

5 MR BOURAS: And then of course we move more to these one-off funding
packages where a certain amount of money would be allocated to a
government agency or to a stream of them. They would then buy the
equipment. In that instance they might go to market when that item reaches
its warranty period three years later, on average; it could be earlier or later
10 than that. Then we could get a look in, but until the item reaches its warranty
period we are generally not involved and so we don't really know the
mechanics throughout though the lens of what we do day to day in terms of
how the market operates in that space.

15 COMMISSIONER LINDWALL: Yes. No, that's all right. Good. Well
thank you very much for participating today, Ari.

MR BOURAS: Thank you.

20 COMMISSIONER ABRAMSON: Ari, that's been really, really helpful. We
might come back to you on some particular things just to make sure we've
understood - well, this Commissioner has understood what you've said. So
thank you so much.

25 MR BOURAS: Not a problem. Absolutely happy to help, thank you.

COMMISSIONER LINDWALL: All right. Well we might now have a
lunch break until - and resume at 1.30 with AREMA and Refrigerants
Australia.

30 COMMISSIONER ABRAMSON: Thanks, Paul.

COMMISSIONER LINDWALL: Thanks, Julie.

35 **LUNCHEON ADJOURNMENT** **[12.33 pm]**

RESUMED

[1.28 pm]

5 COMMISSIONER LINDWALL: Is Greg Picker from the Air Refrigerant Equipment and Manufacturer's Association and Refrigerants Australia there?

MR PICKER: I am.

10 COMMISSIONER LINDWALL: Hello. How are you, Greg?

MR PICKER: Not bad. How are you?

15 COMMISSIONER LINDWALL: Fine, thank you. Would you like to introduce yourself and give a bit of a presentation?

MR PICKER: Sure, I'd be delighted to do that. So, you said where I'm from. Just a tiny bit on the organisations: Refrigerants Australia represents the refrigerant supply chain, so importers of refrigerant, importers of equipment containing refrigerant, wholesalers, people who work with the equipment as well as Refrigerant Reclaim Australia, so we cover the life cycle of refrigerants, and AREMA, which is the Association of Air Conditioning and Refrigerant Manufacturers Association are all the people that make mainly air conditioners, so Daikin, Fujitsu, the large companies that you would recognise. So we represent, I don't know, 80, 85 per cent of air conditioners sold in the country.

20 So just to explain the sort of equipment that I'm talking about, I'm basically talking about all air conditioners and refrigerators above a certain size, so I'm not talking about your domestic fridges. We don't deal with domestic fridges but anything else that's refrigeration system, and in terms of air conditioners I'm talking primarily about split system air conditioners for domestic use, so the things that are installed on walls, or floors or cabinets, wherever they may be installed, as well as larger units and car air conditioners. I'm not talking about portable units such as plug in or things that sit in windows.

35 COMMISSIONER LINDWALL: So ducted type of things you would cover, obviously?

40 MR PICKER: Certainly ducted, but even things that aren't ducted and are smaller than that.

COMMISSIONER LINDWALL: Okay.

45 MR PICKER: But anything that's - anything that has to be installed, where there's wiring that needs to be done, car air conditioners as well, which will become important. There are three or four main points that I'd like to cover. I guess the first is just some of the safety issues around repairing these

5 systems. As a result of the Kigali Amendment to the Montreal Protocol we're changing the sorts of refrigerants used in Australia and globally. We have domestic legislation that covers this as well. What's important to realise about this is increasingly we're going to be shifting towards flammable refrigerants for all sorts of technical reasons that I can bore you with if you really want to know, but it's an automatic result of that requirement.

10 There are safety risks and increasingly the industry is getting additional training to ensure that they're safe when they fix materials. So in terms of right to repair getting people to work on systems, there will be increased risk. One of the bigger problems that we do have as an industry is - and all those refrigerants - most of those refrigerants are covered, and because of the global warming potential, their climate impact, we have - the Ozone Protection and Synthetic Greenhouse Gas Management Act requires that they be dealt with by trained and licenced individuals. Industry and government 15 in a bipartisan way supported that legislation, initially in 2004 and there were revisions in - major revisions in 2017, and so for those reasons there is both a safety and environmental reason about why there's control on refrigerant and why we'd have concern about opening that up for the environmental issues and safety issues as well. 20

25 There's another linked problem that's - I hopefully can explain better than I just explained the other one, that's worth understanding, and that's that there is a small segment of our industry and people that market directly to DIYers that sell hydrocarbon refrigerants. Hydrocarbons - propane and butane, stuff that you'll run in your barbeque. The problem is that market is used very much for repair and it is invariably in equipment not designed for it, unsafe to do so. They do it for a variety of reasons. One, you don't need a licence to buy the material and to use it because you can't control adequately barbeque gas, which is what this is. Secondly, it's cheap and it's reasonably easy. The problem is, of course, it's going into equipment that's not designed for it. 30

35 So there is a coroner's report; there were two deaths in Australia in 2014. In 2007 there was a death in New Zealand. We've had multiple injuries from car fires, from refrigeration systems having leaked and fires in a fish and chip shop in Adelaide a few years - two years ago, in a café in Adelaide, so there is real dangers with encouraging repair when the main gases that are designed to be used are controlled and yet the replacement gases have inherent safety risks. 40

COMMISSIONER LINDWALL: So just a quick one to clarify that. You're saying, Greg, that a person has a car air conditioner, for example, and they're putting basically LPG in as a refrigerant?

45 MR PICKER: Yes, that's exactly what they're doing, and people are marketing that directly to them. There was a fire in Perth in a truck - in a tree lopping truck in Perth in 2014. Two guys were badly burned. Imagine four

little flamethrowers, effectively, and spent months in - literally months in hospital. It's a problem that we're striking with. So I don't have a problem with people repairing things. We have a problem with people repairing things when what they do is unsafe. I guess what that also gets me to is, you
5 know, is there adequate capacity for repair in Australia? And I would argue that there is.

As a result of this licencing scheme we do have a good idea of how many people are licensed to do repair. Now, it's between 80 and 90,000.
10 Apologies, I didn't get the most updated numbers, but it's about 85,000, about half - slightly over half in stationary systems and half in car systems, mobile systems, which are reasonably well spread across Australia, and interestingly, and it was interesting in reading the documentation, that most of these people work across a variety of - you know, they're not dedicated to a particular
15 manufacturer.

If you buy or have an air conditioner serviced and you approach a company to do that, they typically represent multiple manufacturers and they pick the system that best suits, and so everybody can repair everyone else's system.
20 So we don't have, I don't believe, the problem that other industry sectors do, in that, you know, you're tied to repair a particular manufacturer's products. It's not something that exists for us. So, similarly, as a result - sorry, I'll just scroll ahead - I guess a couple of other things to say. We know lifespan is pretty good. So a recently unpublished study indicated that the average point
25 when a product - sorry, this was about split system air conditioners - were turned over was 13.7 years. That study included quite a number of air conditioners actually that were at the ANU that were damaged in the hailstorm a few years ago in Canberra.

30 COMMISSIONER LINDWALL: Yes.

MR PICKER: So 13.7 is probably an underestimate and there will be some systems that come out when people do renovations or whatever and the system needs to change as a result. So 13.7 is a low estimate of lifespan, and
35 so, you know, I'm not overly worried about product obsolescence. You know, people - I think there's broad understanding that systems are designed to last for 10 to 15 years. I think it's worth pointing out that there's a lot of variability in that. Obviously there are environmental factors. You know, one of the things that would be hard in terms of - and I'm jumping ahead a
40 little bit but it seems appropriate to do - so in terms of durability and (indistinct) sort of claim is that when you have systems where there are exposures - there's exposure to particularly humid and salty air, you're going to get corrosion; they're not going to last as long.

45 Amusingly- I ran an event called Future Air with leading people internationally two or three years ago, and one of the questions that they were asked of me in one of the presentations - we did the roadshow around the

country - was why couldn't they get a system that had the efficiency of a European system, the price of a Chinese system, and the durability of an American system, and that's - you know, the problem was, of course, you get what you pay for, and when people tend to buy - if there's a tendency to buy less well-manufactured products you get a tendency toward shorter lifespans, and those are trade-offs that consumers make all the time. Sometimes they're not very cognisant of the choices they're making, but it's hard to be consistent.

10 Look, the last thing I'd like to say - I'd like to say a couple of things about waste very briefly. In relation to the product stewardship scheme there was an investigation in 2013/2014 of split system air conditioners by the then Department of the Environment. They came out with an assessment that cost recovery was not in place for split system air conditioners. I wonder about that but I also wonder about - so I mean, I think there are some merits to consider e-waste are just very - we have a good system.

20 Refrigerant Reclaim Australia collected refrigerant at the end of equipment life. It's worked well. It's one of the top one or two systems for this industry, focused systems, any system in the world to collect and destroy refrigerant at the end of its life. It's worked well. It's industry owned, it's industry operated. It's been that way for 30 plus years. I'm reluctant to move towards a system that - I'd rather have a chance and encouragement to make those sorts of voluntary systems and expand them rather than having a legislated solution. I worry about the costs involved in that. And, similarly, I worry in terms of the idea of GPS trackers - there is a significant cost involved in that. There's a significant logistical challenge. And I just really worry about the practicality of those approaches to manage e-waste. And, so I guess in this context, do I think e-waste is a problem for Australia, yes I do. Do I think it's a problem for this industry - yes, though not in the same way.

35 Most air conditioners are - the viable products, anyway - are recovered, because they've got lots of metals - copper, aluminium and the like in them. So, you don't tend to throw them out, you more tend to see them sitting in the (indistinct) of our suburbs, because people know they have - you know, you can take it to a scrap yard and get money for them. So, is there a problem, yes, but I'm just very cautious about how we approach this. And I don't know that a right to repair approach should be how we look at split-system air conditioners. Just very quickly, other policy issues. I've talked about the durability estimate. I will say that the (indistinct) complaints process may have merit, but I think there's got to be some sort of possibility to have, you know, some sort of either overview or consultation through that process.

45 I use in my notes of course the example of flooding, where after floods we get a whole lot of complaints, manufacturers report, from people saying, 'Well, the system went under water and now it doesn't work.' I use that as a silly example, but the point is we've had a few people lobby about gecko

intrusions in some places, and can you make some components gecko-proof. There are some things we can't solve, even if consumers - you know, for the most part manufacturers will solve what issues they can, it's an advantage. So, am I saying that there's not a place for this, no I'm not. What I'm saying
5 is we have to have something that insured that what's being proposed (indistinct) is rational. And so there should be some sort of communication through the process, if it was to go ahead.

I worry about labelling just because - in terms issues about that - just because
10 air conditioners and refrigeration systems are already subject to significant labelling requirements in relation to energy efficiency, in relation to noise, in relation to output. And they're quite stringent, and there's only - I mean, at time literally there's only so many places you can stick labels. So, you know, consumer information is fine, I would just think about how you would do
15 that. And, lastly, just the broadest point of all is, you know, as I have indicated, that there's quite a lot of regulation on our products already. So I think we want to be careful with what we do. Is it a targeted way, and will help improve the - both the repair of the system and ensuring that people know both their consumer rights and that the waste is well-managed.
20

Anyway, I hope that sort of covers - you have the notes, I hope that explains a bit more. Ask me some questions. Tell me what I didn't make clear.

COMMISSIONER LINDWALL: Thank you, Greg. How much CFCs are
25 still around in air conditioners and so forth at the moment, do you think?

MR PICKER: CFCs - very, very, very little. Nothing in domestic stuff, nothing that people are going to repair. Where you'll see - well, that's not true - you may see CFCs - so we have a study that looks at car systems that
30 come in for repair. Every year or two we get a car out of the 700 (indistinct) that had CFCs in them. Split system air conditioners and the like - not at all there. In air conditioning it would be the big systems.

COMMISSIONER LINDWALL: Okay, yes. And could you describe how -
35 Refrigerant Reclaim Australia, what does it do? So, say your members would go and repair, or want to dispose of, a refrigerant - like an air conditioning unit - and then they supply the refrigerant to Reclaim Australia, or how is it managed and what actually happens to the refrigerant?

MR PICKER: Sure, and let me tell - there's two parts to the answer. Let me
40 tell you historically, and tell you a little bit how it changed. Because both are pertinent. Historically, what happened is the industry recognised it had a problem in terms of how it was seen to and how refrigerants were managed. So off its own bat it created Refrigerant Reclaim Australia, RRA. It did it in
45 roughly 1989, 1990. It was industry funded, and so basically there was ACCC permissions given for industry to collect a levy for all bulk refrigerant imported into Australia. So that's refrigerant big bottles for service. The

money from that levy is taken and invested. When a contractor takes refrigerant out its system at the end of its life, or when there's been a problem and the refrigerant is no longer up to spec, it gets returned to a wholesaler.

5 The contractor gets paid for that. So it gets paid at the moment \$3.50 a kilo, and then the wholesaler collects it, returns it to RRA, reverse supply chain logistics, to (indistinct) and then it is taken to destruction - there's a site in Melbourne, there's also a site in Gladstone. And that's where it goes for destruction. And the wholesaler is paid for its efforts in doing that. So, full
10 tanks of gas come out, tanks with used refrigerant come back.

COMMISSIONER LINDWALL: Okay.

15 MR PICKER: In 2004 the system was expanded to cover pre-charged equipment. So that when you bring in an air conditioner into Australia, the smaller ones, they already have refrigerant in them. They have to be - one of the licence requirements there is that they must be part of an approved product stewardship scheme. There is only one - it's Refrigerant Reclaim Australia. So they all join that. The same process works in reverse. The
20 only other thing to realise is it is illegal to vent refrigerant. So if you've vented, as opposed to returning it, you are also breaking the law. Now, to be absolutely clear about that - catching someone who is venting has only happened two or three times in Australia, and it's when people have been
25 bullish enough to be honest to admit that they've done it to a compliance officer from the department.

Self-notification that you've broken the law is not the only way you can prove that it actually happened.

30 COMMISSIONER LINDWALL: Well, that seems a fairly sensible approach for that. And if it's working with the voluntary scheme. Now, what about for the rest of it though, the other materials, there's no other scheme, but as you say generally it's pretty high value metals and that, which are - there's an incentive to take them for recycling anyway, isn't there?

35 MR PICKER: That's exactly right, and part of what's happened as results of minimum energy performance standards is we'd have increasing amount of copper and the like added because of the good heat transfer product capacities. And so as a result, you know, air conditioners are worth a lot of
40 money in raw materials. You can get, you know - we've all heard a story about people stealing wire and stuff because of the value of copper. Air conditioners are another source.

45 COMMISSIONER LINDWALL: Yes. On other parts of our inquiry, which you really haven't touched on about - and I know that you're in an industry association rather than selling directly - but about warranties, as in

manufacturer warranties and the Australian Consumer Law. Is there anything you can comment on that?

5

MR PICKER: Well, my problem is I don't see it as much.

COMMISSIONER LINDWALL: Yes.

10 MR PICKER: So, I don't have direct line of sight of that. My sense from talking - look, I'm going to say what you're going to expect me to say, but I (indistinct) - the sense I have is companies will go a long way in today's day and age to avoid a negative review. So, they will - if there's a problem with the system it is typically worth getting the system fixed or replaced under warranty, rather than suffering the negative review. The few times that I know that that hasn't happened has been - actually, that flooding example. 15 Though, interestingly, in one of the flooding examples it turns out it was the - and this was only in one example - but it was the installer who actually told the home owner that - who said - the homeowner said to them, 'I'm not sure you want to put the system there, we get quite a lot of flooding,' to which the installer, being - I suspect - lazy - said, 'It will be fine, (indistinct) there 20 won't be a problem.' And of course it flooded, there was a problem.

And in that instance - even in that instance what happened is there was a deal struck between the installer and the manufacturer, where the manufacturer sold the installer a system at cost, and the installer on his own bat replaced it.

25

COMMISSIONER LINDWALL: Yes.

30 MR PICKER: So even in that instance, where it clearly wasn't the manufacturer's responsibility, they still looked for a solution that works for consumers. You know, these aren't - this is equipment that tends to be installed. It's not smaller air conditioner systems, portables that you would throw away.

35 COMMISSIONER LINDWALL: Yes. No, I understand.

MR PICKER: You know, so people get them installed for a house. It's a big deal.

40 COMMISSIONER LINDWALL: And I can understand the safety issues there of course too, and environmental if it's, I mean, illegally vented or accidentally vented too. So I might get Julie to ask some questions.

45 COMMISSIONER ABRAMSON: Thanks very much, Greg. As you were talking I was thinking about my air conditioning issues and thinking "Oh". No, it's all good.

MR PICKER: Ask. I can do my best.

COMMISSIONER ABRAMSON: No, I had a very good installer who said actually, to me, "No, I don't think you really want to put this split system there", so I was quite grateful for that advice. I've got a couple of questions, Greg. The first one is, are your brands that both of the industry associations cover covered by the EU Ecodesign Directives on spare part availability and information, and if so, are they available in Australia, or do you have issues sometimes getting spare parts?

MR PICKER: I know that most of - so it's not a definitive answer. I know that certainly some of the companies will operate in Europe and therefore are covered by that scheme. Not all will, so it depends very much on who does - you know, what company you're talking about. The companies that tend to supply householders tend to be covered. They tend to be the larger companies that have a global presence. Do they have problems getting spare parts? Everybody's had problems getting spare parts over the last 18 months. In a normal situation do they have problems? Not for the majority of products and not for the majority of spare parts, and my caution is if something - it needs to be replaced, that is, you know, truly odd, could we have a problem here in Australia that would be different than in Europe? Yes, we might. I think you'd get it, I just think it would take some time. I mean, I don't think it's that someone's going to say no. I think someone's just going to have to order it from overseas and it might take a few weeks to arrive. I don't think it's that it wouldn't be available, it's just that if it was something that tends not to happen, you know, there are some things that it's just - and that's the - I just want to be careful to say that that's - that would be my best guess.

COMMISSIONER ABRAMSON: Yes. No, that's fine, Greg, and how long - like, the air conditioners obviously have a long lifespan in terms of domestic product, which is what we're talking about. So two questions. First of all, how long will manufacturers hold spare parts for a particular brand, and then the second question is about critical components. So one of the issues that we heard with dishwashers is whilst the dishwasher manufacturer kept spare parts, like a rotor arm, it didn't actually keep and of the spare parts that the rotor arm fitted into, so you get one part fixed but not another part. So the first question was, length of time that spare parts might be available for, and then this concept of critical component parts.

MR PICKER: So the first thing to realise is most of the air conditioners I'm talking about, we have a register; they're required to register for MEPS purposes, for Minimum Energy Performance Standards Purposes.

COMMISSIONER ABRAMSON: Yes.

MR PICKER: The registrations last five years and the reason I say that is there is a broad expectation, when they did all the consultation, that products

would be on the market for at least five years before they were replaced by a newer model, and we know that there are a number of products that continue past five years that get registered more than once. So as long as you have products that continue in the market spare parts are going to be on the market. My understanding is certainly for, you know, more than a decade for - and let me make an important exception in a second, but for the mainstream providers spare parts aren't an issue.

Where we're far more likely to have an issue is when there is someone who - and they won't be my members, in all likelihood, who will bring in a container or two or typically inexpensive Asian-manufactured products to sell in the nonmainstream ways. There you will have significant difficulty in getting spare parts, but often you're not going to be able to find, three or five years later, who the manufacturer or the domestic importer was because they get an opportunity to import on a speculative basis and that's what happens. So making a - and they're registered as well, so making a distinction here between the more established companies with names that you'll recognise, I really don't think you're going to have a problem with spare parts, and particularly critical spare parts.

You also benefit - the consumer benefits for those companies because they tend to sell more and they tend to invest in the market, so all of the main brands have quite established networks across Australian states and territories, and so they do supply them with spare parts, and often the spare parts are usable from one model to another.

COMMISSIONER ABRAMSON: Yes, thanks, Greg. There's one final question. Your air conditioners go into very inhospitable places in Australia and they go into difficult, remote and rural places, so one of the complaints that has been made to us is that a lot of manufacturers stand behind their products, you know, for - especially for high quality. The cost of getting that product, which is often in - is actually installed to a city location means that what's happening is if the manufacturer does support it they're actually sending out a new air conditioner, because it's just not cost effective to repair something onsite. Have you got some views about that?

MR PICKER: Well, sure, and I guess what I'd say is - I mean, from a manufacturer's perspective, and I mean, I'm going to create a completely imaginary example.

COMMISSIONER ABRAMSON: Yes, sure.

MR PICKER: You know, you sell a split system out in Broken Hill and it breaks down, and as a manufacturer, if you don't have someone in Broken Hill, if you don't have a representative there - actually Broken Hill is probably too big - you probably do, but using that as an example - and you

have to send someone out, the problem is if you go out and don't happen to have the part with you, which is likely if you're going out for a diagnosis - - -

COMMISSIONER ABRAMSON: Yes.

5

MR PICKER: You know, you then have to take two trips, at least, and you know, and particularly if you make (indistinct). So from the manufacturer's perspective it is far less risky and less expensive, and also tends to lead towards the consumer being happier, if you replace it and you know it works. If I have to travel for a day-and-a-half to get somewhere and then you - and then - you know, go back and forth, that becomes long, it becomes expensive, and there's a risk of course that even after two trips, if there's a problem that wasn't diagnosed initially it's still there.

10

15 I would just point out that just because that system is pulled out doesn't mean it's not refurbished and used in another way.

COMMISSIONER ABRAMSON: Yes, I was actually going to ask you about refurbishment and happy to take that on notice and perhaps give us some detail in your written submission about that, how many units are refurbished.

20

MR PICKER: Sure.

25 COMMISSIONER ABRAMSON: Thank you.

MR PICKER: No worries. The one thing I would say is I suspect they wouldn't be put back in the market, that they would go to training providers, they'd go to TAFEs, you know, those sorts of things.

30

COMMISSIONER LINDWALL: Yes.

MR PICKER: Because you wouldn't sell it again as new of course.

35 COMMISSIONER ABRAMSON: Yes. No, thank you very much, Greg.

MR PICKER: No worries.

COMMISSIONER LINDWALL: Okay. Greg, just a couple of quick things now. Firstly, because this right to repair is about the environment as well as other aspects of repair, how would - can you comment upon how air conditioner units, the larger ones, have changed in efficiency - in energy efficiency over the last 10 to 20 years, and - because we have had testimony, say, on washing machines and dishwashers from Choice say there's been substantial gains there, so I'd be interested to hear about that on air conditioning units.

40

45

MR PICKER: According to the Department of Industry split system air conditioning units, which are really what are used for residences in terms of the stuff that my guys cover, are 60 per cent more energy efficient than they were 20 years ago, with two-thirds of that happening over the last decade. So it's, you know, significant improvements. So of it's happened through the fact that things are better sealed, but again there's more copper, as I indicated, being used - a whole range of benefits. This has led to increased sophistication in software and in other things, and for everything of course there's a trade-off right? If you design it carefully you also change the tolerances which are possible when it's repaired, and that's one of the implications of the fact of them being more efficient.

COMMISSIONER LINDWALL: Okay, and therefore there's also firmware updates, and we heard testimony before about that. So do the manufacturers normally provide the firmware updates for their air conditioning units free of charge?

MR PICKER: I believe so, yes.

COMMISSIONER LINDWALL: Yes, and finally, the final quick question, which is a bit obscure I suppose, is do most of the - is there any benefit of having a three-phase system versus a normal two-phase?

MR PICKER: Sorry. I had a conversation with someone about this not that long ago.

COMMISSIONER ABRAMSON: A personal question is it, Commissioner Paul?

COMMISSIONER LINDWALL: No, no. Well, maybe.

MR PICKER: Let's just say maybe is the best answer I'm going to give you. It depends on how the premises is already set up, and if it can handle three phase.

COMMISSIONER LINDWALL: Okay. Yes.

MR PICKER: Certainly, you have the capacity to do more if it is three phase, than if not. But I wouldn't be changing my home, you know, from a normal phase to a three phase or my air conditioning system. At least not normally.

COMMISSIONER LINDWALL: Yes. Thank you very much Greg for appearing today.

COMMISSIONER ABRAMSON: Greg - could I just ask Greg one final question, please, Paul. Just to take on notice, Greg. We've heard a lot about

5 washing machines and dryers, and all those things having embedded technology and motherboards. And once that goes then the system is no longer worth operating. So, I'd just be interested in your written submission - which I'm assuming you're putting in - if you could give us some information about how much embedded technology now is part of an air conditioning system. Thank you. Sorry, Paul.

COMMISSIONER LINDWALL: That's all right. No, that's good.

10 MR PICKER: And, look, the very quick answer is quite a lot.

COMMISSIONER LINDWALL: Yes.

15 COMMISSIONER ABRAMSON: Thank you. Thanks a lot, Greg. That was really interesting.

MR PICKER: No worries.

20 COMMISSIONER LINDWALL: Thank you, Greg. Take care. And I now invite James Voortman from the Australian Automotive Dealer Association to appear. Hi James - oh, you're here in person, that's right.

MR VOORTMAN: (Indistinct).

25 COMMISSIONER ABRAMSON: It's quite exciting, James. You're only number 2 of appearances in person.

30 MR VOORTMAN: My office is less than a kilometre down the road, so it would have been impersonal of me to appear (indistinct) - - -

COMMISSIONER LINDWALL: Now, the camera is there, and the video is here. So - - -

35 MR VOORTMAN: Do you have a preference? Would you like me to look - - -

COMMISSIONER LINDWALL: No.

40 MR VOORTMAN: Okay.

COMMISSIONER ABRAMSON: No, I'm not precious at all. You look where you need to look.

45 MR VOORTMAN: Okay.

COMMISSIONER LINDWALL: So, James, if you just introduce yourself and - like the others.

MR VOORTMAN: Absolutely. So, James Voortman. I'm from the Australian Automotive Dealer Association. We represent all of Australia's franchised new car dealers, which is around 3000 dealerships located all
5 across Australia. Our members are franchised to global car manufacturers, and we're authorised to sell their products, and also service and repair these vehicles. As you'd know, our industry is slightly - a bit of a frontrunner on the right to repair issue. We've been debating this issue for approximately a decade. (Indistinct) recently laws made regarding the sharing of service and
10 repair information that passed the parliament and will take effect on 1 July next year.

Look, while we approached our initial submission from the perspective of, you know, sort of information sharing and the strict right to repair, the draft
15 report that's been issued by the Commission has prompted us to, sort of, take note of several of the findings and recommendations and we'd probably like to make the following points in today's presentation. Firstly, we think it's important to enhance the ACL through improving the indemnification rights for suppliers under the ACL. And I'll speak about that in more detail in a
20 second. Secondly, you know, I think there's a common thing around the automotive industry not having the voiding clauses in its warranties. And I think that's a result of some of the strides we've made over the past five years, as there has been more scrutiny on this industry in relation to our interaction with consumer law.

25 We'll make the point that we don't think obsolescence is a concern in our industry. But we think there is an issue with product withdrawal, and some of those issues related to spare parts. And I'm talking there about manufacturers like Holden most recently pulling out of the market and
30 leaving many customers here in Australia. We probably think that there are some difficulties around, sort of, a minimum expected durability for vehicles. And we'll talk to that in more detail. And then, you know, the same around the super complaints process. We'll probably just, you know, (indistinct) the rationale for that. And then finally happy to talk very briefly about e-waste,
35 the probably one sort of intersection of our industries, the emergence of electric vehicles, and what that means for all of the lithium ion batteries that will be coming (indistinct).

40 COMMISSIONER LINDWALL: Yes.

MR VOORTMAN: Would you like me to elaborate on each of those?

COMMISSIONER LINDWALL: Yes, that would be good.

45 COMMISSIONER ABRAMSON: Yes.

MR VOORTMAN: Okay. So, look, the dealers, as I said, are the retailers. And under the Australian Consumer Law we have the responsibility to provide consumers with remedies. We then, in turn, have the rights under the ACL - under section 274 - to seek indemnification from the manufacturer.
5 Now, the problem we have in our industry is that we're franchised to some of the biggest organisations in the world. All of them are Fortune 100 companies, and there's a massive power imbalance. And the agreements we have with manufacturers often constrain our abilities to resolve consumer law complaints.

10 So what might often look like a dealer being difficult, is really a dealer caught between the customer and the manufacturer. And this was a finding of the ACCC inquiry. It was also something that the Consumer Affairs Minister sort of found in August of 2019, when they had one of their
15 meetings and issued a communique. And they actually instructed those governments to go back and develop a regulatory impact statement which looked at ways to improve suppliers' rights, but also to restrict the ability of a manufacturer to take action against a supplier. Two years later, unfortunately we haven't seen much progress.

20 COMMISSIONER LINDWALL: Okay.

MR VOORTMAN: There has been a pandemic, but we'd be hoping that a finding out of this final report could, sort of, ask for (indistinct) on that front.
25 So that's probably our main observation on the ACL. Moving onto the issue of voiding of warranties, you know, and whether we need further education. I think the comment was made by the Commission that there isn't - there aren't many voiding clauses in, you know, new car warranties. But there is still a perception amongst consumers that they need a service or repair within
30 the network to maintain their warranty. I think it's probably gotten better. We had about, you know, five years of intense scrutiny from the ACCC that started with a, sort of, a new car retail study. They've reached enforceable undertakings with a number of manufacturers, they've taken a number of manufacturers to court.

35 We've worked with them to distribute information at the point of sale which improves consumers' knowledge around the interaction between manufacture warranty, ACL rights and extended warranty. And, you know, I guess - you know, I was looking at a few manufacturer warranties before I came here,
40 and they all make it very clear that the ACL is pre-eminent. I didn't see any voiding clauses. And, you know, some of them went over and beyond the ACL - sorry, beyond what they would previously, and give consumers the right to a 60 day replacement or money back guarantee, in the event that their vehicle fails. So, look, I think you know, we have come a long way, and it's
45 been a result of scrutiny. But, you know, that's just a comment.

We then move onto premature solutions. And we haven't seen - we don't believe there's a, you know, there is a premature obsolescence issue in the automotive industry. I think manufacturers compete pretty fiercely on, you know, the durability of their vehicles. I saw - and I reference it in some of the notes - in 1995 the average, sort of, life span of a vehicle was around eight and half years. I think today it's around 11 years. If you look at the average age of vehicles in Australia, I think for light vehicles its 10.4 years, for light commercials it's 10.8. It would probably be even higher if we didn't have, sort of, hailstorms and accidents and the like. But I think the point there is that the vehicles are made to last. It's a selling point. And that, you know, I don't think it's anything - - -

COMMISSIONER LINDWALL: Well, they're expensive products (indistinct).

MR VOORTMAN: That's right. What I would say though is that we are concerned around product withdrawal. And Australia is an incredibly competitive automotive market. We've got many manufacturers competing fiercely here, supplying, you know, I think we've got around 60 manufacturers selling hundreds and hundreds of models, which is a lot more than in places like the United States or the European Union. And, you know, Australia is seen as a relatively easy place for manufacturers to set up shop. But unfortunately we do see them coming and going fairly often. And I can count around six or seven in the past decade.

COMMISSIONER LINDWALL: You mean importers? Well, the manufacturers who import their vehicles.

MR VOORTMAN: Yes, that's right.

COMMISSIONER LINDWALL: They don't make them in Australia.

MR VOORTMAN: No, they don't. No, that's right. So, you know, there has been a number over the years. And that's their choice to stop supplying vehicles in the market. But obviously they often leave a number of dealers who have invested in that brand, and more importantly a number of customers who have bought those vehicles in their wake. And, you know, up until last year it was more lower volume brands. But when Holden was withdrawn from the market by General Motors it left one and a half million registered cars in Australia. It's the second, you know - sort of, Toyota is the vehicle brand with the most registrations in Australia, and Holden would be second. And, you know, I guess we're just concerned that, you know, as the automotive industry rationalises a lot more of these manufacturers are going to make decisions about, you know, whether they consolidate or whether they withdraw from certain markets. And Holden, for example, has said that they'll be committed to their fleet for 10 years.

5 But we're already hearing unfortunate cases from those dealers who were retained as service, sort of, dealers around parts availability. Now, that might be something related to the pandemic which has caused disruption in supply chains. But we're also hearing that there's becoming a lot of stringency around warranty and claims are getting knocked back whereas in previous years if you were more conscious about growing a brand and winning back customers, you'd probably do more to honour those warranties.

10 COMMISSIONER LINDWALL: Yes.

MR VOORTMAN: So, I think that's something we're concerned about in the future. Moving on, durability. Look, this is a tricky one. As I said in my previous, sort of, response, we believe that durability has become a selling point. And I think it's going to be very difficult in many ways to come up with a reliable estimate of durability in the automotive sector. And that's because, you know, I think there are so many factors which influence the durability on a car, ranging from, you know, have you serviced and maintained the car properly, frequency of use, what kind of fuel you use, driving style, have you modified the car, accident history, et cetera, et cetera.

20 A lot of factors there. Also, a product with many components - batteries will have different lifespan to touch screens, to seatbelts, to tyres, et cetera.

25 COMMISSIONER LINDWALL: It depends where you live too, presumably.

MR VOORTMAN: Yes.

30 COMMISSIONER LINDWALL: In cold versus hot, salty versus not.

MR VOORTMAN: That's right, yes. And, you know, I think people tell you that cars in Australia generally last longer than they would in colder climates. And then, you know, I think it's also - the automotive industry is slightly different to most. And maybe I'm just saying this because I haven't thought more broadly. But there's a strong culture of repair in this industry. I think consumers generally understand that when they buy a car it has to be maintained and occasionally repaired. And I just worry that if we put a, sort of, certain timeframe on a vehicle, that might muddy the waters and, you know, it might confuse them in relation to how that sits alongside their warranty, but also it might give them an expectation that they presently don't have.

45 And then I'm also concerned (indistinct) our industries around something like a durability recommendation be coming into effect as standard. We've just gone through a pretty gruelling process in our industry. We are required by law to put fuel consumption labels on the windscreen of all cars supplied in the Australian market. It's a requirement of the Australian Design Rules

administered by the Infrastructure Department. And, to put it in context, those consumption labels are - do not represent world driving. It's a laboratory test and its purpose is that when someone buys a new car they can compare. But, as you'd know, everyone drives differently. Some people like to tow caravans. So that label doesn't always represent real world driving. But recently we've had a case - - -

COMMISSIONER LINDWALL: Some people like to get off the traffic lights first every time.

MR VOORTMAN: That's right, exactly. And recently we had a case which went to VCAT in Victoria in which a consumer took both the dealer and the manufacturer to VCAT and said that I'm not achieving these in the real world, and VCAT found in his favour, and the Victorian Supreme Court found in his favour too. The Supreme Court threw out two of the findings which were around consumer guarantees, but upheld one around misleading and deceptive conduct. So, we've got a situation here where you don't apply the label, you're breaking the law, but you do apply the label you're, sort of, misleading the consumer. Now, I'm not saying that's exactly how it will play out with - - -

COMMISSIONER LINDWALL: I assume that the labels - I haven't even looked at the label for a while - have some sort of qualifier that it was done - - -

MR VOORTMAN: It does, yes. It does, which is even more concerning. And it's prompting us to think do we need an even stronger qualifiers as part of the, sort of, sales documentation. But, look, if we are, sort of, inclined to go down the durability rating for vehicles, you do think we need to work pretty strongly with industry on that, and that we'd have to have pretty wide ranges. And, as I said, we'd be fearful of them becoming standards. Look, we completely agree with the need to review the mandatory data sharing arrangement after three years. This is something dealers did not agree with when it was first raised.

Obviously we are the beneficiaries of being authorised manufacturers, but I'm proud to say that my members over the years have come to accept the fact that this is something that the community wants, and we've, sort of, gotten on board and we're working with the independent repairs sector, and the manufacturers. So, we'll be working in good faith to make it work, put appropriate, sort of, protections around the sharing of that information. And I think in three years' time it would be good to see how we can improve that system.

Super complaints - I guess, when I spoke to members about this the main question from them was what is the problem we're trying to solve. We're all under the impression that consumer groups can already lodge, sort of, these

complaints to the ACCC. In fact, I think the New Car Retail Study was largely driven by the fact that there were many complaints in the industry. You know - - -

5 COMMISSIONER ABRAMSON: James, I might help you there. It's not in a systemic or systematic way. So, there are many instances - it's in force overseas - many instances - and I'm reluctant to name a brand here - but there was a particular car that had a lot of problems with it. But people didn't know - they were all getting the fob off, and they didn't know that somebody
10 else had the same problem. So, it's really about that. Sure, people can go to a regulator, but the difficulty is the regulator may not join the dots, and also it's not really the ACCC is a systemic regulator, it doesn't respond to particular instances with particular individuals.

15 I should also say - and I take your views on board about this - it would have very strict guidelines around it, and it would be developed with industry and consumers. So, it would be quite a careful remedy in the hands of designated consumer groups that would have to meet certain requirements.

20 MR VOORTMAN: Yes, okay. And, look, we - I guess, yes, I do know that individuals can complain. But do we need a formal mechanism for consumer groups to, sort of, lodge those complaints? Or is that happening already? I mean, I did a casual, sort of, search online earlier, and I found that, sort of, organisations such as Choice, you know, have, sort of, brought forward a lot
25 of these complaints to the ACCC's attention. But I do take your point in, sort of, formalising it, developing it along with industry and putting some processes around it. I guess we just want to ensure that we're part of that process.

30 COMMISSIONER ABRAMSON: No, I understand.

MR VOORTMAN: Okay. Look, not too much to say about e-waste. As I referenced earlier, you know, we are on the cusp of a, sort of, a major
35 emergence of electric vehicles. One of the issues people have started turning their mind to (indistinct) is how we deal with the batteries that will be left over. I'm very confident that government and industry will work together towards a, sort of, some kind of solution. One area I'm a bit nervous about in our industry, which probably hasn't come to the fore in this inquiry yet, is the Specialist and Enthusiast Vehicle Scheme, which is a scheme being run by
40 the Infrastructure Department which allows individuals to bring in specialist and enthusiast vehicles.

And at the moment there are a number of electric vehicles on the list - these are used vehicles - which are up to eight years old. And I'm just nervous that
45 we, you know, through that scheme we're inadvertently going to allow a number of vehicles which are, sort of, towards the end of their battery life, coming in, essentially being made the problem of Australia to dispose of

those batteries, rather than the home market. So, that's probably more of an observation, and I will leave it at that and take any questions.

5 COMMISSIONER LINDWALL: Yes. Okay. Well, thanks very much, James. Getting starting on your last point there, the electric vehicles - how big are the batteries? I haven't actually looked at them. Are they very large batteries, I assume?

10 MR VOORTMAN: They are very large. I think they form the majority of the vehicle's chassis.

COMMISSIONER LINDWALL: Yes.

15 MR VOORTMAN: So not your typical lithium-ion battery that can't go in your suitcase.

20 COMMISSIONER LINDWALL: No, I didn't think so. And what would the implications - and it's not really in our terms of reference, but part of your industry obviously, given that the UK has announced that it's moving towards electric vehicles by 2035.

25 MR VOORTMAN: Yes. So, yes, the ban on ICE vehicles. Look, it's difficult to say. You know, we haven't had any indication from government here in Australia that they're looking at doing so, but you can't move away from the fact that many other markets are doing it, and the UK would be, along with Japan, the two big (indistinct words) market, so - - -

COMMISSIONER LINDWALL: Yes, yes.

30 MR VOORTMAN: So, look, the implications are that at some stage we would, you know, probably start getting fewer makes and models than we are at the moment because no one is developing specifically for Australia. But look, it's difficult for us to say at this point. All we know is that a lot of manufacturers are investing their dollars on electric vehicle and a future away from ICE vehicles. So that is something we're going to have to transition to. There are many effects for our members because servicing revenue, margins on new cars, it's all, sort of, very different under an electric vehicle future.

40 COMMISSIONER LINDWALL: And in terms of e-waste to especially - modern cars, of course - there are a lot of computers in them. When they reach the end of life and they can't be repaired economically anymore, the existing systems that you have in the industry are pretty effective, do you think, of safely and environmentally friendly extracting those resources and reusing them, repairing other products (indistinct words).

45 MR VOORTMAN: Look, I'm probably not the most qualified to speak on this, and I notice that later in the agenda you've got - - -

COMMISSIONER LINDWALL: Yes.

5 MR VOORTMAN: - - - Richard Dudley from the Motor Trades Association, and he would probably be more of an expert on that subject matter. But look, from my understanding there is sort of a fairly burgeoning vehicle recycling sector. I think many of the players within that sector would like, sort of, more sort of regulations around how it is done.

10 COMMISSIONER LINDWALL: Yes, yes.

15 MR VOORTMAN: There are, sort of, some components within a vehicle that are under product stewardship schemes, tyres, oil, and there's been talk around batteries which is quite, sort of, topical given the emergence of electric. So look, my understanding is there is an industry; the question is how prepared is that industry to deal with what's coming because it might be a lot of vehicles reaching their end of life very soon if we are going to move away from ICE very quickly.

20 COMMISSIONER LINDWALL: Yes, yes. And the change that was made to the consumer law - I'm not sure exactly when, and Julie might be able to answer that part - where a number of minor faults becomes a major fault, and then you need to replace rather than repair. That's fairly recent, isn't it, that change?

25 MR VOORTMAN: It is fairly recent.

COMMISSIONER LINDWALL: And what have been the implications for the industry?

30 MR VOORTMAN: Look, on that particular sort of change, I think it is too soon to say, but what I can say around consumer law and consumers' awareness of their rights, that has certainly grown in the automotive industry over the past sort of 10 years.

35 MR VOORTMAN: There was the big - the famous campaign around 'I bought a Jeep'.

40 COMMISSIONER LINDWALL: Yes.

COMMISSIONER ABRAMSON: Yes, I was trying to avoid the Jeep man issue.

45 MR VOORTMAN: And, you know, the work of the ACCC and the consumer groups. Consumers are very aware of their rights in relation to the automotive sector and, you know, a lot of state governments have also been pushing it, particularly the Queensland Government, and there's been a

debate around lemon laws. So, you know, I don't think we've had enough time to see yet what the change to the ACL has meant in a practical sense, but, you know, what I can say is over the past decade consumers are well aware of their rights, more so than ever.

5

COMMISSIONER LINDWALL: I've been in Canberra long enough to have seen well before the Jeep when someone parked a Russian-made vehicle outside the Soviet embassy, as it was then in Manuka and I don't think he got a benefit from doing that actually. Julie.

10

COMMISSIONER ABRAMSON: Thank you. Thanks very much, James. I just want to ask you some questions about the warranties, and you did touch on this a bit. As you know, our position at the moment is that there should be some text which states that entitlements to consumer guarantees under the ACL do not require consumers to use authorised repair services or parts, but I'm sure you're aware in America it actually goes further and prohibits manufacturer warranties from containing terms that require consumers to use authorised repair services or parts to keep the warranty coverage, and I'm just wondering what your views are on that.

20

MR VOORTMAN: Look, I think, you know - and correct me if I'm wrong. I think the Commission might've mentioned that at a glance at the current manufacture warranties in the automotive sector is that they don't have any of those sort of voiding terms. So, you know, I would think that that is not something we would oppose if you were to make that change and bring it in line with the United States. I had a look at a couple before I came here and I must say those are probably some of the (indistinct) that have achieved enforceable undertakings with the ACCC. And to me it seems like they actually do make it very clear, firstly, that ACL takes pre-eminence over manufacturer warranty; and secondly, that repairing the vehicle, you know sort of outside of the authorised network does not void the warranty. So I don't think that's something we would oppose.

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COMMISSIONER ABRAMSON: Excellent. That's all I wanted to ask, James. Thank you.

40

COMMISSIONER LINDWALL: And James, in the point that you raised there about the regulation impact statement and two years later not much has been happening in terms of consumer - sorry - your member rights versus manufacturer rights.

MR VOORTMAN: Yes.

45

COMMISSIONER LINDWALL: What did you actually want us to do?

MR VOORTMAN: Look, I think from a recommendation sort of - if we finalise recommendations in this report I would just say something along the

lines that the communicate sort of agreed to by the consumer affairs ministers gets sort of progressed or progress was made on that, yes.

5

COMMISSIONER LINDWALL: Okay. Drawing that - - -

MR VOORTMAN: We'll put it - I'll make the point more eloquently in the submission.

10

COMMISSIONER LINDWALL: All right. That will be fantastic. All right. Now, do I have any other questions I think at this time anyway? So - no, that's been very helpful. Thank you very much.

MR VOORTMAN: Okay.

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COMMISSIONER LINDWALL: Thanks, James.

MR VOORTMAN: Thank you.

20

COMMISSIONER ABRAMSON: Thanks, James.

MR VOORTMAN: Thank you.

COMMISSIONER LINDWALL: Now, is Alix Ziebell here?

25

MS ZIEBELL: Hello.

COMMISSIONER LINDWALL: Welcome, Alix. Please come up.

30

COMMISSIONER ABRAMSON: Another person in person form. This is getting very exciting.

MS ZIEBELL: I saw you both in person at the Right to Repair Summit a couple of weeks ago.

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COMMISSIONER LINDWALL: That's right, yes.

COMMISSIONER ABRAMSON: Yes. Alix, that was the last time I was allowed out of my state.

40

MS ZIEBELL: Well, what a great event to be allowed out for.

COMMISSIONER LINDWALL: Indeed it was, yes.

45

COMMISSIONER ABRAMSON: Excellent.

COMMISSIONER LINDWALL: Now, Alix, if you would like to introduce yourself and perhaps say what you would like to.

MS ZIEBELL: Thank you. I'm Alix Ziebell. I'm the Director of Policy and Government Relations at the Australian Academy of Technology and Engineering. We are one of Australia's five learned academies and we are located directly across the road from here, so thank you; it's been very convenient. I am here today to speak with you about the right to repair in terms of waste and the right to repair as one of the methods to avoid waste in Australia. ATSE wrote a major report that was published last year called Towards a Waste-Free Future and I have a copy that you are welcome to.

10

COMMISSIONER LINDWALL: Thank you.

MS ZIEBELL: Which looked at three potential solutions to - technology-based solutions to waste that included design, product stewardship and advance resource recovery, and as part of that work we did quite a lot of looking into the right to repair as a waste-avoidance technique. ATSE sees huge potential for technology to positively disrupt the waste and resource recovery sector in Australia and the manufacturing sector and support our transition toward a circular economy. Our report emphasised the critical importance of maximising the productivity of finite natural resources by deliberately designing products, systems, and infrastructure to make better use of these materials, including through repair and extending the life of products.

Technology will help us to design products that are more durable, reusable, repairable and able to be remanufactured or disassembled once they reach the end of their first life. Most relevant to this inquiry, the ATSE report recommended a legislated consumer right to repair products, and we're pleased to see this has been implemented in a recent amendment to the Competition and Consumer Act. ATSE recommended this right begin with electronics, given the amount of waste and the value of the resources contained in electronics. I absolutely understand that this right is directly initially at high value consumer products, but we urge the Commission to also consider the productivity losses associated with waste, and in particular wasting products that contain high value materials, rather than repairing or remanufacturing them.

E-waste, in particular, is a key focus of the right to repair internationally, with electronic products filling almost every aspect of our lives, we're faced with a mountain of broken devices. Consumers are increasingly demanding repair services. But, as we know, and as you discussed Paul at the Repair Summit a few weeks ago, broken devices often need to be sent to the manufacturer for a diagnosis of the issue, and then if possible an extremely costly repair. Local repairers are frequently unable to repair devices due to the inaccessibility of the device's software, information or technology. In many cases it's often easier, quicker and cheaper to purchase a new device,

rather than repair. In addition to the expensive consumer costs, unfixable devices contribute to the mounting problem of e-waste.

5 The consumer movement dubbed the Right to Repair, as you probably know, began in Massachusetts in 2012. And it shows that people are increasingly holding manufacturers accountable for the durability and the sustainability credentials of their products. Some small businesses will repair products, but as we know there are issues with warranties and monopolies. Intellectual property and copyright laws restrict small businesses such as mechanics and
10 electronic repairers from being able to access the information required to repair goods, and they have called for government regulation to permit a right to repair. More than 30 states in the US now have introduced Right to Repair bills.

15 Europe has new standards for appliance durability, which include a requirement for manufacturers to supply spare parts for up to 10 years for some whitegoods. And these regulations also require manufacturers to make maintenance and repair instructions available to professional repairers. As the Commission will be aware, to improve reuse and reparability, the
20 National Waste Action Plan proposes that governments review and report on recommendations to introduce laws to improve consumers' right to repair options. And it also calls on all governments to support community based reuse and repair centres, enabling communities to avoid creating waste.

25 More products designed to be repaired and regulations allowing a right to repair would create a substantial increase in small businesses offering these services. For example, in 2018 Sweden introduced a number of tax incentives and concessions for consumers to repair household items such as
30 whitegoods, rather than replacing them. And this had the effect of reducing the cost of repair by the (indistinct) consumer by as much as 85 per cent, and stimulating jobs in the repair service industry. ATSE's submission to the Productivity Commission's Inquiry into the Right to Repair made three recommendations - create a legislated consumer right to repair products, beginning with electronics, target manufacturing grant programs and tax
35 incentives toward innovative design for waste avoidance and minimisation, including reparability, create standards and certification systems for reused, repaired and remanufactured goods to build consumer confidence and promote sustainable design.

40 We welcome the Committee's draft report, which we note focuses on whether consumers face barriers to repair, and that require a government policy response. We strongly support a legislated consumer right to repair products, because this will enable better outcomes for consumers and reduce environmental impact. Repairing products rather than replacing them
45 represents better value for the consumers' money and creates a loyalty relationship between the consumer and the manufacturer. Repairing and

remanufacturing products for resale is also more cost effective than making new product, and it requires less resources, avoiding waste.

5 Repair economies support job growth through the development of small local businesses offering these services. It diverts substantial valuable resources from landfill, particularly in e-waste which contains environmentally harmful substances in much higher quantities than other products. Our report
10 Towards a Waste-Free Future found that consumers are increasingly demanding repair services, particularly for electronics, and that unfixable devices are contributing to this mounting problem of e-waste. I'm done.

15 COMMISSIONER LINDWALL: Could I ask straight off what - when you say we should have a legislated consumer right to repair, what exactly would you mean by that, Alix?

MS ZIEBELL: I think it would mirror fairly closely what we have seen in the recent amendments for the auto-repair industry. So, I am probably not -
20 ATSE is made up of applied scientists, engineers, and industrial specialists, essentially. But what we would like to see is, as the Productivity Commission would like to see, the removal of the barriers. So the removal of copyright and IP issues that prevent independent repairers from having the ability to repair these things. So the - - -

25 COMMISSIONER LINDWALL: So it covers everything from IP through, in some cases, a positive obligation to product stewardship schemes. So, it's not just one lot of legislation, isn't it?

30 MS ZIEBELL: I think what we meant by that particular recommendation was more specifically in line with the consumer law amendments that have been made recently, in terms of removing the barriers. So, we'd like to see - if I had something that is broken that I have bought, I would like the right to be able to repair it and not face any negative consequences for that. I was thinking the other day about what my grandparents might have thought about me having to argue for that right. If you think about people who were living
35 during war time, it would - I think you would have faced a lot more scrutiny and public taboo for not repairing your products or your goods.

40 And now we have to argue that we have the right to repair things that we own. Which seems anathema to me and to our fellows, and to, I think, an engineering mindset in general that you have this incredibly complex beautifully designed piece of machinery or technology, and you have to throw it away because it has something mildly wrong with it that could quite easily be repaired.

45 COMMISSIONER LINDWALL: Some of that to do with spare parts availability, obviously. Some of it's with software and firmware. But what about - obviously in technological devices, because of the rapid change in

technology a lot of consumers will prefer something newer because it's changed quite a bit since the last time they bought it.

5 MS ZIEBELL: Absolutely.

COMMISSIONER LINDWALL: Are you talking - you're not talking about substantial changes, like if you bought a phone and you had it for three years, maybe holding it for four years is a big change, but saying it should last 20 years might mean that you're holding something that looks like a brick.

10 MS ZIEBELL: Potentially. But, I mean, if you look at a circular economy, the same person doesn't have to hold that phone for 20 years.

COMMISSIONER LINDWALL: Exactly.

15 MS ZIEBELL: So if they then have - through a product stewardship scheme or something similar, the ability to hand that back to - or give it to a local business who can then either refurbish or remanufacture that particular piece of technology for resale, it continues to have its first life. It can be reused. If
20 that piece of technology is so outdated that it can't be used by anybody else, it can be disassembled to then increase the availability of those spare parts, as we were talking about. So there are definitely options, I think, that would assist people to continue to keep up with the ever-increasing pace of
25 technology. And also enable us not to leave people behind.

So, potentially, as that technology travels down the scale it can be used for free by people, it can be loaned by people.

COMMISSIONER LINDWALL: Yes.

30 MS ZIEBELL: We also looked in the report beyond repair to things like products as a service. So, where you would then, in a sense, lease that product, but that product - the manufacturer is then obliged to repair and maintain that product for you. And, as I said in my remarks, it creates this
35 loyalty relationship between consumers and manufacturers, where manufacturers are therefore incentivised to make products that are of a high quality, are sustainable, have these credentials that are becoming more and more desirable for the consumer.

40 COMMISSIONER LINDWALL: Of course, there would be a tension between that and independent repairers. Because if the manufacturer's only leasing it to you, they won't allow you to take it to an independent repairer, so - - -

45 MS ZIEBELL: Indeed. But you would have the right to repair it through the manufacturer. It would be part of your, sort of, your negotiation, I suppose, with them. You would give up potentially some of your rights to take it to an

independent repairer, but in return you might get a cheaper price, or you might get better returns in another way.

5 COMMISSIONER LINDWALL: Yes. In terms of product stewardship schemes, and the NTCRS is one of them, of course - that's the only one that's co-regulatory in Australia at the moment - what do you think of - I mean, and you see that we proposed that it should be allowable to take repair into account, rather than just recycling - what did you think about what we said, and where do you see our product stewardship schemes - where are they good, and where are they not so good? How would you improve them?
10 Because no system is perfect by definition.

15 MS ZIEBELL: No, not at all. And I know that you heard from Rose Read and John Gertsakis earlier this morning. I wasn't able to hear their evidence, but I'm sure they would put it much more eloquently than I'm about to. But we really, in our consultations, would push for what's more commonly known as extended producer responsibility.

20 So, in a sort of simplistic way, you could create a three-tiered system where, if a product is either manufactured or imported into Australia, it needs to have an end-of-life plan. So if that plan is that there's extended - if there's a stewardship scheme where the manufacturer or importer is going to take that back holus bolus, and they have a plan for what to do with it, and it's not going to go into landfill, then that's obviously a low impact on the consumer,
25 low impact on the taxpayer.

That person or manufacturer would have, in effect, an incentive where - in our design, we should be incentivised to create that pathway. The second level would be what's now sort of co-regulated, where they would not necessarily take that product back, but there is a pathway for that. It is fully
30 recyclable; it can be repaired or re-manufactured. It's not going to go into landfill again.

35 We do think that there is a need for some kind of regulation and penalty for products that do not have a plan for that product's end of life, whether that be repair, re-manufacture, or recycling. What that would in effect do is send a price signal to the consumer at the very beginning of all of this, to show that there is a cost. The product that you are buying - in effect people -
40 manufacturers are incentivised to make them as low-quality as possible, to make them as cheap as possible, so that the consumer then purchases that product.

45 But at the end of that product's lifecycle, someone is still paying for it, whether that's the community near the landfill; whether that's the people using the water that has toxic chemicals in it; whether it's the platypus that gets the beer can thing around its neck; someone is paying for that product. So if we can regulate, to put that cost upfront to the consumer, it would

change consumer behaviour toward that more positive, sustainable produced product, which otherwise would be more expensive.

5 COMMISSIONER LINDWALL: Yes. And – but of course, you have to be aware of the impact upon the less well-off people, low-income people.

10 MS ZIEBELL: Indeed, which is why it can't just be a straight (indistinct) increase in price. What you need to do is also equivalently tip the scales in the other direction as well, to make sure that people who are doing the right thing, and who are buying sustainable products, and who are making sustainable products are incentivised to do that.

15 COMMISSIONER LINDWALL: Now, just one more question, and then we'll turn to Julie. On labelling and design – and of course we've pointed to the French labelling scheme, and there's always a debate about whether you go it alone, and try and improve on what's out there, or do you just copy it. I'm interested in your thoughts about that, and also about design.

20 One way of getting things that are more repairable would be, Australia set design standards. But the implication of that could be that certain products don't come to Australia, and maybe that's good, maybe that's bad; it depends on who you speak to, I guess. But Australia is not that small a market; well, (indistinct) a big market, so we have some influence, but not a huge amount of influence.

25 So I guess my question on the labelling and design is, how much should we leverage our size with our countries, who are also interested in getting better outcomes for the environment, versus trying to go it alone, if you like?

30 MS ZIEBELL: Trade is not my speciality, but I will have a go. This is the third in a series of reports. So the reports are actually on technology readiness in Australia, and they look, on a 10-year horizon, to 2030, whether Australia is ready to adapt, adopt, or develop technology solutions to face complex problems. So this one was on waste. We did one on health as well, 35 and the first one was on the transport industry.

40 And I heard your previous speaker talking about dumping behaviour in Australia, and that is something that we very much found in the transport report, was that Australia's slow uptake of LEVs is essentially creating a dumping ground for the dirtiest, the most outdated, and the least sustainable cars in the world. And I would imagine that that extends to many of these other products as well.

45 Yes, we don't have the capacity to make them ourselves here at the moment, but this is also a question of what kind of country we want to be in the future. So I would fully support standards for better design products, for two reasons. One, it prevents us becoming a dumping ground for bad technology.

Two, it creates an even playing ground for Australian developers and Australian manufacturers who might want to do that.

5 So we have the capacity, we have the research strength, we have the small business, we have the manufacturing capability, the skills to develop some really incredible technology in Australia that could become an export market for our economy. As long as these cheap, badly made, unsustainable products are allowed to continue to be imported, it is smothering that capability. It is smothering the development of those sectors.

10 So it really is a choice for Australia, as far as I'm concerned, in terms of what kind of country we want to be in the future. And if we want to be that leading-edge, sustainable technology country, we would need to provide some support to the sectors of our economy which would be hurt by these particular regulations. But we need to do it in a deliberate and well-communicated way, and say, 'We've made this choice. This is where we're going in the future. We are going to support you to come with us.'

20 COMMISSIONER LINDWALL: All right, thank you. Julie.

COMMISSIONER ABRAMSON: Thank you. Thanks very much, Alix. I just wanted to ask some questions about some of the EU regulations, and what practical effect you think they might have in Australia. So, where there is a requirement to have repair supplies for a particular period of time, and given that we import a lot of products – we don't make them, mainly, here – so I was just wondering about your view about that, Alix.

25 MS ZIEBELL: Well, it does present a bit of an opportunity, as far as I'm concerned, for developing the capacity to make them in Australia. So if we create a market, I'm fairly confident that we would be also creating the capability in Australia to do those thing. If not – COVID has created some complications there, so it would be something that you would need to speak to industry about, what their supply chains look like, and what the capability would be to do that.

35 I wouldn't suggest, necessarily, that we would put such a stringent requirement in place. As you mentioned, Europe is a huge market, and they are quite close to their supply chains. Having said that, though, we heard a lot in the development of this report that, as a dominantly importing country, it's impossible for Australia to put any kind of barriers up at the border. But the EU is also an importing country, and they have put those barriers up, and people adapt, and they start to design products that meet those standards.

40 So it's – again, not my specialty, in terms of EU regulations, but I think that there would be – you will hear, if you ask industry this question, that it's impossible. I would advise, seek some further expert opinions if that's the advice that you're given.

5 COMMISSIONER ABRAMSON: Thank you, Alix. There's an additional point to that, is holding cost. So we've heard a lot about how expensive it is to retain spare parts, et cetera. Do you have any information on that, given that you work with a lot of engineers?

10 MS ZIEBELL: I don't, but I can imagine what they would say, which is that the technology for things like 3D printing is incredibly – is accelerating exponentially. And we have the capacity, if we had these regulations on the right to repair, for example, and the specifications for these parts were made available to repairers, to 3D print those parts, and they wouldn't have to hold anything. They could be made on demand. And further, we have – one of our fellows you're probably quite aware of, Veena Sahajwalla, who - - -

15 COMMISSIONER ABRAMSON: Yes.

20 MS ZIEBELL: - - - who is very keen on creating a closed loop with these particular circumstances; so, making those spare parts out of waste. Rather than importing raw materials, pure raw materials, we could be creating this lovely closed loop where we gather the requisite materials to make certain parts and stockpile those, and then make parts on demand.

25 COMMISSIONER ABRAMSON: Thank you. One final question, if I may, Paul. In your Towards a Waste-Free Future, you mention the idea of the promotion of urban mining. This is very interesting, Alix. Can you explain to me what urban mining is, and how it might incentivise consumers?

30 MS ZIEBELL: Interestingly, I've heard just in the last week that there are multiple definitions of urban mining.

COMMISSIONER ABRAMSON: I'd like yours.

35 MS ZIEBELL: We envisaged urban mining – again, with Veena's support; Veena was on the expert working group for this report – as essentially gathering the materials – so the whole expert working group on this report really didn't see products as products, they saw them as most engineers do, as collections of raw materials and resources. And something that came through again and again was resource productivity. So, you've dug this thing out of the ground, that took lots of energy and resources, and then given that value proposition you need to use it over and over and over again so that you're not continuing to dig up raw materials and throwing these materials into the ground.

45 So, Vena's idea of urban mining is essentially looking at products, determining what raw materials are in them, finding a use for those materials and sort of marrying the two up. So, she's created micro factories which could do that for e-waste where you stockpile e-waste essentially and then

what normally happens is you have to truck the e-waste to a facility, or you stockpile it at that facility, and it sort of slowly chugs through it. Vena's micro factories are the size of a shipping container, and they can be taken anywhere in a city, in a rural area, whatever you like and then turn that e-waste into valuable resources. There is another definition of urban mining which is a bit different, and I'm still getting my head around it, which essentially that we should put absolutely everything into landfill and then use technology, that will be developed in the future, to sift through and find those raw materials. So, I'm not as confident explaining that one, but I think it's an interesting idea if you're into the idea of urban mining.

COMMISSIONER ABRAMSON: Thank you. Thank you very much and thanks for your evidence Alix, back to you Paul.

COMMISSIONER LINDWALL: Well, it's a bit like if you look at goldmines, there's ones that are in operation and then there's potential ones and it depends on the value of gold at the time so if the gold price is sufficiently high it's economic to mine this, and otherwise it's not.

MS ZIEBELL: Indeed.

COMMISSIONER LINDWALL: So, I can see that in conception, and of course the technology changes over time so you can actually mind things, in that sense, less expensively than you may have in the past. So, it does make some sense to me, although I don't know about the technology. I was going to comment a bit about the productivity - since we are the Productivity Commission - and efficiency and productivity obviously is critically important to do things to recycle and repair using less resources than you would have in the past. And resources include human labour, and capital and so on, so how can we drive productivity growth in recycling and repair to make it even more competitive than it might presently be?

MS ZIEBELL: Disincentivise waste. Make it more expensive to chuck something away without having first done that. That's going to be a long-term proposition, and it's going to be unpopular, but that's essentially - you know, the market drives most of these changes and that's the biggest that you've got, to change the equation. And that's where I was going with the product stewardship vision is that somehow, you've got to tip the scales to make being more productive, or using resources more productively, a better economic outcome. That will naturally happen as resources are finite, they will decline, and it will become more economically viable for people to recover resources than to go for virgin resources. That's not currently the case. Particularly - I mean plastic is the wicked problem that everybody is talking about. I don't have the answer for tomorrow, but that's essentially - it's an economic questions, which again is not my speciality.

COMMISSIONER LINDWALL: Well competition will help drive it to change, so we have to be careful to not create monopolies of recyclers and so on. Yes, that was one point.

5 MS ZIEBELL: Well, it sort of goes back to that point where I was talking about creating a relationship between manufacturers and consumers because at some point, as I say, it's going to become cheaper for a manufacturer - they're going to be incentivised to try and get that valuable mobile phone, computer, whatever it is that contains all of these resources. It's going to be
10 an economically better decision to try and get it back off their consumer rather than let that consumer waste it somehow.

COMMISSIONER LINDWALL: Now I wanted to just comment briefly on the point you made about putting in special Australian standards for products and that, which we have had for example in the Australian Design Rules for motor vehicles, and we had originally - as a student of economic history -
15 very high tariffs in passenger motor vehicles. An outcome of that was actually quite perverse, it led to very high priced, very inefficient, very environmentally unfriendly vehicles because there was no competitive pressure on the Australian industry at the time. So, I'm just saying, as an
20 economist, when you want to incentivise efficiencies you still need overseas competition, otherwise you might get - probably would get - manufacturers in Australia who have become quite sleepy, and they don't develop things according to what you want. So, I'm just warning against perverse effects
25 from certain policies.

MS ZIEBELL: Absolutely. I'm glad that that's top of mind.

COMMISSIONER LINDWALL: So, anything else, Alix, that you'd like to
30 point out? I mean you've gone through a whole lot of things today.

MS ZIEBELL: No, happy to.

COMMISSIONER LINDWALL: Well, thank you very much for appearing
35 then,

MS ZIEBELL: My pleasure, thank you for the opportunity.

COMMISSIONER ABRAMSON: Thank you Alix.
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COMMISSIONER LINDWALL: And we might just - it's just on almost 3:00, we'll resume at 3:15 with Pete McCann from the Tractor and Machinery Association of Australia.

45 COMMISSIONER ABRAMSON: Thank you. Thanks Paul.

COMMISSIONER LINDWALL: Thanks Jules

SHORT ADJOURNMENT

[2.56 pm]

5

RESUMED

[3.13 pm]

10 COMMISSIONER LINDWALL: Ready to go, Julie?

COMMISSIONER ABRAMSON: I am.

COMMISSIONER LINDWALL: Pete's here.

15 MR McCANN: In person.

COMMISSIONER LINDWALL: In person.

20 MR McCANN: She's not excited as the last person. I'm disappointed.

COMMISSIONER ABRAMSON: I am very excited, Pete. I just am trying to remember which is my work WhatsApp group, and which is the WhatsApp group for my family who seem to think that I'm just sitting at home doing nothing. But it's lovely to see you and thank you for coming in person.

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MR McCANN: And thank you for the invitation.

30 COMMISSIONER LINDWALL: So, Pete, would you like to introduce yourself.

MR McCANN: Yes. Firstly, thank you to Paul and Julie for the invitation to present. I'm here to represent the Tractor & Machinery Association of Australia. It's a member based industry organisation which was established over 70 years ago, and it represents importers, manufacturers, sellers of agriculture and machinery in Australia. The members include John Deere Limited, CNH Industrial, AGCO, Kubota, Landpower Group and Power Farming Group. And it includes 160 independent dealerships. I'd like to clearly state that the TMA does not oppose the right to repair.

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However, if the right to repair includes modifying this area, we do oppose. We have concerns about safety and the cost that these recommendations for farmers - recommendations for farmers and dealers and the flow on effect, impact to their communities. We also have concerns over the haste of which this is moving off the back of the ACCC report. For the record, the ACCC report surveyed around 355 individuals. The survey size we see was extremely inadequate. It represents 0.004 per cent of the farming industry

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within Australia. We would like to see a larger sample size to ensure all areas of the farming industry is fairly covered. I've been fortunate to listen to the entire series of the public hearings. This is day 3 for me.

5 COMMISSIONER ABRAMSON: We should give you an award, Pete.

COMMISSIONER LINDWALL: I think so. I think there should be an award.

10 MR McCANN: I might have missed a couple of minutes here and there. I would say I have learnt an awful lot. And I would also like to say I think agriculture - the agricultural industry has got the circular economy down pat, because we don't throw anything away. We either reuse it or change it into something else. The one thing I think that has astounded me is the opinion
15 that the manufacturers are out to take advantage of our customers. I can't comment for the automotive or the whitegoods, or mobile phones, but I can guarantee you this is not the case in the agricultural industry. The majority of our dealers are franchises. The company I work for directly - and I know for a fact John Deere is the same - we don't own any of our retail stores. It's all
20 done through franchisees.

Most of our dealerships are small businesses and owned by local people. And the people see their customer base on a daily basis in town or at Saturday sport. These dealerships also grow the regional economy by more -
25 more than often are the largest employers within that town. They employ countless apprentices to ensure we grow our talent pool and keep up with the demand of our customers. The NFF says the right to repair will solve the issues of access to farmers, but we firmly believe that there's a broader issue of the capacity in the industry. It's actually a lack of people and man power
30 within the actual regional areas.

To put it simply, we need more people in regional areas to do the work. From my company's point of view, last year our dealer network advertised
35 799 jobs and we only could fill 50 per cent of that 799. 60 per cent of those jobs were actually for technicians. And obviously the number across the industry could easily be multiplied by four, as we are only one company. The agricultural industry does not have the industry volume of automotive. Looking at the average total industry volume for ag over the last ten years -
40 so that does include our regular four year droughts that we're coming accustomed to - we sell around about 13 and a half thousand tractors a year. So it's not a big number.

This number is split across many suppliers, so the NFF claims that the market isn't competitive actually surprised me. And then if we look at the data and
45 the claims that customers are locked into a brand, there's two streams of agricultural data that's collected. One being agronomic, which is crop performance yield data. The second piece of data is machine data. So, fuel

usage, performance capabilities, and et cetera. To speak for my brand, we have zero interest or access to the customer's agronomic data. That is purely the producer's data and their choice on who they share it with.

5 The machine data we can see. But keep in mind the customer has to give permission to the dealer to even view his machine data. So if he doesn't want it viewed, he doesn't have to have it viewed by the dealer. Why is the machine data so important? Not only does it help us design better, stronger, more reliable machines. More importantly, we are using it as an early
10 warning system. We now have the information to send a mechanic on a 300 kilometre round trip with the correct part to fix the machine before it actually breaks down. Previously the tractor would break. The technician would then drive out 300 kilometres, diagnose, drive back 300 kilometres, get the part, drive back again. And obviously there's a kilometre rate attached to that
15 travel. Very similar to the air conditioner gentleman talking about Broken Hill. As the data builds we start to understand trends across the machinery and understand weak points so we can continually improve our products. One component that has come up a lot in the last couple of days is parts.

20 You've heard claims made about time limits and availability of aftermarket parts and servicing and restrictive repair networks. The availability of parts has proven a challenge, I think, for anybody in the last 12 months. And completely out of our control. The industry is exploring every opportunity to ensure we have significant supply of parts are readily available in Australia,
25 both now and into the future. Farmers can access parts freely and easily at any time. We don't believe there is a single manufacturer in agriculture that restricts access to parts. And when you look at the parts that are sold through our dealers, the vast majority of parts are actually going to - across the counter to the end user to complete his own repairs.

30 And if you look at that in a percentage, 40 per cent of our parts going across the dealership parts counter. Forty per cent go to the back of the building to supply the service guys. And 60 per cent go across the front counter to the farmer directly. Another component - we've heard a lot about warranties -
35 I've learnt a lot about warranties, especially consumer warranties. You've also heard that there are restrictions. The use of independent repairers for non-critical work will generally not automatically void a TMA member's warranty. However, if the work is undertaken by an independent repairer that causes a fault to develop, then this will not be covered under the TMA
40 member's warranties.

This is reasonable, as a manufacturer should not be liable to repair what was - that was only necessary due to the third party defective repair, or the failure to properly maintain the unit. We are keen to explore how we can improve
45 our language, and the clarity on what is covered and what isn't. And we look forward to further round table discussions on this topic.

Now, I left this one to second last because it's safety. And we've heard a lot about safety in the last three days. To hear the safety being referred to as a red herring is a great concern to the TMA. Safe Work Australia reports that in 2018 agriculture had the second highest traumatic injury and fatalities number. The Commission I'm sure would agree that each of those fatalities is a tragedy, and no one should make light of safety. Over the last five years of data from 2014 to 2018, the majority of fatalities in agricultures, 69 per cent of them, have involved a farm vehicle. So, Paul, yesterday you asked what I thought was a very important question to Sue from the NFF. And, in my opinion, you didn't actually receive an adequate answer. I'd like to answer that for you now.

From memory, you asked are these machines complex to drive and are they complex to repair. I would say they are both complex to drive, complex to fix, and then complex to even diagnose. They can be extremely dangerous. For example, if you look at a spray rig which we use to spray the crop, these machines have got a span of 140 foot, or 42 metres. They travel at 40 kilometres an hour, and they apply chemical at that speed. So in the same mind that - thinking in the same way, that spray rig has a pressurised cab to keep our customer safe. There's also other technology to tell him about droplet size and pressures. There's even a mobile weather station on there. So he can record and track when he sprayed, where he sprayed, and what the conditions were.

At the end of the day, a car doesn't have blades that spin or cut, or spray and et cetera. They're two very different types of machines and they do two very different jobs. Ag machinery is not the same as a car, and it should not be treated as such. As you can imagine, it's imperative that all this equipment is working. And we train our technicians year round via online, face to face - to ensure we protect our customers from any harm day to day - and also our dealer staff. So, in closing, we are proposing a series of round table meetings with the ACCC, the Productivity Commission, the NFF, the dealers, third party repairers, our growers, to discuss a path forward that not only addresses the safety concerns, it also ensure small businesses within our rural communities can survive.

And let's not forget the actual struggle that has been highlighted by the NFF is the time it takes to repair machines. The implementation of the Right to Repair Bill will not fix this for the ag industry. Our issue is far greater, with a lack of people in regional Australia. If the recommendations were implemented in their current form, we are concerned repairs will be made by people who do not have the required training, and that may result in the machines not being fixed correctly the first time. That will then lead to an increase in down time and other breakdowns which will create a knock on effect and actually be an expense to the customer.

5 Farmers cannot afford to have their machinery to be out of operation for any great lengths of time. They rely on it for their business. Anyone repairing or maintaining these machines needs to fix them right, and they need to do it the first time. Or farmers will end up bearing the additional costs. These are often complex machines, and need to be maintained and repaired by people with a required level of training and experience. We've also published a statement of principles - a document that outlines our support for the Australian farmers and the dealerships. And this is available on our TMA website. That's it. Fire away.

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COMMISSIONER LINDWALL: Thank you, Pete. Well, I think you could distinguish between your dealer repairers and independent repairers who are qualified, and of course the farmers themselves whose - and having lived on a farm, and (indistinct) if you're more and more remote, you get more and more self-reliant. So I can see where a lot of farmers like to do things themselves. And that's probably more than the average car owner, by the way. I mean, when we're talking about the motor vehicle industry, we're probably talking about either having it done at the authorised dealer, or an independent repairer who has good qualifications and that. Less so someone doing it themselves. It's quite different here. And I can see this frustration from a farmer. Because, as you say, a lack of availability of people to fix things, and they're in the middle of Australia, remote (indistinct) somewhere. How do you resolve that?

25 I mean it's good to say that you need to have more people, but we can't have people everywhere in Australia. So, can you be clearer about the types of things that are safe for the average farmer to repair and maintain, versus things that are not.

30 MR McCANN: Yes, I guess one question I've always had with the right to repair is there's a right to repair, or a right to service. I guess, you know, I don't think we've ever really gone down the road of understanding - you know, from a service point of view, for one of my farmers to, you know, replace a pulley or drop the oil out, or spin a filter on, we have no dramas with that whatsoever. You know, even to the point of - as Sue said, she has her own mechanic on - we have a lot of growers that do that. And they work in conjunction with the dealerships, especially at peak times when, you know, because the - the biggest thing with farmer is there's never one farmer that's busy. They're all busy at that certain time.

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45 So, again, you know, going off the telematics side of it - and, you know, having that early warning to actually get ahead of - and farmers are getting very good at actually bringing machines - or booking machines in to say - this is before the season, come and run your eye over it. If there's any changes we need to make, we can do them now before the season starts and the machine actually goes into the field, you know, crop ready as we call it. To go from there. Probably the most concerning thing, I think, you know

going back to the people side of it, is each manufacturer has got an exceptionally robust apprentice scheme to try and bring young people in. In the old days of being a mechanic and, you know, being paid 50 grand a year to swing spanners and work in the heat and et cetera has changed dramatically.

You know, this is why we don't even refer to them as mechanics anymore. They're technicians. Because there is a lot of stuff that they are doing from - not only spinning spanners, but you know, diagnostics, you know, the control panels, looking at actually a tractor without standing in front of it and saying, okay, it's not performing right, what could - with the diagnosis, what could possibly be not right with that, and what do we need to load up and take out there. From that point of view. So, it's an education from our side of it. And I think the part that's getting lost is that, you know, we - our number one focus is to keep those machines moving at all costs. Because we have such a small customer base. You know, we don't have the enjoyment of 10 million cars. It's just not there.

So, yes, I don't know what the fix is straight away. But, yes, I think it's going to be - it's something that we definitely need to (indistinct) - - -

COMMISSIONER LINDWALL: (Indistinct) about diagnosis, because when I was on another inquiry talking to the Royal Flying Doctors Service - because they have a similar issue. They have medical practitioners, and they have to move them out to remote parts of Australia. And they now have a device that can measure the - what do you call it - cardio rhythms remotely, like an echocardiogram. And then the doctor can look at it remotely and then determine whether to go or not, or whether it's just simply something that a tablet needs to be taken. So that type of thing surely is something that - - -

MR McCANN: The telematics side, and actually being able to monitor their machines and look for trends - you know, because we've got a lot of, you know, history in regards to a machine working at 40 degrees in Moree doing X-amount of work, and fuel burn and all these, I guess, parameters, to actually say, well hold on that just doesn't look right, you know. And even to the point where we've got service technicians now - they'll make a phone call and say, 'Have you done something? Have you changed something?' You know, even to the point of inflating tyres. When we get down to the point, we actually know that there's a tyre flat.

And, again, our industry is moving at a rate of knots towards autonomy. And it's driven from, again, the same problem we have with manpower in the regions, in we can't get - you know, especially this year there's no backpackers, you know, for harvest and et cetera. So, that's even becoming more reliant on the telematics. Hopefully Telstra will catch up one day so we'll actually have mobile phone service everywhere. But that's a different story.

COMMISSIONER LINDWALL: There are solutions to that.

MR McCANN: There is.

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COMMISSIONER LINDWALL: I mean, you're right, and we did an agricultural report - regulation report - a few years ago about the injuries and deaths caused in agriculture. But don't you think it might be mostly the operation of the machine, rather than the repair of the machine, that's causing the injuries and deaths. I mean, how many do you have data on - how many farmers are injured or die from actually repairing their equipment, as opposed to just operating (indistinct).

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MR McCANN: There's probably - because a lot of the repairs are done on farm. So, they're not brought into a dealership, because of the size, and et cetera. I think probably the larger one is injuries sustained because there's - you know, there's not a workshop full of people. It's one person doing something. You know, we have had farmers that have been trapped by a fall, or you know, a transmission falling on them, and they have actually died because no one found them. Because they're by themselves.

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COMMISSIONER LINDWALL: Of course.

MR McCANN: The other part of it is if it's not repaired properly, or something isn't put on properly, and then, you know, someone's running it up, or as we say - you know, putting it and just starting it and running it and something comes off, you know, the amount of moving parts in a machine, I think, is what - - -

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COMMISSIONER LINDWALL: Yes, well they're very complicated (indistinct).

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MR McCANN: Yes, correct.

COMMISSIONER LINDWALL: Could I ask, Pete - and then I'll turn over to Julie - - -

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MR McCANN: Yes.

COMMISSIONER LINDWALL: Recently President Biden signed an executive order which is quite long - I had a look at it - giving instruction to the US Federal Trade Commission about a whole lot of things including on tractors, or agricultural machinery. And given that a lot of agriculture machinery is made in the United States obviously, what are the implications for Australia from that executive order (indistinct).

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MR McCANN: Yes, at the moment we're still - as you said it's quite an in depth report. We're still kind of understanding it and talking to, obviously, all of our - the head offices over in the US to understand what they're going to do. I think it will be a good thing for the industry, because it will open it up a little bit. And, you know, there will always be, to a certain extent I think, farmers will engage for fixing what they can - especially if they're under pressure. And there will always be, you know, a certain amount that will actually say, no, it's, you know, it's passed. Or there will be the guys, you know, you get to those corporate - the corporate farms where, you know, they have a service agreement with the dealership. So, the phone call is - it's something like, 'Right, you come out.' So, it will be interesting to see how that all flows through and what kind of parameters are put in place.

And you are right - most of the machinery - well, it's pretty well built all over the world, but they've all got head offices, and there is a portion of it built in the US, (indistinct).

COMMISSIONER LINDWALL: I'm sorry, Julie. I've got one more question. (Indistinct) others, actually, but this one is about what was submitted by the Motor Transport Association earlier, which you were here for, where they feel like - (indistinct) like your franchisees, they are squeezed by the customer and the big manufacturer in the United States. Is that still - -

MR McCANN: I think there's - squeezed in what way?

COMMISSIONER LINDWALL: Well, they try and push warranty repairs. I mean, I heard it previously too where a customer who owns a motor vehicle goes to the dealer to get it repaired, and the - and there's very strong contracts between the franchisee and the - say, General Motors or Toyota, or whatever. And they basically push back the cost to the franchisee, rather than taking it on to the manufacturer.

MR McCANN: Yes, it's probably not as prevalent in our industry. Again, because I think it's just - it's mainly driven from the size.

COMMISSIONER LINDWALL: Yes.

MR McCANN: You know, agriculture is very much a relationship industry. You know, we've got dealers just in my company that have been dealers with us for 70 years. And we've got guys that are three years. So a massive range. But, yes, it's more - you know, we're always - you know, even you look at, you know, breakdowns. You know, we keep a - again, in reference to my company - we keep a fleet of machines at planting time to do a replacement. If we can't fix your certain machine in 24 hours we'll send you a new one to use while we fix your other one. Because of, again - - -

COMMISSIONER LINDWALL: Because it's so time sensitive.

MR McCANN: Yes.

5 COMMISSIONER LINDWALL: So, Julie, sorry?

COMMISSIONER ABRAMSON: Thank you, Pete. I just want to test out some ideas, Pete. It's not necessarily that this is the Commission's view. But if everything is so working well in terms of parts and all of those types of
10 issues, how come there's so much noise, and how come the ACCC had said that there's something that needs to be addressed? And bear in mind, Pete, that we're pleased to have you here today, and we're testing ideas.

MR McCANN: No, no. It's a hard question to answer. Because after sitting
15 through three days, and hearing consumers and whitegoods, and phones and recycling, I was kind of scratching my head a little bit to understand - it's a strange bucket for the ag industry to be in. I think the greater concern is that - you know, going back to my earlier statement - is we haven't got a really good snapshot of what the growers are feeling. From 355 people, that's - in
20 my eyes - that's not a lot of people to talk to. You know, it is - I actually think it should be a lot wider. And I know their survey went for a lot longer than they did, because we had Covid and et cetera.

And, you know, farmers are not overly excited about sitting in front of a
25 computer and answering a survey. But in all honesty, Julie, I don't really know, to be honest. Because, you know, we - from my - again, talking from my point of view - we bend over backwards to keep our farmers going. And, again, from my side of it, you know, I want to keep my customers. I don't want John Deere to get them, or AGCO. So, you know, we do go over and
30 above to maintain our customer base, because there aren't - and the other thing is, we're not creating new farmers. We're not opening up new land. If anything, the industry is actually (indistinct) at a rate of knots.

COMMISSIONER LINDWALL: Consolidating.

35 MR McCANN: You know, we have seen some changes with what's happening with China and the, you know, the money coming out. But, you know, gone are the days where, you know - I'm off a family farm at 5000 acres. You know, and that manages just to support one family. Hence why
40 I'm not on the family farm. But, you know, you've got to get the scale now. It's all about scale to obviously spread your risk, and et cetera, and drought and all the other enjoying things of agriculture. So, I can't really answer that, Julie, I'm sorry. I don't really know why.

45 COMMISSIONER ABRAMSON: Thank you Pete. Look, I did want to ask you some very specific questions, I'm happy for you to take them on notice. When you talk about warranties, you talked about restrictions that wouldn't

apply for non-critical work. Well, of course, the million dollar question is what's non-critical work?

5 MR McCANN: So that's more - so the non-critical side of it is more, you know, spinning filters and if there's a bearing that's broken that is replaced by a third party. We're not going to say, 'You've got no warranty because you didn't use our dealer to do that.' It's more the lead in effect that, you know, let's say for argument's sake the third party repairer doesn't put oil in it, or enough oil in it, just for argument's sake, and the engine locks up. The
10 problem being then is we're not going to be overly keen to go and put a new engine in it, because again it wasn't done properly, or it wasn't done to spec.

Now, that's a very, very basic example. And I would be very shocked that that would happen, but it does. You know, because a lot of the times the
15 other part of it is that most of these guys, when they are doing repairs they're usually under pressure; (a) there's another job - because I think one thing in the ag industry with third party repairers, then it's not like a (indistinct) of it - there's not 20 of them. It's one guy usually. And this has been another kind of concern that we've got. Those guys are not always breeding up
20 apprentices to go back into the market, because it's a small outfit. You know, it's one guy, it's a service truck and (indistinct) that runs around, you know, kind of doing the odd parts, or the gap filling, I guess you'd say from that point of view.

25 But, yes, that's probably - I can get you more information on that if you want a better breakdown, Julie?

COMMISSIONER ABRAMSON: Yes, it's actually quite important. The other issue to is why is it then, Pete, that we hear a lot - (indistinct) well, I
30 understand that - but we get comments and submissions by people - we got one, I think, from grain growers who said, well, because a sensor was misbehaving, it actually stopped the whole machine and then we couldn't get the code for the sensor - I don't want to speak out of turn with grain growers, but it's that type of argument. So, why is that a problem if, you know, the
35 dealers and the OEMs are assisting farmers?

MR McCANN: Yes, well I think - the only thing I can think that there would be an issue with that is more time limits to get to it. Like, you know, there was - we had a discussion with the NFF about - I think there was a comment
40 made that there was a person with a machine down for months. Now, that's not, you know, again for our business that's not ideal. You know, this is why we keep machines in house. You know, now there could have been parts supply, definitely. But the other lead into that is what we do for parts is we will - also from those machines that we keep in our kind of manufacturers'
45 inventory within Australia, is we rob them.

5 So, we'll go and take that sensor off a machine and send it out, again all purely focused on getting that guy going. So, you know, there possibly could have been an issue of supply, you know. I'm pretty comfortable to say our guys don't sit there and say to a customer, 'No, we're not going to give you the code,' you know, or we're not going to help you out. Again, it's very hard to make an assumption on very limited information, I suppose from that point (indistinct).

10 COMMISSIONER ABRAMSON: Look, thank you Pete. And you can - I'm sure you'll respond on this in your submission - but I have read through your statements of principles, so it will be interesting to have some background in your submission about how that came about. And, as I said, thank you for being here today. So, thank you.

15 MR McCANN: No problems, thank you.

COMMISSIONER LINDWALL: Thank you Pete.

20 COMMISSIONER ABRAMSON: Back to you, Paul.

COMMISSIONER LINDWALL: Also about the round tables you were talking about - - -

25 MR McCANN: Yes, we'd be very interested in that. And just for our firmware, which has come up in the last little while, we are moving towards firmware over the air, because as much as our farmers don't like doing surveys they also don't like pressing, 'update firmware.' So, we're now sending it to them via telematics.

30 COMMISSIONER LINDWALL: Thank you very much (indistinct).

COMMISSIONER ABRAMSON: Thanks a lot, Pete.

35 COMMISSIONER LINDWALL: Now, I'll invite Minister Shane Rattenbury. Shane, how are you today?

MINISTER RATTENBURY: (Indistinct).

40 COMMISSIONER LINDWALL: Excellent, yes.

MINISTER RATTENBURY: (Indistinct) interesting day.

45 COMMISSIONER LINDWALL: Very interesting. You get all sorts of different products, don't we Julie?

MINISTER RATTENBURY: Afternoon, Julie.

COMMISSIONER ABRAMSON: Yes, I've learnt - I have to say, Minister, I've learnt a great deal in the course of this inquiry.

5 MINISTER RATTENBURY: I can tell that from the questions you were just asking.

COMMISSIONER LINDWALL: The confusion is we've got a camera over here, and you'll see her there. So, sometimes you feel like you're doing this, but don't worry too much. So, perhaps, if you wouldn't mind introducing yourself and just give us a statement, that would be (indistinct).

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MINISTER RATTENBURY: Yes, certainly for the opportunity to appear this afternoon. I'm really pleased with the work the Productivity Commission has done on this report, and I'm very interested to see how the public hearings go. Shane Rattenbury, the ACT Minister for Consumer Affairs. And this is an issue I've had an interest in for some time now, including having put the proposal to the Consumer Affairs Ministers that we start this piece of work, and ask the Productivity Commission to undertake this inquiry. So, I'm very grateful for the work that you've done, and I think it's really helping to illuminate this discussion in Australia about where we need to go.

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For my mind, the purpose of the reform in this sort of broad right to repair space is two-fold. One is about consumer rights, and the other is one of environment and sustainability. And I guess the good use of the valuable resources that we extract to do all the things we'd like to do in this world. I think the Productivity Commission's report, and (indistinct) their findings are very welcome. And I was intending to comment on a few of them specifically, if you're happy for me to sort of (indistinct).

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COMMISSIONER LINDWALL: Please. That would be perfect, yes.

MINISTER RATTENBURY: Because I think the work you've done so far really confirms the issues that the ACT Government has been concerned with for some time. And that is there are a number of unnecessary barriers that manufacturers of common household goods, and in particular digital and smart goods, have established that prevent consumers from fully realising their right to have a good repaired at a competitive price. And I do note the really interesting part of your paper - it's actually at page 4, right up front - where you talk about what is the notion of a right to repair. Because I think it is quite broad, and that elaboration you do in that section I think draws the issues out quite well.

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And I think there are a number of facets to it. But that notion of the ability to get repairs, the ability to get parts, the ability for repairers to access the tools and information they need to make those repairs, and to have repairs at a competitive price are some of the key elements of a right to repair in my

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mind. And I think if you talk to people about it, (indistinct) it's very hard to get things repaired. And that raises interesting questions of why is that the case. And that's, in many ways, the heart of this issue. I agree with the Commission that the perspective of manufacturers needs to be taken into account, and that they're integral to finding solutions to some of these issues. And certainly we don't want governments inhibiting innovation.

And we also need to think about the security and intellectual property protection elements. So I think they're all a really important part of this equation. But for my mind, the companies are pretty good at sorting these things out, and there is a role here for governments to perhaps counteract the strong influence that companies have in that space, and seek to rebalance things in consumer's favour a little bit, and also to address those environmental issues. I certainly support, in principle, the recommendations made by the Commission, relating to the improved enforcement of consumer guarantees through the introduction of alternative dispute resolution processes, and also your idea of a super complaints mechanism.

These, I think, would give state and territory governments the capability to intervene more strongly. But also, obviously empower consumers to take up their rights. As you've probably heard me talk about before, the ACT Government has actually legislated a similar measure where we've created a binding conciliation process where our consumer agency - Access Canberra, in this case - can compel a company, or an organisation, to come to the table to actually have a conciliation process with a consumer over - you know, these are for consumer matters under \$5000. I guess our experience is it's very hard for consumers to take matters up. And this is - it hasn't started yet. It's just about to get underway; the legislation comes into force in the next few weeks.

So I can't tell you how it has practically gone so far, but certainly the intent is that it will give consumers greater ability to resolve matters that have proved very difficult to resolve in the past. So, I think the proposal you suggested - this super complaint mechanism - can play a similar role to address one of the shortcomings of the current consumers guarantees is that they still fall to an individual consumer to enforce them, with little in the way of broader mandatory enforcement where a business fails to engage with the consumer. And that's certainly one of the issues we've sought to address. So that is a general consumer problem that I think manifests itself in this space.

The other benefit is potentially the ability for advocacy groups to pursue issues on behalf of a group of consumers, or some vulnerable and disadvantaged consumers. I think there's real merit in your proposal there. So, I think that is a welcome recommendation and one that our legislation - like we say - it provides a bit of a template for. And as it rolls out you may see some of the implementation issues that do or don't arise in that space. I think also having the ACCC working in collaboration with state and territory

regulators to develop and publish estimates for how long certain products can be reasonably expected to last, in other words better inform the consumers about planned obsolescence as the case may be, would be a powerful tool for consumers and advocacy groups as well, and when it's coupled with our
5 alternative dispute resolution processes I can really see the opportunity for increased and informed estimates and products' durability resulting in more positive outcomes for consumers, and on that point I'd welcome the Commission considering further whether it can identify ways that Australian-based regulators could develop appropriate and reasonably accurate
10 durability standards for products manufactured overseas.

As you'd be aware, at the moment there are systems for when products come into Australia about various safety standards and the like, and I'm interested in whether we can develop mechanisms for this question of how long a
15 product is supposed to last and some of those issues that I think - - -

COMMISSIONER LINDWALL: And repairability too, I guess.

MINISTER RATTENBURY: Yes, this sort of space. So that is another
20 point I was going to touch on. Your analysis of barriers to repair I think is really informative, but it's also quite concerning in the extent to which certain product manufacturers were found to use their stronger bargaining position in the marketplace to dictate both how a consumer might seek a repair as well as frankly encouraging them to take up new products over current versions,
25 which is at the heart of, I think, some of the - particularly the environmental concerns in this space is.

Repair becomes so difficult that the obvious, and in some ways rational and easy choice, is to throw the product away and just buy another one, which I
30 think both serves the manufacturer's interests, certainly in these personal products, but does not serve the interests of resource retention and the like. I think, as a matter of principle, consumers should be able to use an independent repair or access the resources needed to repair a product themselves, and that goes to that heart of the definition of a right to repair.
35 This is really central to reducing waste, particularly where there is that deliberate shortening of a product's lifespan.

On this issue I support the Commission's recommendation that more work be done by Australian governments to improve consumer's awareness of their
40 statutory consumer guarantees. I think this a broader consumer issue that is particularly relevant in this space. I don't think people have a really good sense of their rights, and there's probably a lot of evidence about what people's rights are or are not, and some of those are probably happily allowed to stand as missed by companies not necessarily being forthcoming about
45 information.

The last area I thought I'd be useful to touch on is just intellectual property, and then I will stop and we can go to questions and discussion, but I particularly commend the Commission's considered approach on the challenges posed by the conflicts framework that currently exists in Australia regarding the protection of intellectual property and copyright laws. The
5 government - the ACT Government supports in principle appropriate reforms to Australia's copyright laws in order to better facilitate the sharing of repair information and access to repair information behind digital locks where such use would be - and I think you used the words "fair".

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We have to find solutions that help people - consumers and the environment, and these vexed situations of clashing of rights and principles. We do need to prioritise consumers and the environment in my view. We also support in principle the development of a positive obligation on manufacturers to make
15 repair supplies available to third parties. I thought there was a really interesting story recently that came out; you may have seen it - the comments made by Steve Wozniak, one of the founders or co-founders of Apple.

20 COMMISSIONER LINDWALL: Yes.

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MINISTER RATTENBURY: And he talked about the fact that it was his ability to tinker with hardware and software to learn from and improve upon products through his own ingenuity. It actually was really integral in developing the company Apple and its products. His ability to just muck
25 around with things and work out better ways to do it was central to that innovation, and so it is ironic now that Apple is sort of one of the companies that's so often cited in this space as being one that is clamping down on people's ability to repair or tinker with their products.

30 Sorry, there was one other point I wanted to touch on, which was this issue of product design, obsolescence, and e-waste. This is certainly part of what you've talked about and you've made some interesting points in your report about this. Some of the behaviours that the Commissioner has observed, such as the deliberate shortening of a product's lifespan by manufacturing
35 products using solder that does not allow the product to be opened and repaired, or refusing the supply of component parts or discontinuing software updates. These are a market failure and also need to be countered.

40 I do strongly believe it's an important consumer right to be able to tinker, get fixed, change or improve a product, and for people to make the product last as long as they want it to, or at least reasonably so, and so we support the Productivity Commission's recommendation of improving product labelling to increase consumers' awareness of the components of a product, and we
45 also strongly support changing product stewardship programs to include the counting recycled and repaired goods in their statistics. Such approaches, I think, can have a combined impact of stemming the creation of product turnover and also e-waste by extending the product liability and lifespan.

5 The final comment I'll make in this space is that - and I made this at the
repair summit the other week, so you will have heard it before, but is I would
urge you, in your further work - much of your analysis so far as focused on,
in my reading at least, the end product and the potential for solutions at the
end of the line for consumers, and I think that's a really important area of
consideration but I do think that we need to consider more of the upstream
issues as well. How do we actually get products designed in a way that
makes them last longer, ensures that they can be unlocked and opened and all
10 the things that consumers are talking about in this space, and advocates, and
so I'd welcome the Commission perhaps developing that side of your work
more thoroughly as you go through your (indistinct) process.

15 We are seeing this more of a feature in the European discussions about a right
to repair and their sort of Ecodesign Directives and the like, and I think that if
government doesn't intervene in this space companies will simply keep going
down the path they are, and so I would argue that there is a market failure in
this space and therefore there is a role for regulators to look at how these
issues may be addressed. There's plenty more to say but let me stop there and
20 allow for more of these questions. Thank you for the opportunity.

COMMISSIONER LINDWALL: Thanks very much, Shane. Could I ask
upon the points you've made there about the front end? We'll start with
labelling, for example. There is a French scheme that's been put out about
25 repairability and durability. To what extent - and because there's costs and
benefits in this - we can adopt a scheme that's already there, it's know to
some extent and it allows for some level of harmonisation? Or we could go it
alone and maybe get a better system. Do you have a view on each of those
options?

30 MINISTER RATTENBURY: Look, I don't have a fixed view but I'm
always very conscious, in a global context, which is where Australia does sit,
and manufacturers are global, we are a small market, and so where we can
frankly copy others, draw it into certain schemes, I think this is desirable.
35 There's no need to reinvent the wheel if there's a good scheme out there that
we could simply join into. You know, the Commission is of course always
looking at the cost benefit of various things and all those sort of issues, and
obviously the costs will be cheaper.

40 COMMISSIONER LINDWALL: So obviously the Ecodesign initiative in
the EU is something we're very interested in, and again, Australia could have
its own design rules which basically made it much more difficult to bring in
products which are not easily repairable. The risk of that could be that if we
overstepped it too far we'd lose a lot of products for less - disadvantaged
45 people which are less expensive. So there's a balancing act there, but I agree
that if there is useful overseas experience and there's a larger market we can
piggyback upon it's probably very helpful. One things that - - -

MINISTER RATTENBURY: In the context of, you know, seeking and negotiating free trade agreements with the European Bloc and others.

5 COMMISSIONER LINDWALL: Exactly.

MINISTER RATTENBURY: I guess the more consistency we have the greater the economic efficiency.

10 COMMISSIONER LINDWALL: Exactly. Now, one of the things that came up, I think it was yesterday, was about procurement policies both by governments and also large corporates where they can actually specify in their policy, like, rather than just value for money maybe you have to - the suppliers have to have reparability as an important part of it. Has the ACT
15 Government thought about that in its own procurement policies?

MINISTER RATTENBURY: I must confess we have not. No one's raised that issue with us before, but I think it's a very important point. I think as a matter of principle government procurement policy can be a very powerful
20 way to shift markets, set new standards, and I think we'll certainly take it on as a suggestion to have a look at.

COMMISSIONER LINDWALL: Yes. No, I think it'd be quite interesting, because the labelling can help individuals understand and then perhaps they
25 can exercise their market power collectively, if you like, by buying things that are more repairable. In the end I think that manufacturers respond to consumer demand, and clearly, you know, governments are fairly large consumers so they have an opportunity to influence there. The other thing that came up was about - and I don't know about the legality of this and I'm
30 not a lawyer, but Julie is, and - is about the Surveillance Act.

Now, there's a Commonwealth Surveillance Act, and this is with respect to the GPS tracker idea that we've put forward.

35 MINISTER RATTENBURY: Yes.

COMMISSIONER LINDWALL: That because of surveillance Acts, and I don't know whether there's also an ACT surveillance Act, you have to notify people, and it can be quite restrictive, especially if you want to check whether
40 somebody is going countries where it's poorly disposed of, for example - waste that's been exported. So, I don't know if you have a view on that.

MINISTER RATTENBURY: Well, I thought it was a very interesting idea in your paper, and with the way technology has gone it would be a really
45 inexpensive way, I should imagine, to add those sort of trackers.

COMMISSIONER LINDWALL: Yes.

5 MINISTER RATTENBURY: I think the nature of any sort of concerns with surveillance goes to informed consent, and being very clear with purchasers that these things are (indistinct) I think these things are manageable if one is up front and transparent, both about the fact that the tracking exists and probably at the back end, having the appropriate safeguards for personal information.

10 COMMISSIONER LINDWALL: In terms of our proposal for changes to copyright laws, to either bring in fair dealing or fair use exceptions for repair, do you have a view on one - you know, fair use versus fair dealing, or, (indistinct)?

15 MINISTER RATTENBURY: No, not that level of detail. I think the principle of where you've gone in the recommendation is very much in the spirit of where we see this policy really needing to go. I don't have a view on sort of the particulars of that area that (indistinct).

20 COMMISSIONER LINDWALL: No, that's all right. And you're a great supporter of, obviously, product stewardship schemes if they're efficiently designed. I mean a lot of what we've said is that these schemes can be improved, and like any scheme they should be reviewed after a certain period of time to see they're meeting their objectives. So, I probably should turn to Julie to ask some questions.

25 MINISTER RATTENBURY: Sorry, Julie, before you do - on that point, though, I think one of the interesting parts of the, sort of, product stewardship schemes is, you know, the e-waste one is a good example - you can take your TV and dump it for free, and all these sort of things - but the risk is that in that broad public understanding that recycling is a good thing, it fails to recognise the step before, which is the potential use or repair.

30 COMMISSIONER LINDWALL: Yes, exactly.

35 MINISTER RATTENBURY: And so there's a potential perverse outcome where the simplicity of those schemes fails to recognise the value of the product.

40 COMMISSIONER LINDWALL: Exactly.

MINISTER RATTENBURY: And its potential reparability.

45 COMMISSIONER LINDWALL: Yes, and we had testimony of someone yesterday, I think, who pointed out that they'd gone to the NTCRS and found computers that were perfectly useable, so.

MINISTER RATTENBURY: I'm sure.

COMMISSIONER LINDWALL: Yes.

MINISTER RATTENBURY: Yes, I'm sure.

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COMMISSIONER LINDWALL: Julie?

COMMISSIONER ABRAMSON: Thank you. Minister - thank you so much for coming along, it's greatly appreciated. I had a couple of questions. One, I want to ask you because I'm making an assumption about your portfolio responsibilities and your consumer affairs hat meaning that you also have responsibility for some consumer safety - product safety - issues.

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MINISTER RATTENBURY: Yes, I do.

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COMMISSIONER ABRAMSON: We've heard a lot - we were given a lot of testimony - especially by one of the industry groups, that independent repair is inherently unsafe. And we gather that in some particular things - you know, medical technology - you would want to be quite careful, and the TGA regulates that area. But you're a Consumer Affairs Minister with responsibility for safety, so I'm just interested in what crosses your desk and your views about that.

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MINISTER RATTENBURY: I think this is an area that is potentially a vicious cycle. In the sense that if you don't allow repairers to be involved, you get either - and you don't provide the right equipment - people will cut corners, seek to find ways to do things, will be less skilled. Whereas, if you have a healthy and robust repair industry, you will get higher levels of skills and the safety issues will not be as prevalent as perhaps has been suggested by some of the evidence. So, I don't accept that as a principle argument of why you shouldn't have a repair industry. I think it is a risk if you don't have a good repair industry.

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COMMISSIONER ABRAMSON: Thank you, Minister. The other question I wanted to ask - and forgive my ignorance here - you said that the conciliation was limited to \$5000. Is that something to do with the way that your scheme is put together? Or was it a policy decision that disputes under that require the extra assistance?

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MINISTER RATTENBURY: It really was a policy decision. Partly because we've not done something like this before. We're looking to set a limit on it see - to get a scheme going. The second was that often it's the small matters where it's not worth somebody seeking out legal assistance to take up a matter, and you get a greater power imbalance between the consumer and the manufacturer, or the retailer, or whatever. So, we see that those small consumer matters are a place where there's the most potential to help people who would least be able to help themselves, or it's least economically

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worthwhile for them to contest the matter with the manufacturer or the retailers they're having a problem with.

5 And, it gives us a starting point. If we found that the limit was a bit low, we can raise it in the future. We (indistinct) really build a successful system to start with.

10 COMMISSIONER ABRAMSON: Thank you, Minister. The final question I think that I just wanted to ask you about is with super complaints. The paper - well, our draft report - actually put that power with the ACCC, mainly because we'd understood the experience in the past - I know you've been a Consumer Minister for some time - was that most of these type of issues were national issues. And we understood that previously with the (indistinct) labelling, which I think was part of a trial for super complaints with NSW, they tended to be national. That was not to say that we had a closed mind about states and territories, it's just that we formed the view that we thought it would be a matter for a national regulator. I'm just interested in any views that you have, given your experience in the area.

20 MINISTER RATTENBURY: Yes, look, I think you are right to identify that national need, and because of the way federation works, and plenty of products will be sold in Australia, as opposed to a state or territory. And the consumers and the head office of a company might be in different jurisdictions. Having a national approach, I think, is very attractive in that sense. I think my answer to your question - my response would be - ideally you would have both.

COMMISSIONER ABRAMSON: Yes.

30 MINISTER RATTENBURY: That we would have a national power, because that will be the right jurisdiction and the right forum for some issues, and that states and territories would have a mirroring power, as we will have, in a slightly different form, to deal with the issues that best suit that jurisdiction, or that sort of tier of government.

35 COMMISSIONER ABRAMSON: Thank you, Minister. And thank you so much for giving us your valuable time. It's most appreciated. Paul?

40 COMMISSIONER LINDWALL: I don't have much really, except to ask about - do you know much in the work in the ACT in terms of repair cafes? I think I met one at the Repair Summit.

45 MINISTER RATTENBURY: Yes. Yes, look, it's been very popular in the ACT. There's actually probably more repair cafes than even I realise. I've discovered a few new ones recently. What I find really interesting is that, you know, one might argue they've been, sort of, the trend of a particular crowd. But the newest one in Canberra is running out of Tuggeranong, and

it's wildly popular, in the sense that they're having to take bookings, they can't keep up with the pace. And so I think that - - -

COMMISSIONER LINDWALL: And it's not just electronics then?

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MINISTER RATTENBURY: No, it's predominantly electronics, is the feedback I've heard. But it's all sorts of things, you know, it's bicycles, all sorts of products. But mostly - often common electronics - toasters, and these kind of things - that I think people assume should be repairable and want to not just throw them away. And most people do have that value of not wanting to throw things out.

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COMMISSIONER LINDWALL: Yes, exactly. And you see some passionate people there who are very committed.

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MINISTER RATTENBURY: The other place we've seen is a bit of connection with the Men's Sheds.

COMMISSIONER LINDWALL: Yes.

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MINISTER RATTENBURY: So they were set up for a different reason, but I think have become a natural place for those repair cafes to take place, because it's that same notion of tinkering.

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COMMISSIONER LINDWALL: Exactly. Yes, it is exactly, yes. Well, thank you very much for appearing today Shane.

MINISTER RATTENBURY: I appreciate the opportunity.

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COMMISSIONER LINDWALL: And I take the points that you've just raised and where we should look more at for the final report. And we certainly will.

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MINISTER RATTENBURY: It's easy to say that when you get to read it afterwards. Putting these reports together is very challenging and I appreciate the work the Commission has done (indistinct).

COMMISSIONER LINDWALL: Thank you for coming, yes.

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COMMISSIONER ABRAMSON: Thank you, Minister.

MINISTER RATTENBURY: Thank you, Julie. Nice to see you remotely.

COMMISSIONER LINDWALL: In locked down Melbourne, yes.

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COMMISSIONER ABRAMSON: (Indistinct).

COMMISSIONER LINDWALL: She was lucky to come to the repair summit, it was - - -

5 COMMISSIONER ABRAMSON: Yes, I had to endure my Covid test on return, but I thought it was worth it for the quality of Leanne's Summit.

MINISTER RATTENBURY: Very good. Our thoughts are with you down in Melbourne.

10 COMMISSIONER ABRAMSON: Thank you.

COMMISSIONER LINDWALL: Thank you. Richard?

15 MINISTER RATTENBURY: Thanks again.

COMMISSIONER LINDWALL: Welcome, Richard.

MR DUDLEY: Thank you very much. I appreciate it.

20 COMMISSIONER LINDWALL: If you could give your name and organisation, and perhaps give a little bit of an opening statement, that would be perfect.

25 MR DUDLEY: Richard Dudley, Chief Executive Officer of the Motor Trades Association of Australia. My members are state and territory Motor Trades Associations and Automobile Chambers of Commerce, as the case may be in Victoria and Tasmania. Automotive, I should say, Chambers of Commerce. And their constituents in turn represent the entire supply chain for the automotive industry. So everyone from new car retailers, all the way
30 through to recyclers, dismantlers and everything in between. Some 53 professions, specific professions, and 13 industries. So, we are the only national federated body that actually represents the entire supply chain. That can make for very interesting meetings.

35 COMMISSIONER LINDWALL: Yes, I can imagine.

40 MR DUDLEY: And it can also make for some advantages as well, where we can see a whole range of issues that are applicable to each of those industries in the sector that perhaps those that are closest to it can't. We thank the Commission, not only for the opportunity to address you here today, but also for a very important report. One recognised by President Biden in sorts with his executive order of 9 July, in terms of the broader issues of competition, which I'm sure the Commission is extremely aware of. MTAA and its state and territory member associations have been involved in critical issues on the
45 issue of service and repair information provision with the automotive industry for well over a decade, and I'm sure you've heard from some of my members, and you've also heard from some other kindred organisations as

well in that space, both supporting the need and also not supporting the (indistinct).

5 MTAA was a little bit different. We were heavily involved prior to the Commonwealth Consumer Advisory Committee investigations early in the last decade, around 2011 and 2012. Our stand at that point in time was that there was insufficient evidence presented - we knew there was a problem, but we couldn't quite lay our hand on exactly what the nature of the problem was then. And we worked very hard to exactly - with all of those business
10 constituents - to try and find exactly what the nature of the problem was.

And, as we subsequently found out, it was about elements of information that were critical to repairs not being provided. So, a consumer could exercise their choice, go and get their car repaired at an independent repairer who
15 were suitably qualified, and have access to the tools and equipment, would conduct the repair to a point and then not be able to complete it. And I'm sure you've heard many of those examples. At that time we thought it was beneficial to try a voluntary approach. So, on a very elongated pathway we were heavily involved in the voluntary arrangements that came about, and
20 which subsequently failed. Now, the failure of those was due to a number of different factors, not the least of which there was no enforcement capability, there was no ability to try and highlight the problems, et cetera.

And so we kept on the pathway of (indistinct) number of inquiries, both ACL
25 reviews, franchise and trade reviews, believe it or not, this was also raised in. And also, of course, the ACCC's New Car Market Study in 2017. Which led to two years of investigations by the government and its respective departments, which I think there is now a number of public servants that have an intimate knowledge of this, automotive and other issues. We welcome the
30 draft report, and we consider the recommendations in it as being very constructive. We have concerns about a couple of them in terms of unintended consequences about how they might be applied, as more opposed to (indistinct) recommendations or the findings themselves.

35 Modern motor vehicles are now highly complex. They're integrated and increasingly interconnected. And that's going to accelerate over the next few years. We're going to see quite dynamic and forever changing aspects to the automotive industry, mobility and the connectivity of those essential devices. They should not be put in the same category - and this is an important point -
40 as a toaster, or a refrigerator, or a computer in its own right. And I'm not being trite there. The interdependencies between the systems and operations of an automobile are going to become far more complex with automotive driving systems, with the ability for the cars of the future to basically navigate, for example, one end of the Australian Capital Territory to the
45 other, without a driver actually touching the (indistinct) of the vehicle.

There is going to be a massive amount of interest and diversification in terms of what's in the cockpit of those vehicles. In terms of the data that those vehicles, it's mobile computing platforms, are going to be producing, about who is going to own that data, and more importantly who is going to be able to access it, in terms of being able to rectify issues arising from it. Last month the MTAA and its members released Automotive Directions which touch on a few of these issues. And it's a comprehensive industry scheme that took us eight months of data analysis mining and information gathering, not only from available data sources, but also from a thousand of those businesses I previously mentioned.

We note, as I said earlier, the 9 July executive order and a specific reference to right to repair and the rationale behind that. Particularly, the unfair competitive restrictions on third party or self-repair items that were raised in that executive order. As I said earlier, we have competing members. We have automotive dealers who have service departments; we also have independent mechanical repairers. We've been instrumental in assisting the government formulate the Service and Repair Information Bill, and we are heavily involved - along with others - in terms of how that bill we applied shortly, and I'm happy to take questions that the Commission might have.

COMMISSIONER LINDWALL: Thank you for that. That's great. In terms of - if you were to compare one industry, which is agricultural machinery, to motor vehicles. Both are very complicated, and you can argue which is more complicated. Autonomous vehicles, if I'm not mistaken, level 4 or something and above, are excluded from the motor vehicle scheme, I think, if I'm not mistaken.

MR DUDLEY: At this stage.

COMMISSIONER LINDWALL: At this stage, yes. But as I was saying to Pete earlier, that in terms of a farmer on - living remotely - they're probably - they're fairly self-reliant individuals and probably want to do a lot of things themselves. But to the average motor vehicle consumer would they - I mean, maybe 20 or 30 years ago they'd do a lot of repairs themselves - but I would imagine more of them would take them to either an authorised repairer or a third party repairer, rather than trying to do it themselves. So, I guess my question is, is the issue about poorly qualified people repairing it less of an issue in motor vehicles because of that?

MR DUDLEY: Look, we would advocate - and we've been a strong supporter of the scheme rules which are currently being developed for the Service and Repair Information Bill - that repairs in general terms for a motor vehicle product should be performed by people who are adequately qualified to do so. They should also be not only qualified by way of trade qualification et cetera, which has its necessary competencies tested, but also in terms of emerging technologies, et cetera. However - this is a classic example of

where not all issues are going to necessarily fit the bill. For example, we have great consolidation going on at the moment of motor vehicle dealerships.

5 So, in communities that used to, perhaps, have a dealership - and this applies to farm machinery and industrial machinery as well - so most communities that may have only been 150, 500 people, may have once upon a time had a dealership. Now, they've been absorbed into the regional location - in some respects, those regional locations are now completely disappearing as well.
10 And, in some cases, that's being replaced by a mobile technician. In other cases - that mobile technician may be 400 kilometres away. The Takata recall was an interesting exercise where arrangements had to be made - - -

15 COMMISSIONER LINDWALL: That's the airbag - - -

MR DUDLEY: - - - to enable those technicians to go out to urgent cases of vehicles that were located in tropical areas where the risk of those airbags deployed was far more pronounced. And arrangements had to be made by manufacturers to get technicians to the site of the vehicle, as opposed to
20 waiting for it to turn up at a dealership somewhere. The same applies in agricultural perspectives. Agriculture and farm machinery dealers are often at the forefront of a whole stack of things. We'd argue they were at the forefront of the need for change in franchising arrangements, and we're working very hard now to get them included in the recent changes to
25 franchising for motor vehicle dealers.

Because it is, in fact, the treatment of farm machinery dealers on the issue of warranty repairs, on the issue of being able to access service and repair information, that was, if you like, the litmus - or the catalyst - for the larger
30 problem. Equally, the ability of farmers who often have a mechanical background to be able to do their own repairs, it should be a case where that's assessed at the time. And there needs to be a level of comfort from the manufacturer, but also acceptance that there are going to be people who are quite qualified and quite able to do those repairs themselves.

35 COMMISSIONER LINDWALL: Now, earlier we heard from James Voortman from the Australian Automotive Dealer Association, and he was saying that a lot of the franchisees in Australia are squeezed between the customer and the manufacturer. Would you agree with that? And then he
40 said that there was some rules being developed, and it's been delayed by two years because of COVID, to make - to give more rights to the franchisee. Are you aware of that?

45 MR DUDLEY: Yes, we've been heavily involved in that. We also share dealers as part of our membership base, or my members do anyway. So we've been actively involved in the franchising changes as well. Yes, they are squeezed. So, for example, when a problem occurs with a motor vehicle,

and I'll give you a case study - it's probably the best way. There's been many examples where a problem has developed with a specific model of motor vehicle. It's known to all of the dealers. It becomes known to all of the consumers of that particular model as well unfortunately.

5

A dealer is instructed - and let's assume that that problem of - and I am relying on this particular brand and this particular model - it was a known fault. The consumers or the purchasers of that product were asked to take it to their nearest dealer to get the problem rectified. What's unknown to the consumer is the litany of problems that occurred afterwards, when they got their vehicle back and it was repaired and fixed, between the dealer and the manufacturer. The manufacturer, wishing to save money on this - and it wasn't a full-blown recall; it was a voluntary type recall - wanted to argue the point on how much the dealer was compensated for the amount of time, effort, et cetera that was involved in the repair, and in some of those situations that went on for months.

So the dealer's actually out of pocket for those - for that time while they're disputing whether it took four-and-a-half hours to remove a gearbox or three-and-a-half, you know, to the extent where one particular dealer has said "Well, a grandmaster technician assembled all of the tools on the - that were required for that transmission overhaul and proved beyond any doubt that the least amount of time they could do it in was four-and-a-half hours.

20
25 COMMISSIONER LINDWALL: Sure.

MR DUDLEY: So they were only being compensated for three. There is a litany of those sorts of issues, so that's why we're saying be very careful about super complaints because of the unintended consequences that may occur from a group of consumers not realising that either the problem may be able to be rectified or that the problem can be rectified and it all comes down to whether it was through an authorised repairer or whether it was through a third party repairer, or whether it was through a designated manufacturer endorsed repairer, and there can be differences to how all three of those work.

30
35 COMMISSIONER LINDWALL: Yes, okay. Yes. I understand that. So presumably if you did have a super complaints scheme it would have to be - the consumer group would have to be speaking to the dealers, who would inform that a lot of this is the manufacturer pushing things onto the dealer, and then the ACCC, if - it would hopefully do a proper investigation so that it doesn't look like it's all the dealer's fault when it might be the manufacturer's problem.

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45 COMMISSIONER ABRAMSON: To be fair, Richard, it's likely in those circumstances, if we look at some of the things we've seen overseas, it's probably likely to be a manufacturer issue and you'd be well aware and I wouldn't put them - go further on it, but there have been some car companies

5 where there have been consistent problems, and that was - they were manufacturer issues, not the dealers', who were in the invidious position of trying to work with the consumers at the same time. The other thing I'd say is that there will be - if it proceeds, there would be safeguards around it as well so, you know, that's something also to be considered.

10 MR DUDLEY: Thank you for that, Julie. That's understood. I think our concerns are centred on the fact that, particularly if you get to durability, who's to say that somebody who used a four-wheel-drive, and this is a case study again, has driven it round - it's a 10-year-old vehicle. Now it's done 15 60,000 kilometres and it was subsequently found out that it actually towed a caravan that was three times the manufacturer's recommended weight, and a claim was made through that state, so a particular consumer affairs body, that the dealer should have known that and should have fixed it, and fixed the problems that arised (sic) out of the usage of that vehicle 10 years down the track.

20 COMMISSIONER ABRAMSON: No, no, I understand. One of the things - and I'm not saying that the Productivity Commission is going in this direction; I'm just interested what you know about the motor vehicle 25 ombudsman scheme in the UK, because when we look at complaint data, and bear in mind we're looking at right to repair, but when we look at complaint data it is heavily weighted in motor vehicles and it's - you'd understand why that would be, is because of the amount of investment for most people; apart from their home that might be their biggest purchase. Do you have any experience in that scheme or any views about that scheme?

30 MR DUDLEY: Yes, we are very familiar with it. In fact, we had a conversation last week on what's happening in the market only last week with our kindred organisation over there. We have mentioned an automotive 35 ombudsman before. We've suggested that that might be a position where some of these activities could be coordinated through outside of the regulator, but in an area that's recognised. I know that there are limitations to, for example, the Commonwealth Ombudsman's role in that respect, and you can't have ombudsman after ombudsman after ombudsman, but it may be pertinent with the range of consumer affairs issues, the range of small business issues, that one of the solutions to that might be to create a coordination point within 40 the ombudsman's office that would be able to channel some of these issues, and that's both from a consumer perspective but also from a business to business perspective that would give weight to the franchising, the right to repair, and offer support to, for example, a new scheme adviser for the service and repair bill.

45 It'll have a responsibility for the service - sorry, for the complaints line, but it would be interesting, and we think beneficial, that they have a go to person, along with a lot of others. Now, that's an enormous amount of work potentially, but we don't think it would be because these issues will all end

up being systemic and systematic issues as opposed to the minutiae. We're interested in seeing how the ACT scheme goes because that might deal with that cohort of level of complaint up to a financial level, but the systemic and systematic issues could be dealt with by a coordination pathway through
5 (indistinct).

COMMISSIONER ABRAMSON: Did you think, Richard - thank you for that. One of the things that's been put to us is one of the difficulties might be that motor vehicle legislation tends to be state-based, but you would see it, I
10 assume, as sort of a harmony type situation where some of the key things would be - have to be agreed to by states?

MR DUDLEY: Absolutely. I mean, one of the issues we have constantly banged on about is there is a lack of harmonisation and a lack of
15 coordination, and with no disrespect to Minister Rattenbury, he did mention that whilst there would be a coordination on labelling; for example there might be some subtle - there might - or it might have been one of the other areas of reform - there would - there might be some subtle difference that
20 might occur for the ACT because of the ACT jurisdiction. That's what worries an industry association like us, is because when you translate that to a small business they have an enormous problem trying to comply with what the range of issues are.

So we're all for one for harmonising and we're all for one for making sure that those issues are as consistent as possible. So if you were to look at
25 labelling, it should be national labelling as opposed to state jurisdictional labelling.

COMMISSIONER LINDWALL: Yes.
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MR DUDLEY: If you're looking at a durability then it's not just on the product. It should also be uniform across the federation as well.

COMMISSIONER ABRAMSON: Richard, one final things, and thank you
35 for your time today, and I'm happy for you to take it on notice, given the time, is the environmental, the e-waste space. You have commented on that before, but I was having a look at your website and you do cover a range of things like tyres and, you know, wholesalers of parts and things, so - in the wrecking industry I gather. So we'd be very interested in having some more
40 commentary from you on that, and also looking at some of the things that we'd suggested around reuse being incentivised in some of the schemes. So we'd welcome that.

MR DUDLEY: We will touch on that in our submission in 48 hours' time, if
45 I get it finished.

COMMISSIONER LINDWALL: Okay, that's all right.

MR DUDLEY: But look - - -

5 COMMISSIONER ABRAMSON: Well, talk to us, Richard. If the 48 hours, given that you're with us today is an issue, please call us.

MR DUDLEY: No, I shall do. Look, our concentration has been on trying to get government to - and the Federal Government in this respect. We're not anti product stewardship but what we are after is take it - look, one cap
10 doesn't fit all necessarily.

COMMISSIONER ABRAMSON: Sure.

MR DUDLEY: Particularly when you've got a product like a motor vehicle
15 that has so many inputs from so many different OEMs, and now that those products are exclusively imported, like many others, you know, it's impracticable and improbable that they'll actually go on a ship and go back to where they came from. So - but that in itself gives an opportunity to our dismantlers and recyclers. We've spent well over \$150,000 analysing the end
20 of life vehicle market. We know that there are opportunities there. We know that there are difficulties in terms of linking an accredited dismantling network around Australia with end users of those products that will come out the other end, and this e-waste issue is critical to us because a lot of that - and we've got statistics which we'll share with the Commission about how much
25 of that's still going into landfill, and we know that there are other means, other ways that that can be dealt with. But our difficulty is you need an end of life vehicle policy framework. You need the enforcement and the accreditation of disposal centres. You need to actually address it like other countries have to be able to address that, and that doesn't neatly fit in with a
30 specific product stewardship program at the moment, but we think it can be adapted to do so.

COMMISSIONER LINDWALL: So - - -

35 COMMISSIONER ABRAMSON: Thank you, Richard.

COMMISSIONER LINDWALL: Sorry, Julie. So at the moment how would you describe the end of life waste disposal for motor vehicles? It goes through a whole lot of processes and lot does get reused and recycled, but - -
40 -

MR DUDLEY: We've established there's a commonality of approach to the decommissioning of a vehicle and the dismantling of the vehicle, including extraction of fluids and gases, et cetera. There are no markets in terms of the
45 steel and other metals, some of them highly valuable, the metals that come out of catalytic converters, et cetera.

COMMISSIONER LINDWALL: That's platinum isn't it?

5 MR DUDLEY: But we also have a situation at the moment where - there's platinum, there's titanium. We also have a situation where there's stockpiles emerging all over the country with plastic bumper bars because the ability to
10 actually use all of those bumper bars are not as prominent as they were, because some of them went offshore. We work with Tyre Stewardship Australia and our retailers in that space, so obviously working with - in regard to TSA and the ability to get those tyres reused. The trouble is, though, there's still too much going to landfill and there's still too much in terms of what happens to product - by-products when markets disappear or fail.

15 COMMISSIONER LINDWALL: Yes.

MR DUDLEY: For example, steel at the moment, for baled steel, it has a cyclical effect. We can tell you that when these - the scrap steel price goes through the bottom of the ledger those vehicles don't get scrapped. They tend to stockpile them and they can become an eyesore outside our members' premises, et cetera. So, for the lack of a framework, for the lack of - and we're one of the few OECD countries that doesn't have one - these opportunities can be taken up and they can be addressed.

20 COMMISSIONER LINDWALL: Okay, that's a good point, and as Julie said, that would be great to put it in your submission. Anything about the - you said that you've had 60 - 53 professions and 13 industries.

MR DUDLEY: Yes.

30 COMMISSIONER LINDWALL: Could you just comment briefly about the labour of - skills availability, skills shortages, and what's industry doing to rectify the extent that you have shortages?

35 MR DUDLEY: On the one hand we've got - we're short 31,000 skilled automotive professionals as we speak. That figure will increase to 38,000 next - 2022/23. That's historical highs for skills shortages which have impacted the sector and the industries in it for the last decade. That's borne about of a number of reasons. Skilled migration is a significant issue for us in that space. So too has been the perception of the automotive trades. A lot of mums and dads still think of automotive trades as being a dirty profession, in the sense of grease and petroleum products and all that sort of stuff, and I'm not sure about the last time many of you have gone to the actual workshop site of an automotive business, but they are pretty pristine.

45 COMMISSIONER LINDWALL: No, I have. They're pretty clean, yes.

MR DUDLEY: They are highly computerised now and they are changing rapidly.

5 COMMISSIONER ABRAMSON: I have to say, Richard, before COVID they looked after me very well. I got coffee and a little something to eat, but these days it's purely, you know, in and out.

10 MR DUDLEY: That's right, and in fact it's not even in and out in some jurisdictions as we speak, so, it's click and collect believe it or not, even for the delivery of motor vehicles at the moment.

COMMISSIONER ABRAMSON: Well they've wrapped everything in gladwrap so I don't know how that goes on the environmental side of things.

15 MR DUDLEY: Because in the workshops themselves, according to their own individual COVID plans, they'll be wearing gloves and that sort of thing, so it's an added barrier that they're putting on.

20 COMMISSIONER LINDWALL: Exactly. It's a COVID things. Yes, exactly.

25 MR DUDLEY: But the issue - the government's assistance measures on apprenticeships is working. We've had a near 40 per cent increase in terms of apprenticeship take-up since the subsidy was launched, so that's good, but the problem is we've got a diminishing labour pool generally. We've got mining and resources on the uptake again and whenever they go nuts they - - -

COMMISSIONER LINDWALL: So competing with you, exactly.

30 COMMISSIONER ABRAMSON: And it competes with civil construction as well.

MR DUDLEY: That's right.

35 COMMISSIONER ABRAMSON: It's the same skills base.

COMMISSIONER LINDWALL: And agricultural machinery (indistinct).

40 MR DUDLEY: Yes. But for the first time this is now manifesting on major infrastructure projects. So we had a crisis meeting last week where some of our business members are telling us that those major infrastructure projects, such as the tunnel projects in Melbourne, et cetera, the trucks that roll the first out of the tunnels, they're not being repaired, and they're not being repaired at the moment because of parts supply issues, and more critically
45 now is because of the lack of skills that we're encompassing. So that's a consideration as well in terms of the opportunities that might exist in terms of

service and repair, and the opportunities are getting stronger pipelines of people into them.

5 COMMISSIONER LINDWALL: Well, thank you very much, Richard, yes.

COMMISSIONER ABRAMSON: Thank you, Richard.

MR DUDLEY: Thank you, Julie.

10 COMMISSIONER LINDWALL: I don't know what the movie was, but I remember - distinctly remember a movie where a person was trapped in the car and they picked them up with those big electric magnets and then crushed the whole car, person included.

15 COMMISSIONER ABRAMSON: It sounds like a James Bond movie, Paul.

COMMISSIONER LINDWALL: No, it was earlier than that. That was how they used to recycle things, crush the whole car - crush it and throw it into landfill.

20 MR DUDLEY: The repair issue is going to become very critical because - and look, the last point I'll make, it's quite possibly - and you allude to it in the draft report. What's disappointing, as somebody who has been around Canberra for a long time and across many industries, including media -
25 what's disappointing at the moment is the forward looking nature in terms of policy development, and MTAA is of the view that there needs to be a strategic plan for automotive going forward so that issues such as this, such as right to repair, so that we're not playing catch up.

30 We know now that the interface of connectivity and mobility is going to be enormous. We know that the manufacturers of automotive products, because of the reduction of service requirements, because of the less number of moving parts, because of the importance of what the cockpit's going to provide to the consumer and how much the consumer may or may not want
35 those products in the cockpit, that in itself requires planning now, because to try and play catch up on some of those issues is going to be enormously difficult, particularly as these industries continue to consolidate.

40 COMMISSIONER LINDWALL: Yes, that's true. All right, well again, thank you, Richard. Now, could I - I think we've got - where are we? We've got Ian McAlister. Is Ian around online at the moment?

COMMISSIONER ABRAMSON: He is but he - yes.

45 MR McALISTER: There you are.

COMMISSIONER LINDWALL: Hello, Ian.

MR McALISTER: Can you hear me okay?

COMMISSIONER LINDWALL: Yes.

5

COMMISSIONER ABRAMSON: How are you?

MR McALISTER: Good.

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COMMISSIONER LINDWALL: So, Ian, do you want to introduce yourself? I understand you wanted to make a brief statement; is that right?

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MR McALISTER: Yes, just a brief statement. As you know I've met you at the summit, the Repair Summit, and we've made submissions earlier. My name is Ian McAlister. I'm the CEO of CESA, the Consumer Electronics Suppliers Association, and we represent the global suppliers of consumer electronics, all brand names that you know so well. We also have in our membership the major retailers of consumer electronics as well. So our members, in essence they are - first of all we're very familiar - our members are very familiar with the Ecodesign Directive in Europe. They have to meet those directives in Europe, so when we talk about the elements of that directive I'm sure it would not be an issue for our members, because they're familiar with it.

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They're also familiar with the developments in France on the durability labelling arrangements. I think they still are in sort of an embryonic sort of state at the moment, and I might come back to that in a moment, the durability labelling. There's just a couple of points on the report, the draft, report. CESA very strongly endorses the findings in the report, that a considerable amount of additional analysis is required on - you know, a product by product analysis in the various sectors. We'd be very keen to see that consumer electronics is differentiated from, you know, agricultural machinery or therapeutic goods or whatever.

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Even within our own industry it varies greatly from installers of air conditioning equipment and gas equipment and gas heating. Elements of that sector are greatly different to mobile phones or, you know, kitchen appliances and so on, so we'd like to see a lot more analysis go into that. CESA does not believe that there's a major issue with competition in the repair sector. All of our members have long-established authorised repair divisions or authorised repair networks. The majority of consumer electronics repair is undertaken through these networks in this country. In fact, our members have voiced concerns that they have trouble recruiting skilled people in that repair sector.

40

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We'd like to see future proposals that may arise out of the Commission's report. We'd like to see that they're national proposals, they're going to be

5 applied nationally, particularly in labelling issues. That's something our members are very keen on. We don't want to have different labels for different jurisdictions; there's a huge cost involved there. We should - we think they should focus on markets where there's evidence of, you know, the lack of durability, the lack of repair facilities, insufficient repair coverage. That's the areas we think we would like to see the Commission focus on.

10 Like the European Ecodesign Directive, our sister organisations is in Europe, and we've recently had webinars on this between the US, Europe and Australia. We'd like to see any proposals focus on professional repairers; that is repairers that have effective training, they understand the standards and regulations that apply, particularly cyber security, electrical safety, those sorts of regulatory arrangements that apply for products. We'd like to see the repairers have liability insurance and take responsibility for the repairs if they undertake them.

20 Just a couple of points in e-waste. Thoroughly endorse the views of John Gertsakis and Rose Read that perhaps proposals coming out of the PC should particular take cognisance of existing government policies and regulations in these areas. The - we were - we have some reservations with your comments regarding the extension of the NTCRS scheme. We think perhaps that wouldn't be the appropriate place because - mainly because the NTCRS scheme is only a very limited scheme in terms of it covers computers and televisions when there's a whole host of other e-waste out there in the whitegoods sectors, solar panels and so on, that is not covered by the NTCRS scheme.

30 We, along with many others, have been arguing for extension of the NTCRS scheme to include other streams of e-waste for many years. It is on the government's priority list for future product stewardship schemes; however, you know, to this - to date nothing has happened there, but we would like to see proposals coming out of the PC that take account of the review recommendations in the Product Stewardship Act and other product stewardship schemes in evidence around the country. These schemes have been very successful, particularly the NTCRS scheme - it's been very successful, largely bankrolled by our members. Yes, that's about all I want to say really as a statement. The draft report really covered a lot of ground and, you know, we congratulate the Commission for the extent of the work that they've done to date and we'd be happy to continue the dialogue.

40 COMMISSIONER ABRAMSON: Thank you, Ian.

45 COMMISSIONER LINDWALL: Thank you, Ian. I think we'll be very happy to continue the dialogue too, so thank you. Much appreciated for your thoughts there. Now, does anyone else who's online wish to make a comment? You're welcome to.

COMMISSIONER ABRAMSON: Karen Ellis has her hand up, Paul.

COMMISSIONER LINDWALL: Karen, would you like to just introduce yourself and say what you wish to?

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MR ELLIS: Hi, Paul and Julie. It's Danny Ellis.

COMMISSIONER LINDWALL: Danny. Hello, Danny.

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COMMISSIONER ABRAMSON: Hello, Danny.

MR ELLIS: I'd just like to hope the Commission keeps the consumer in mind. From what I've been seeing over the last three days, industry is trying to divide itself into all separate units, whereas I think the Commission's goal is to look after the consumer so we get a result for the consumer that better puts them and the repair - the right to repair all the same, but industry just seems to look to have its own little sections all over the place, where I think we need to kind of concentrate on us and the right to repair, and that's just my little bit for today.

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COMMISSIONER LINDWALL: Okay, thank you, Danny.

COMMISSIONER ABRAMSON: Thank you, Danny.

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COMMISSIONER LINDWALL: Anyone else wants to say something?

MR JONES: Yes, I just wanted - can you hear me all right?

30

COMMISSIONER LINDWALL: Yes. Please identify yourself, yes.

MR JONES: Sorry, yes. Andrew Jones.

COMMISSIONER LINDWALL: Hello, Andrew.

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MR JONES: Yes. Sorry, I haven't got a camera at the moment.

COMMISSIONER LINDWALL: I'm sure it can be switched on. I'm not controlling it but I'm - I think - - -

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MR JONES: No, I have even got a camera at all, like, on the computer.

COMMISSIONER LINDWALL: Okay. No, it's all right. Go ahead, Andrew, Yes.

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MR JONES: Yes. I just wanted to agree with, yes, the previous point and just say that, yes, I'm looking at it from perspective of I like to repair my own things and things like serialisation and access to tools, even if tools can be

5 provided for a cost as a personal - at home I repair things because I can't afford to replace them, so if I have to pay a large amount to get tools to be able to serialise components for, say, a phone, that would make that very difficult, you know, and yes, basically just, yes, there - I think there are a lot of people who don't repair their stuff because they don't think they can, is the bigger issue.

10 COMMISSIONER ABRAMSON: Could I just ask you while we've got you - it's Julie - do you use repair cafes or any of those other places where they do have some of these specialised tools?

MR JONES: No. I have primarily lived regionally so I haven't been near those sort of things.

15 COMMISSIONER ABRAMSON: Yes, thank you.

MR JONES: Yes.

20 COMMISSIONER LINDWALL: Okay. Thank you, Andrew. Anything else you wanted to say?

MR JONES: No, I think that's it, thank you.

25 COMMISSIONER LINDWALL: Okay. Anyone else wants to have a say? No? In which case I'll adjourn the proceedings and this is the conclusion of the hearings for the Right to Repair Inquiry, and Julie and I would like to thank all participants to the inquiry to date and look forward to your further comments and submissions, and thank you to the transcript people too, and that's it for today and for the hearings.

30 COMMISSIONER ABRAMSON: And thank you to the team as well. Thanks, Paul.

35 COMMISSIONER LINDWALL: Thanks to the team. That goes without saying.

COMMISSIONER ABRAMSON: Thank you. Thanks everyone.

40 COMMISSIONER LINDWALL: Bye.

MATTER ADJOURNED

[4.48 pm]