



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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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 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 - 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 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 more time.

35 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 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 congratulations on the report; we think the tone is right.

45 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 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 change 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?

10

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.

30

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).

35

40

COMMISSIONER LINDWALL: You're cutting out a bit there Lesley, sorry.

45

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?

COMMISSIONER LINDWALL: Yes. No, I can see you now. Hello.

5

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.

The reason I went there was I was hoping to get my microwave fixed which
20 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 me a story about his experience repairing a keyboard which really touched
25 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 used; it's not right for the music.

Alf knew Harry through Meals on Wheels and he wanted to help him with his
30 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 going to work. He realised very quickly that he needed to have the spare part
35 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
5 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
10 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
15 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
20 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
25 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
30 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
35 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.)
40

- - - 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
45 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.

5

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?

10

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?

15

20

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?

25

30

COMMISSIONER LINDWALL: In some cases, it might be 3D printing, I don't know if you have any thoughts on that?

35

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.

40

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.

10

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.

20

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.

35

COMMISSIONER ABRAMSON: That's fine. If you're putting in a submission, that would be useful for us to know.

40

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?

45

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?

10

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

25 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.

30

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

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 therefore 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 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
40 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.

10 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 - - -

15 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.

20 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.

25 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.

30 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?

35 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 repairs should be favoured over replacement, even if that meant that
40 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 consumer law provides existing rights for replacement and that's really
45 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.

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.

10 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 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.

25 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 they'll produce things that are cheap that will break and I think we see that in some areas.

30 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 implementation of that has to be balanced to ensure that products, you know, are affordable.

35 COMMISSIONER LINDWALL: Okay. And one question on third party repairers. You might have been here when Techtronic and AI Group both 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.

40 MR BRODY: Look, I don't think we do, Paul. I mean, I think that 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?
45 No?

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 Brigitte Rose?

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COMMISSIONER ABRAMSON: Brigitte. 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.

20 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 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
25 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 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
30 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 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.

45 Thirdly, I want to touch on a point that was brought up earlier and the idea of 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
15 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
30 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
40 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
45 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 repairability, 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.

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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?

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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.

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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.

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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.

45 MS HOBBY: I think the difference is hygiene too. I think because it's close 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
5 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?

10 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
15 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
20 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
25 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
30 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?
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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.

40 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
45 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.

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 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 safety concerns.

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 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.

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 data would be governed by the development of codes on the use of examination of that data.

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.

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 look forward to your questions.

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
5 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 -
10 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
15 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
20 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,
25 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
30 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
35 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
40 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
45 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 which farm safety is required, and we've got what we call the chain of
25 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
15 procedures in your business, and that you're picking up – so our kind of way 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.

35 And whether you negotiate the contracts – contractual terms, for example, for a sale, is indicative – and I note the ACCC survey suggested, for example, 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.

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-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 - - -

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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.

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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 resales 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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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?

15

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.

35

COMMISSIONER LINDWALL: Exactly.

40

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?

MS ELLIS: Yes.

COMMISSIONER LINDWALL: And what do you think of it?

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.

COMMISSIONER LINDWALL: Yes.

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 - - -

MS ELLIS: No.

COMMISSIONER LINDWALL: No, okay.

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 sides, 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.

25 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?

30 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.

30 COMMISSIONER LINDWALL: So could I just clarify, then, because there are two approaches if you wanted to have a labelling scheme.

MR LOZANCIC: Yes.

35 COMMISSIONER LINDWALL: You could for the benefit of harmonisation adopt the one that's already out there or you could develop a separate one 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?

40 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 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 45 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 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.

5

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
15 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
20 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?'

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
25 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
30 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
35 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
45 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?

15 MR BAKER: Look, I have heard that and it's been put to be before. It's very
- 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
20 to them? I don't know, but I've had to strip that watch down. I've got to then
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.

25 COMMISSIONER ABRAMSON: So your remedy, if there was to be a
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 - - -

40 COMMISSIONER ABRAMSON: No. It's been a very interesting inquiry,
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.

45 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
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.

10 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.

20 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.

30 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.

45 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.

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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.

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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.

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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.

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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.

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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.

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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.

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Someone was saying you can't open them to repair them. Let's take the AC adapters for instance.

UNIDENTIFIED SPEAKER: (Indistinct words).

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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 - - -

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COMMISSIONER LINDWALL: Yes, I understand. AC adapters, yes. Okay.

MR HARRIS: Yes.

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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.

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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.

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30 COMMISSIONER ABRAMSON: And the teams for putting it all together.

COMMISSIONER LINDWALL: And the teams, yes.

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COMMISSIONER ABRAMSON: So thank you very much. Thanks everyone.

COMMISSIONER LINDWALL: Bye.

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MATTER ADJOURNED

[5.01 pm]