



**Australian Government**  
**Productivity Commission**

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**PRODUCTIVITY COMMISSION**

**RIGHT TO REPAIR - PUBLIC HEARING**

**MR P LINDWALL, Commissioner**  
**MS J ABRAMSON, Commissioner**

**TRANSCRIPT OF PROCEEDINGS**

**WEDNESDAY 21 JULY 2021**

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COMMISSIONER LINDWALL: Good morning everyone, welcome to the public hearing for the Productivity Commission inquiry into a right to repair on the day of the 1933 that Wiley Post became the first person to fly solo around the world in his Lockheed Vega aircraft called Winnie Mae, a little  
5 trivia. My name is Paul Lindwall the Presiding Commissioner for the inquiry and my college commissioner is Julie Abramson, and she is in lockdown in Melbourne. Today's hearing is in Canberra, so I'd like to welcome any members of the Ngunnawal and Ngambri and pay our respects. The inquiry started with a reference from the Australian Government on 29 October last  
10 year, we released an issues paper on 7 December and have talked to a range of organisations and individuals with an interest in the reference.

We released a draft report on 11 June and have been receiving post-draft submissions and welcome further submissions, preferably by 23 July. We  
15 are grateful to all of the organisations and individuals who have taken the time to meet with us, prepare submissions and appear at these hearings. I'd like to also acknowledge Ana Markulev who was the team leader who delivered the draft report, and then her first baby, and she is of course on maternity leave. The purpose of these hearings is to provide an opportunity  
20 for interested parties to provide comments and feedback on the draft report, which is this document here for those who haven't seen the hardcopy, which will assist us in preparing our final report to be provided to the government by 29 October. Following these hearings in Canberra - this is the last of the hearings - that's the end of the hearings at the end of today.

25 We will then be working towards completing the final report, as I said, which the government has up to 25 sitting days before it has to release the report under our act. Participants and those who have registered their interest in the inquiry will be advised when the final report is released by the government.  
30 We like to conduct all hearings in a reasonably informal manner, but I remind all participants that a full transcript is being taken. For this reason, comments from the floor, or the virtual floor, cannot be allowed but at the end of the day's proceedings I will provide an opportunity for anyone who wishes to do so to make a brief presentation.

35 You're not required to take an oath but are required under the Productivity Commission Act to be truthful in your remarks. Participants are welcome to comment on the issues raised in other submissions, or by other participants at hearings, the transcript will also be made available to those who participated  
40 and also will be put on our website following the hearings. . For any media representatives attending today some general rules apply; there is no broadcast of the proceedings allowed, and taping is only permitted with prior permission.

45 And for those that are in Canberra to comply with the requirements of the Commonwealth Occupational Health and Safety Legislation you're advised that in the unlikely event of an emergency requiring the evacuation of the

building, please listen for instructions over the emergency warning system. There are two types of tones which may be used, the alert tone followed by the evacuation tone, in the case of the evacuation tone please evacuate directly out the door here turn to your right and turn to your right again down the stairs. If you are unable to make the stairs, please advise one of the wardens or myself. The National Press carpark is the assembly point - sorry no, it's at the back of this building near the church on Fitzroy Street, near the back of the hotel is where the assembly point is.

Participants are invited to make brief opening comments which will allow us the opportunity to discuss matters in greater detail. I would also like to ask all online observers and participants who are not speaking to please ensure your microphones are on mute and turn off your camera so as to ensure minimum disruptions. And I think that's it, so now I'd like to welcome Anthony Rosborough from the Canadian Repair Coalition who is presenting online today. So, Anthony if you are able to - and I might look carefully at the camera plus also you and give us an introductory statement and introduce yourself.

MR ROSBOROUGH: Certainly. Well good morning Commissioners Abramson and Lindwall, thank you so much for providing the opportunity for me to share my thoughts all the way from Canada, which is quite far away from Canberra, but similar in sound I suppose. So, I'm really thankful to see such a strong emphasis on the right to repair in Australia and I thank both of you and everyone who has participated in this for your work on this. I'm a doctoral researcher at the European University Institute in Florence. My research focusses mostly on intellectual property and its relation to human agency. So, the right to repair has been a large part of my work to date, and although a few years junior you could say I am very much kindred spirits with Professors Leanne Wiseman and Matthew Rimmer.

I'm also a practicing lawyer and faculty member here at the law school here in my hometown of Halifax, Nova Scotia where I currently am speaking to you from on the other side of the world, so apologies if I'm a bit weary eyed. But yes, more recently I've founded the Canadian Repair Coalition which is an organisation focussed on bringing together repair advocates across the country to achieve right to repair policy reforms, and so thank you again for having me join you. My submissions this morning are primarily focussed on pages 155 to 183 of the draft report, and they're intended to accomplish two main goals. The first is to provide a perspective from Canada on the efforts towards the right to repair so far, as well as our approach to policy reforms in this regard.

And the second is to respond to the information requests at 5.1 in the draft report in relation to technological protection measures or TPMs and embedded systems. So that's sort of an overview of what I hope to speak about today, but I don't know if you have any questions?

COMMISSIONER LINDWALL: No, that's perfect. Do you want to speak to them now or would you prefer us to ask questions on them?

5 MR ROSBOROUGH: Maybe I'll go ahead and speak about them.

COMMISSIONER LINDWALL: Yes, I think so. Yes.

MR ROSBOROUGH: Feel free to interrupt me at any point.

10

COMMISSIONER LINDWALL: No, I don't think that's needed.

MR ROSBOROUGH: So just a brief comment I'd like to start by drawing some comparisons between Australia and Canada with respect to the right to repair that I think are important for this discussion. So firstly, Australia's copyright reforms and policy reforms over the years has followed a similar trajectory to Canada, in both cases our federal statutes, out governing law are structured similarly with similar purposes and objectives, and with the exception of Quebec of course in Canada both countries follow a similar legal and parliamentary tradition. So, particularly in the case of TPMs both countries have followed the same approach to the wording in the legislation, and both inclusions in the legislation are as the result of international trade agreements which is an important detail. Lastly, just on the similarities, both countries possess sort of similar social and geopolitical dynamics with respect to the right to repair. So, both countries feature very remote communities which often have delayed access to repair, resources, and parts.

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And on balance, it could be said that both countries are sort of importers, if you will, importers of OEM manufactured goods that are subject to repair restrictions. So, without boring you to death about the similarities of our two great countries, I just thought I would try and set the stage with that. As for what Canada has been doing to date, I think our most notable development on right to repair is the private member's bill, Bill C272, which seeks to amend our Copyright Act's protection for TPMs.

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It would essentially create a new exception for circumventing TPMs, where the sole purpose is to diagnose, maintain or repair a product in which a computer program is embedded. So it's focussed very specifically on products with embedded computer programs. So – and the case, of course, also, of third-party service providers who would be offering the tools to circumvent TPMs, it offers an exception for the same purpose.

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Importantly, on the second reading of the bill, which is where it sits now, waiting to go committee, the parliamentarian who introduced – Mr Bryan May – he made a remark that I think is important for some of the comments I have on the draft report. He said:

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*TPMs may work to prevent the repair from being completed or beginning in the first place. Many vehicles and appliances are not able to be repaired without entering some form of reset code or modifying the code to accept a new part that was installed.*

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And so, unlike Australia, I should say, Canada has not engaged in public consultation similar to this. So, in many ways, you are in the future, not only literally, but substantively as well. So, as I said, the bill is now set before committee, and we have yet to see what will happen from here. We're

10 expecting amendments and witness testimony that will speak to the merits and potential pitfalls of the legislation.

COMMISSIONER ABRAMSON: Can I ask you a question, which I should know, but I'm assuming that this is all federal law. So, it's like in Australia.

15 So, one of the things we've observed with America, which I'm sure you'll speak about at some stage, is that a lot of it is state-based. But this is clearly national law.

MR ROSBOROUGH: That's right. So our approach to copyright in Canada

20 is very much analogous to Australia.

COMMISSIONER ABRAMSON: Yes, thank you.

MR ROSBOROUGH: There are some differences, in the sense that Australia

25 has the technological – copyright regulations which govern TPMs in different ways. We don't follow this approach, but all else being equal, it's apples for apples. Do you have any other questions about what Canada has been up to?

COMMISSIONER ABRAMSON: I'm just interested – we've consulted a

30 lot, Anthony, with people who specialise in IP. And one of the big issues that's been raised with us – and you did speak to it – is our international agreements, so things like TRIPS. And given your background, I'm just really interested in how that argument is playing out in Canada.

MR ROSBOROUGH: Right. So, as I mentioned, in both cases, the

35 protections for TPMs came about as a result of international trade agreements. Though the exact wording found in, for example, the United States-Australia Free Trade Agreement versus the (indistinct) trade agreement, which now has too many names, but one of which is the Canada-

40 US-Mexico Agreement, sometimes referred to as NAFTA 2.0. It has all kinds of names. But you know the one.

COMMISSIONER ABRAMSON: Yes.

MR ROSBOROUGH: The wording is slightly different, but both free trade

45 agreements permit new exceptions to TPM protections in certain circumstances. And in that case – so on that level, I think there are some

similarities here. My interpretation of the Canada-US-Mexico Free Trade Agreement is that it's slightly more flexible, in that it envisions more robust exceptions than the one that, as I read it, is in the United States-Australia Free Trade Agreement.

5

That's up for debate, of course, but – the argument has come up in our discussions with our – what's called Industry, Science and Economic Development Canada, which is our competition authority. The (indistinct) regulate intellectual property – yes, pretty much intellectual property and scientific development. They have raised these concerns, that new exceptions to TPMs may conflict with our international trade agreement, but again, no definitive answer to it.

10

And when pushed and asked, 'Which provision is it that it may conflict with?' there's not a very – well, there hasn't been a very definitive answer to that question. So, my reading is that there is ample room to carve such an exception out. It's been brought up, I suppose, but it's not a (indistinct).

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COMMISSIONER ABRAMSON: Yes, thank you.

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COMMISSIONER LINDWALL: Did you want to continue, sorry, Julie?

COMMISSIONER ABRAMSON: No, Paul. Over to you.

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COMMISSIONER LINDWALL: Anthony, did you want to add on anything more, or shall we go to questions?

MR ROSBOROUGH: I do have some comments on the draft report if you're interested in hearing them.

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COMMISSIONER LINDWALL: Please, (indistinct).

MR ROSBOROUGH: Sure. So I think the approach – Canada's approach to right to repair, in terms of focusing on TPMs and embedded systems, frames the context in which I read the draft report. And on that basis, I think what I noticed when I read the draft report was that there's a very strong emphasis on the role of TPMs in restricting access to repair information.

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So, then, based on this focus, it discusses the potential application of, for example, the fair dealing doctrine, as well as an existing repair exception found in the 2017 Copyright Regulations. And I think, for the most part, this approach and this focus places most of the emphasis on the protected materials under copyright law, rather than the TPM itself.

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My concern is that by focusing so closely on the ability of TPMs to restrict access to repair information or other materials that are protected by copyright, the broader repair implications posed by TPMs may not be

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sufficiently addressed. So, in some ways, the report needs to look more closely to the nature of embedded systems and Internet of Things devices, in my estimation.

5 And so the reality is that TPMs can be very broad in scope, and they're defined the same way, more or less, in Canada and in Australia. The Act defines them in Australia as any technology, device or component which controls access to a work. But it doesn't say that they can only control access to a work. They can also control access to other physical components of  
10 devices or products; just sort of latent in their design.

So they can control, for example, the physical functioning of devices or equipment. There is one example of Apple's error code 53, where devices were able to be detected if they were attempted to be repaired by an  
15 independent repair person, and they would be bricked, or completely disabled. In fact, in 2018, the Australian Federal Court awarded close to \$7m in damages for that.

So this is one example of the potential uses of TPMs that can prohibit repair. There's also the classic case of the activation of replacement parts. So we've seen this with agricultural equipment, where a new part will have to be activated by the central computer in order to be operable. So, these are uncopyrightable aspects of physical objects, and they're not works protected by copyright.  
20

25 But nevertheless, they can be controlled by TPMs through the TPMs' protection of computer programs. So this kind of a strange cat and mouse, where there's an asymmetry of protection. The TPM is defined very broadly to include all sorts of things, but the exceptions are defined very narrowly for  
30 certain purposes. So this interpretation of the draft report is really what struck me as being a concern in terms of the broader right to repair trajectory.

So it's worth reiterating that protection for TPMs under the Copyright Act are independent of any infringement of copyright. It's a standalone legal regime, and so this sui generis legal regime requires an equally comprehensive set of exceptions and limitations. In my opinion, I think relying on fair dealing or a similar fair use concept would be insufficient, because what we're talking about here is not necessarily works protectable by copyright, but other things that are incidentally affected in a product or device as a result of a TPM.  
35

40 COMMISSIONER ABRAMSON: Anthony, I should remember, because I am also a trained lawyer, but could you explain the sui generis point that you just made? Do you just mean that they're alike or something? Can you remind me?

45 MR ROSBOROUGH: They tried to tell us in law school not to do this anymore, but occasionally we use Latin. It's a unique, of its own kind law.

So it's in the Copyright Act, as it is in Australia and Canada and other countries. But really, it has very little relationship to the purposes and objectives of copyright. We're talking about physical objects. It should be in the realm of trade secrecy or patent.

5

COMMISSIONER ABRAMSON: I should remember these things. Leanne was very helpful reminding me about the exclusion law in contracts, but I have to say, Anthony, my legal skills are quite rusty these days. So, thank you very much for that.

10

MR ROSBOROUGH: You're welcome. So the draft report envisions really two potential avenues forward in terms of TPMs. So it looks to the existing repair TPM exemption in the 2017 regulations and says, well, you know, maybe this could be interpreted liberally to encompass repair activities; and then, second, it envisions a new exception for sharing and reproducing repair information and users - sorry - by users and third parties. So unfortunately I think - as you see in the case of embedded systems which can be completely controlled by a TPM, neither approach really addresses the problems in terms of the functioning of a device. So this is because both solutions focus really only on circumvention for the purposes of accessing copyright material.

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COMMISSIONER LINDWALL: Copyright, yes.

25

MR ROSBOROUGH: So I think overall I would urge the commission to review the permitted exceptions and limitations to TPM exceptions as found in the United States - sorry - in the United States-Australian Free Trade Agreement. And so this is at article 17.4. That provision of the agreement allows for additional exceptions to permit non-infringing uses where TPMs can be shown to have an adverse impact in a demonstrated review proceeding heard every four years. So the free trade agreement - - -

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COMMISSIONER ABRAMSON: Anthony, are you saying that we need to go back and - I'm just interested in your view about how you would remedy that. Now, clearly part of it is you're talking about the international agreements, but clearly you have in mind a particular way in which you would put something in the law. So I'm interested both in you exploring a bit further about what you were about to say about the agreements, but also about your practical view about how you would resolve it.

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MR ROSBOROUGH: Absolutely. So given the pace of technological change and the inability for a government at any point in time to envision how TPMs may be used in the future. My suggestion is that Australia take advantage of this provision in the US-Australia Free Trade Agreement and have a review-like process similar to the United States Library of Congress where it reviews, sort of, case by case blanket exceptions based on particular products or certain purposes, a certain class, and conducts that, you know, periodically every three or four years. So that would be my suggestion, and I

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suppose where I was going with it was that this was envisioned by the free trade agreement. It's certainly permitted.

5 COMMISSIONER ABRAMSON: But what would it look like, Anthony, in terms of where you get to a solution? So we've got quite a lot of text there about the way in which the provision is crafted. So leaving aside the mechanism to change, how would you change it?

10 MR ROSBOROUGH: So I think I would - I mean, it's sort of funny to think of me crafting Australian law, but I think that it needs to focus on not merely the subject of TPM protection; it needs to be - the exception needs to apply to circumvention of TPMs rather than, you know, the ability to access certain things protected by TPMs.

15 COMMISSIONER ABRAMSON: Yes. So you're arguing for a broader interpretation, and I'm inviting you to be bold, so don't feel that you can't comment on Australian law, Anthony.

20 MR ROSBOROUGH: No, I'm just worried that you may ask me to recite it in detail, and, you know, it wasn't my field of study, so - - -

COMMISSIONER LINDWALL: So you basically want to say, Anthony, that we should use article 17.4 in the US free trade agreement - - -

25 COMMISSIONER ABRAMSON: Yes.

30 COMMISSIONER LINDWALL: - - - to specifically say that it is perfectly fine to - and I'm not a lawyer - circumvent TPMs for repair purposes in a very broad sense, and that would apply whether they're copyright or not copyrighted or whether they're patented or whether they're whatever, basically?

MR ROSBOROUGH: Exactly. And - - -

35 COMMISSIONER LINDWALL: Someone has dropped out.

MR ROSBOROUGH: A lot of flexibility in terms of certain - - -

40 COMMISSIONER LINDWALL: Could you repeat that? I missed the last 30 seconds of what you said because it dropped out.

45 MR ROSBOROUGH: Sure. I'm sorry. I said I suppose the beauty of it - and that's an interesting word to use because I'm not sure anything about TPMs is beautiful, but the beauty of this approach is that it would enable Australia to have a lot of flexibility in the way it approaches exceptions. So you may find that a blanket exception for repair in certain industries isn't feasible or you may find that certain types of TPMs can be classified

differently than others, and so you could have an exception that applies for repair for those types of TPMs. For example, embedded systems.

5 COMMISSIONER ABRAMSON: Sorry, Anthony. I think there are two points. So the first point is what we've been talking about which is the breadth of the exception, and the second thing we will think about, Anthony, with the team is how we would do it in the primary legislation because it has got to be the two things. You can open it up, but you've still got to have something in the law which reflects what it is that you're trying to achieve.

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MR ROSBOROUGH: Precisely, yes.

15 COMMISSIONER LINDWALL: Okay, Anthony. Could I ask, what happens if you can't circumvent a TPM and how would that work in Canada, too? So all of these changes, and even in our report, of course, are based upon the fact that someone could circumvent a TPM and then provide the information to other third parties, but what if it's physically - well, it's impossible to because it's a very secure encrypted product as well as there's a trade secret or something, so no one has disclosed it in any way?

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25 MR ROSBOROUGH: I think in these cases - and we've had similar situations, of course, in Canada and scratched our heads about what do we do, and quite often the discussion leads to competition authorities. This is, sort of, the limits of where intellectual property protections can - you know, they can't provide positive (indistinct) you can't compel - I suppose you could, I mean, but you might find difficulty compelling a manufacturer to provide the tools through copyright to circumvent to TPM, particularly in light of international trade obligations which require that you confine exceptions and limitations to, you know, certain situations.

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35 And my interpretation would be that that would go beyond more or less all of those that you see in all of these international trade agreements. So you could look then at the ability to circumvent a TPM as - to use competition language - an essential facility for participation in a secondary market. And I think there's not a lot written about this. I've attempted to address the subject in some of my writing, but the relationship between TPM circumvention and competition (indistinct) idea of a central facility. I think there's a lot to be thought of there, but certainly the notion of intellectual property being an essential facility has been addressed in the United States and Europe. I'm not sure that provides you a very clean answer, but - - -

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45 COMMISSIONER ABRAMSON: No, we have provisions in our law which talk about essentially - not called an essential facility, but that's a really interesting line of argument, Anthony.

MR ROSBOROUGH: Well, I mean, you know, ultimately if - you cannot participate in a follow on or secondary market without the ability to circumvent that TPM.

5 COMMISSIONER ABRAMSON: Yes.

MR ROSBOROUGH: And this is where the repair and kind of innovation boundary becomes more prominent in the case of industries that rely on interoperable technologies, for example. This is where we really have to look  
10 to the anti-competitive effects of TPM - - -

COMMISSIONER ABRAMSON: Yes.

MR ROSBOROUGH: - - - more so than purely the repair and, you know,  
15 circular economy effects of TPMs.

COMMISSIONER LINDWALL: Yes. Yes. No, I see what you mean.

COMMISSIONER ABRAMSON: Yes.  
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COMMISSIONER LINDWALL: Anything that you would like to say about - because one of our - earlier this week we had a person testifying on medical technologies and mainly the protections there were patents rather than copyright, and I assume what you're talking about here would apply equally  
25 to things that were patented in some way or other.

MR ROSBOROUGH: Yes, exactly. And this is where, you know, the issue of TPMs becomes, you know, one of many in terms of the use of intellectual property to preclude competition. In the case of medical equipment, I mean,  
30 you have - maybe different than purely a market-based argument for why these protections should have some kind of limitation. I mean, in the case of medical equipment, of course, there's a public interest argument; there's a national security argument; there's a public health - so in that case I think the justifications for interfering with the exclusive rights of intellectual property  
35 become even more prominent than purely market imbalances.

COMMISSIONER LINDWALL: This was a particularly - the person who testified was principally about a pandemic or some public health emergency whereby - I think his Apple was changing sleep apnoea machines into  
40 ventilators, for example.

MR ROSBOROUGH: Right.

COMMISSIONER LINDWALL: So - - -  
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MR ROSBOROUGH: I think the pandemic has shed light on a lot of these sort of dependencies and centralised control over physical technologies in this way that can have a lot of harmful effects.

5 COMMISSIONER LINDWALL: Yes. Now, is there anything else that you wanted to mention, Anthony?

MR ROSBOROUGH: I just wanted to conclude with maybe an addition to the healthcare perspective. A brief remark about the social and educational importance of repair. So far, the right to repair movement has been  
10 occasioned by strong arguments from environmental and economic perspectives, and of course in healthcare as well, but I think it's worth a look at the importance of repair for technological literacy. So, in my experience - just as a personal anecdote - I had someone reach out to me in the last couple  
15 of months who operates a program technological literacy to indigenous youth in Canada. And they said to me, 'Anthony, this is not just an issue about market fairness, or consumer protection, this is an issue about the decentralisation of power and teaching, sharing education and human knowledge.'

20 And so, one further similarity between Canada and Australia is our ongoing efforts towards reconciliation with our indigenous peoples. And so, I think that, viewed in that context, we can look at repair as something that involves experimentation, research, and knowledge dissemination, rather than as  
25 something purely as utilitarian or market based. And so, I would urge the commission to consider the importance of repair not only for its obvious benefits, but also to decentralise power and to share knowledge in a way that benefits us all.

30 COMMISSIONER LINDWALL: Okay, no that's a good point.

COMMISSIONER ABRAMSON: Paul, could I ask some questions?

35 COMMISSIONER LINDWALL: Please, go ahead Julie.

COMMISSIONER ABRAMSON: Anthony having - you've raised a broad and important point - I'm going to take you back to the narrow again if I may.

40 MR ROSBOROUGH: Sure.

COMMISSIONER ABRAMSON: Manufacturers have often raised with us that there are security and safety concerns regarding the TPM issue, and I'm just interested in your view of that.

45 MR ROSBOROUGH: Well, I mean, my personal view of it is that the more open a platform generally the more secure it is in many ways. I think if we think of innumerable technologies that have become commonplace and we've

learnt how they work, that sort of ability for users to become testers and challengers of the technology ends up benefitting it. And I know that's probably a very tired talking point from these three meetings, but I would agree wholeheartedly with it. And I think, this is a very specific example, but  
5 there was the Linksys WRT54G router - it's an internet router - and you can google the story about. It was a router that was released by Linksys and it had on it proprietary software, they alleged, that was built on the Linux platform.

10 And because it was built on the Linux platform unfortunately Linksys realised that they had to disclose the source code for it, against their will. And it ended up being an invitation platform, it was originally laden with security risks which users fixed on their own, and then used it essentially as a development tool which spurred all sorts of innovation. So, I think the  
15 argument that closing down repair is good for the public interest in some way - and particularly in the case of safety and security - I think we should challenge that assumption when we're talking about this. This argument often comes from companies which produce products that explode randomly on airplanes, which catch fire, I mean I think security and safety I think is  
20 always better off when it's decentralised to some degree, and we all have an understanding of how these technologies work.

COMMISSIONER ABRAMSON: Thank you Anthony, I just wanted to ask one other point. Fair use and fair dealing; so, we put two options in to deal  
25 with the copyright issue, fair use of course I'm sure it's the same in Canada, it's a principles-based regime, and the commission has argued for that in the past. The other thing that we've looked at is a fair dealing exception, so it would be crafted as an exception for the purposes of repair. Do you have a view about either of the options, and which might or might not be preferable?

30 MR ROSBOROUGH: Again, I think my concern, with looking at fair dealing and fair use, goes back to my comments about embedded systems, and that if the subject of this discussion is on the works protected by copyright, we're missing 90 per cent of the repair issue. Having said that, I  
35 think fair use has obvious advantages in terms of being an open norm, it allows us to tailor new exceptions based on different factors. I think there are obvious advantages to that in the context of technology that is constantly and more quickly developing, rather than the rigidity of fair dealing which I know that in Australia and in Canada we're both kind of stuck with sometimes.

40 COMMISSIONER LINDWALL: Yes.

COMMISSIONER ABRAMSON: Thank you, back to you Paul.

45 COMMISSIONER LINDWALL: That's good, I mean your point about software is well taken, because I know a bit about cryptography and of course open-source software for inscription tends to be a lot more secure because of

the ability for everyone to test it for its vulnerabilities, rather than it being a trade secret or something. Now, could I ask whether Anthony - because we've got a couple more minutes - have you got any comments on things that are unrelated to intellectual property, in particular where the right to repair movement is in Canada in terms of product labelling, there's a product labelling scheme for example in France but I'd be interested to know just where - from your knowledge of Canada's movement to have a right to repair.

MR ROSBOROUGH: Certainly, so one difference between Canada and Australia, and correct me if I'm wrong, is that our consumer protection law is provincially regulated, so it is fragmented somewhat. Most provinces have an analogous framework, but it's still separate acts in each of the provinces. This creates challenges for sort of uniform rules at the consumer level for right to repair. We've had some efforts so far towards amending consumer protection acts in the provinces, with varying success. Ontario, our largest province - most populace, I should say, province - had an attempt I think in 2019 to amend its consumer protection act to require manufacturers to uphold warranties on products that had been repaired by an independent repairer.

This was met initially with a lot of - a lot of people sort of came out of the woodwork and responded with a lot of criticism of it, suspiciously. You know people who up to that point seemed to have no interest in the subject, which the conclusion is - among most people - is that there was a lot of lobbying effort to quash it, and it was successful. So that bill sort of died on the order of paper. A counter argument you hear is that it was introduced by an opposition member of the Ontario legislature without reason, it was doomed from the beginning. Either way it's shown that there's at least some resistance to those reforms

On the more positive side we've seen in Quebec a much more sort of populist approach to consumer protection, and they've had great success in getting a piece of legislation forward that will require manufacturers to uphold warranties for one, and to ensure that their products last for a reasonable lifetime. So, I don't know if it's the case that Quebec is perpetually inspired by France, but in this case, they seem to have taken a page out of that approach. And they haven't gone as far as product labelling in the same way, but they're definitely the forerunners of a kind of consumer protection approach to repair.

This again, I think, can be distinguished somewhat from the ability for an individual to actually carry out a repair. I think the consumer protection side is sort of - the information that's provided to you at the time of sale and your rights as a consumer to do with a product - to have someone else repair it. So, there's some distinction to be made there, but we have yet to see other provinces take up a similar approach, that's what's been happening so far.

COMMISSIONER LINDWALL: No, that's great. Well, I think Anthony that's much appreciated, and unless Julie has anymore comments?

5 COMMISSIONER ABRAMSON: I have one which is really left field, but Anthony you look like you're up for a challenge. It's about the Ontario e-waste scheme, do you know anything about that? It's been mentioned to us a few times.

10 MR ROSBOROUGH: I know a little bit about it, but I'll do my best to respond.

15 COMMISSIONER ABRAMSON: Thank you, just generally, we'll look into things ourselves. But just, you know, the experience of being a Canadian and you talked about Ontario being the biggest province, so we're just interested in what you know about it.

20 MR ROSBOROUGH: So, I know that it's novel among the provinces, though I'm not terribly sure of its successes at this point, sorry I'm not terribly familiar.

25 COMMISSIONER ABRAMSON: No, I asked you outside your field of inquiry, but look that's been really, really helpful Anthony, because you're encouraging us to think more broadly about the issue. I'm not sure of the time difference but we've probably inconvenienced you, so thank you so much.

MR ROSBOROUGH: Thank you very much for having me.

30 COMMISSIONER LINDWALL: Thank you very much Anthony, take care.

MR ROSBOROUGH: Take care, have a great day.

35 COMMISSIONER LINDWALL: Thank you, you too. Alright. Well, it's 10 past. Is Yasmin there? Yasmin was due to be here in five minutes' time, so it's probably a couple of minutes early. I can't see who is on Zoom.

40 COMMISSIONER ABRAMSON: No, I can't see on the screen, that she's on the screen yet, but I'm sure Bonnie – no, I've just got a message from Bonnie that we haven't got Yasmin yet.

COMMISSIONER LINDWALL: All right. We'll wait a couple more minutes, then, because we did say quarter past 10, and we're not quite there yet. Hello, Yasmin. Are you online?

45 MS GRIGALIUNAS: I am online. Can you hear me?

COMMISSIONER LINDWALL: Yes, I can.

MS GRIGALIUNAS: Wonderful.

5 COMMISSIONER LINDWALL: Sorry, I've got a screen on one side and a camera there, so I look a bit odd. That's the way it is. Would you mind introducing yourself, and perhaps – and give a bit of an introduction about what you would like to say to us today?

10 COMMISSIONER ABRAMSON: She disappeared. She was there. Back again.

COMMISSIONER LINDWALL: Hello, Yasmin.

15 MS GRIGALIUNAS: Sorry. Hello again.

COMMISSIONER LINDWALL: That's all right.

20 MS GRIGALIUNAS: I'm not quite sure what happened then, but we are back.

COMMISSIONER LINDWALL: Well, you probably didn't hear me then. I was just saying, would you mind introducing yourself, and just give a bit of an opening statement, and we'll move on to questions, if that is all right with you.

25 MS GRIGALIUNAS: Yes, that's perfect, thank you. My name is Yasmin Grigaliunas. I am the CEO and the founder of the World's Biggest Garage Sale. We are a profit-for-purpose organisation, and we opened Australia's first and only fully operational circular economy precinct in Brisbane back in  
30 April 2020. Since then, we have scaled from six staff up 33 team members, with 50 per cent of our staff actually coming from disadvantaged or underprivileged communities.

35 So we provide jobs, and we are a profit-for-purpose organisation, not to be mistaken as a charity. We exist for the circular economy, and, as part of our precinct, since having a permanent space, which was opened in our third year of business – we're just about to celebrate four years as a company this year – we ensured that our first space really lived and breathed the principles of circular economy, which fiercely includes the right to repair, and it's  
40 something we've been very strongly passionate about since opening.

Really, I guess, from (indistinct) through to a whole-of-system problem or opportunity, the right to repair is something that we don't see in isolation for our business, and we see it significantly in tandem with other responsibilities  
45 of the circular economy, including the extended producer responsibility. And we're seeing some physical evidence of that uptake with partners such as Officeworks, who are currently one of our largest partners.

5 We at the moment physically take in items that need repair and renewal in the office products category with Officeworks. And for us, what we've been able to see, transform, is from a pilot system many years ago, through to, now, production. So we're taking what we call surprise chain, and we're turning that into supply chain, and using materials and parts that not necessarily are identical in brand to the items that are actually flowing through our system.

10 We feel, certainly as representatives of circular economy, and a very loud and proud voice of the right for repair, there's opportunities that are being missed, and we're seeing them on the ground every single day in our centre, whether it's (indistinct), clothing, any materials, noting that the World's Biggest Garage Sale is actually an enterprise that is not specialising in one product stream.

20 So we see fridges, computers, T-shirts, dresses; all might need the smallest repair, or, in some cases, the largest repair. And we have enquiries currently coming to us nationally from people asking us to repair their microwave, fridge, laptop, dress, desk, chair, and so on. And really, what we're seeing is a demand for these circular economy precincts across the country, because consumers are hungry for the capability to prolong the life of their existing items.

25 And they're also shopping with more consciousness around wanting to make a choice where an item might be able to be disassembled easily, and then reassembled, or harvested for parts, so that those parts might otherwise be used in another product and material stream.

30 We joke about the word 'Okea,' which, internally, our business has created, where we take a product from a brand like Ikea, where a customer might drop off an item that they think is useless, and they no longer have a need for, and it needs repair, and rather than crush it and send it off to a landfill facility, our team will design the product and the part from other materials, and, in some cases, Officeworks materials, to then complete the item, which is made from two source materials from two different suppliers, all through a creative design-led process, which is a systems change.

40 So we're really looking for systems change, and what we try to do at World's Biggest Garage Sale – and I believe very successfully – is we get to show the impossible is possible. And because we don't mind blending materials from multiple source supply chains, we have an ability to take the blinkers off, to crush the silos of competition, and to actually take a co-opetition, collaborative approach, because the materials on ground in our precinct are actually – all the work has already gone into them, so we want to use those items as repair supply chains, so that not only in our circular economy precinct, but in other locations across this country, and even as a supply chain

material where spare parts are made available for customers to do their own repairs, we're really looking at encompassing education as a very strong value proposition, to ensure that sustainable end of life for products is achieved, and that the higher value proposition of a product, from its first life through to its multiple life, is recognised and realised as a very capable and consumable opportunity for this country.

I think Australia leads the way when it comes to getting our hands dirty. We're really good at getting stuff done, and I feel that we're in a wonderful position, particularly with the support at government level, to ensure that these ground-up opportunities are coupled with policy, and enabling to have influence around doing things differently, because of the (indistinct) we get to see on the ground.

I feel that, as I wrap up the conversation around the right for repair, I would like to really just represent the voice of the consumer. They desire it. We have thousands of customers every single year talking to us, with a repeat customer base of over 30 to 40 per cent most weeks. Customers are recycling themselves. So enterprises like ours with a strong commitment to sustainability, when they're looking for prolonged life and extended life of items either currently in the system or future items that are designed better. And really one thing that's vitally important, and a wonderful demonstration of success, is organisations - the big, what I call stability. So people like Officeworks. Stability coming together with agility - organisations like ours - to actual equal capability.

And it's a little formula that we use internally at our business. We created it because what we're trying to articulate is that stability and agility, when they come together they do result in new capabilities. And we're seeing that with Officeworks, who now work with us to ensure that the spare parts sitting idle within their own warehouses are now resource streams for our organisation to actually repair products that would otherwise not end up back in the ecosystem. So, if it can be done with a difficult material like cracked or chipped or imperfect furnishing items and office products, then surely we, as a nation, can start to take that information and the education around it to be able to start to design on purpose the ability to provide information about materials used in a product, where they're sourced from, what parts do we need, what is the spare parts list and can we get access to those spare parts.

Understanding the life cycle and the environmental cost of making that product in the first place, and how might we do more onshoring and creation of spare parts and supply chain of those materials made from non-virgin products here in this country. And then, of course, reparability. It's something that we're really passionate about, and we'd like to see the good old-fashioned values of old times coming back to new, where there are repair centres and repair opportunities, and we're tapping into - this is the one thing I'm super passionate about - not true, I'm passionate about lots of things but -

there are so many idle people right now with knowledge of how to sew, grow, repair. I come from a technology background where products used to be pulled apart and repaired. And we just have lost the art of that skill.

5 And I would like to see initiatives taken at government level where those knowledge, wisdom creators who have that capability can start to teach the younger generation how we might repair and renew and remodel products made from non-virgin materials within our ecosystem. You know, we think the novel materials need to be built and very durable. And moving forward  
10 this country is in an amazing position. We have the knowledge, we have the humans, we have the capability. And now, for me as a founder, and one of those crazy entrepreneurs who believes that things can be done even when most people think that they can't, I think that we've got an opportunity to do some testing. Rather than too much formalisation around the theories of  
15 what we could do, can we blend that formalisation with a little bit of (indistinct) and can we get our hands dirty and draw on those who are prepared to do so, so that we can learn, and then we can teach, and then we can scale.

20 COMMISSIONER LINDWALL: Okay, well thank you very much for that, Yasmin. Very thorough presentation. Could I ask for a start - you've got a circular economy precinct, which, if it wasn't for Covid, we probably would have been able to visit, unfortunately we can't at the moment. How do you compare the precinct to what we would call a repair café. Is it like a super  
25 repair café, or something more than that?

MS GRIGALIUNAS: Yes, definitely much more scaled. And I suppose one thing we heard from our customers over the years is that they really just wanted a one stop shop. Like, somewhere where they go and take  
30 everything. And so within the precinct the very nature of the inputs coming in is across the entire sector of materials sourced from community and corporate. So, it could be - all the materials flow in and then we have different departments that work with the different product chains. So we have an electrical department doing electrical remodel, repurpose, rebuild,  
35 test and tag. We have a chair and repair facility, where wheels and bases are changed over and re-covered and reupholstered. We have a carpentry area, or a workshop, where items are actually built using sourced materials of pallets and wood and composite products that would otherwise be landfilled.

40 And we also have a resell retail facility where customers can actually consume the products - come and visually see how we prepared and repaired items. So I suppose in a lot of ways it is like a bit of a super-centre. And we see - that we've got an upholstery and textiles facility within our operation as well. So we're actually now working not only with manufacturers, but also  
45 with, you know, of course from your rags - because we rag trade a lot, obviously - but - we don't personally, but Australia does - we send a lot of products off for rag trading. But we do kind of a rags to riches textile repair

centre as well, where items are actually repaired for consumers. But also remodeled and reshaped based on materials that are maybe not suitable for repair as well.

5 So I think it's - we see a repair café as a complimentary product within our circular economy precinct, and we think that as we scale these facilities and capabilities, that each community across this country already has those people out there wanting to do the doing. So it's about actually bringing all the doers together to actually bring that to a super-charged, super-power  
10 facility, where it's almost like a super-centre of new - you don't go to buy new stuff, you go to buy old stuff. But it's so much more than an - like, people have called us an op-shop in the past. And if you come to our facility, we're anything but an op-shop. It's an absolute retail, resale experience, that's like going to a shopping centre, but where everything is not new.

15 COMMISSIONER LINDWALL: Okay. No, that's fantastic. And obviously it requires good partnerships with organisations, as you said with Officeworks in your case. But one of things that have been said to us by a regional equipment manufacturer is that they worry about safety and security  
20 of products being repaired in places like individuals or repair cafés. So, I appreciate your comments on that, because that's been a claim that's been made a few times to us.

25 MS GRIGALIUNAS: Absolutely, it is certainly a theoretical risk, and an absolutely practical risk as well. And, as an enterprise, it's something that we take very seriously. When it comes to manufacturing products, we ensure that we have all the right systems in place to be able to manufacture a product with qualified professionals where it's being remanufactured. And I think that we underestimate the capability of people within this country. I mean,  
30 we build houses every day, and there's no risk with houses. We construct buildings every day and we mitigate against that risk.

And I think when you bring design, engineer, manufacturing and, of course, the consumer together, it's amazing the capability to be able to create  
35 something new. And instead of us having to do it and rely on sending our designs offshore to be manufactured for us, where I would argue that the same risk exists, as long as we implement and integrate standards here - and I do feel that that's an opportunity for government to step in and assist - then those standards can be standardised to allow for more people to be able to  
40 safely repair, model, renew, rebuild products, so it becomes a significant value stream within the economy.

COMMISSIONER LINDWALL: Yes, and now, Yasmin, of course we've also heard that - and we've observed too - that a lot of products are more  
45 difficult to repair than other products. Obviously the product design makes an effect upon the reparability of things. In the case of France, it's introduced a product labelling scheme about reparability. I don't know if you

have any comments on that, or how you would see something to improve the ability for things to be repaired.

5 MS GRIGALIUNAS: Yes, I really do see that that is a significant opportunity for our country. I feel that as a consumer myself - and I'm a  
conscious consumer - that that scheme - the ability to understand and visually  
see how easily repairable my product is, it would help me make a decision  
based on where I want to spend my money. And I think that the more we can  
10 educate our consumer, the more we will see a momentum growth of circularity, which is then drawing on less resources, which is of course then ensuring longevity of our entire environmental ecosystem. And I'm more of an activator than an activist, and a producer than a protestor.

15 So you won't often hear me use negativity around this entire opportunity. I think that there's a lot of hot air that gets tatted about in relation to why we can't do things, or why we must do it better.

20 But ultimately, I think that there's enough global support and information around the need to educate consumers, for (indistinct) to trust a consumer that they're going to make decisions that's right for the environment, but also right for the manufacturer. And I would say also that it doesn't necessarily need to start with the big guys and the big girls, because sometimes turning a Titanic is much more difficult than steering a tugboat.

25 So, can we practically support smaller businesses to integrate and implement these systems that then help us drive change into the bigger businesses? And you'll see organisations like Ikea and others now are putting labels on their resale products, and talking about how and where that source material came from. I think that the more we can see it, the more we can be it, and I would  
30 absolutely encourage visibility of that, and put a call out to all manufacturers, that, no one wants a Kodak moment, and Kodak didn't change, and we talk about the taxi industry as well, and didn't change.

35 The only constant right now is change, and we all need to take a bit more of a Sniff and Scurry approach, referring to the book 'Who moved my cheese?' than a Hem and Haw approach, where we're trying to hold on or clutch on to old systems. Change is coming whether we like it or not, and I think that the more positive and proactive we can be about sharing the information that lies under the hood of many of these products right now, the more open and  
40 collaborative we are, the more, I believe strongly, and can prove it through our own customer experience, you will gain more customer loyalty and repeat customers if you could just let them under the hood a little bit more, and give them a little bit of capability and control, to make better choices.

45 COMMISSIONER LINDWALL: Yasmin, I'll ask one more question and turn to Julie. Do you have any comments about the regulated schemes and the unregulated schemes on product stewardship, and could you talk

generally about product stewardship? In Australia of course we have the NTCRS, the National Television and Computer Recycling Scheme, which, in our report, we've recommended that it be broadened to include repair and reuse, as well as recycling. So did you have any particular things you would like to comment on that?

MS GRIGALIUNAS: Yes, I do. I think there's been a lot of trending terms around circular economy, product stewardship, and even the word 'waste.' And I was at a women and waste and resource recovery breakfast this morning here in Brisbane. But what I see is, around product stewardship there's a very broad scope of what people believe that it is.

And I think there needs to be more education around it, more articulation around exactly what it means, and then a refinement of each of the encompassing opportunities within product stewardship. So, I agree and support your suggestion of including repair in all product stewardship schemes. And you could argue right now – and we were recent recipients of the Banksia Foundation's award, the Minister's award, for the environment, for our work with Officeworks.

You could argue that that product stewardship scheme that we run with Officeworks, it's very – started very informal, and now it's a more formalised partnership that's across the nation. You could argue that the lessons learnt in that could then feed and fuel into other opportunity product schemes. And perhaps instead of, again, us just each looking at our own product stewardship scheme, all novel or very materialised, each of us has the information that we need right now in order to create a system that is replicable and scalable within product stewardship across every product category within this country and beyond.

And Australia could easily be exporters of products in the future that we're re-manufacturing here in this country if we got our product stewardship schemes more closely aligned and operating, again, more in a collaborative and cooperative approach and manner.

COMMISSIONER LINDWALL: Thank you. Julie, can I turn to you now?

COMMISSIONER ABRAMSON: Thanks. And thank you very much, Yasmin. Like Paul said, if we were allowed to travel, we would absolutely have come and had a look at your premises. I wanted to ask you some questions about warranties, and I'll talk you through the proposals that we've got there, because one of the issues that – a barrier to repair is that consumers think that they will void their warranty, and therefore they have no rights.

Now, it's quite clear that the consumer law guarantees are not affected by independent repair. And what we've recommended in the report is that there should be text in a warranty, stating that entitlements to consumer guarantees

under consumer law don't require consumers to use authorised repair services or parts.

5 But in America, they even actually go further than that, and they actually contain – actually have provisions which contain terms that require consumers – (indistinct) requiring consumers to use authorised repair services or parts to keep their warranty coverage. So, we've proposed one step, but there is a further step, so I'm interested in your views.

10 MS GRIGALIUNAS: I think – if I take my experience from when I was working in a technology company, and we had a service centre where customers would be encouraged to bring their technology back, and we would pull it apart, repair it, and renew it again and put it back out into the economy. Sometimes you wouldn't be able to get the exact branded parts  
15 that – you would find an additional part that would function the same way.

And warranties would also be provided. I think that a warranty is required for consumers to feel safe and secure. But I do feel that it doesn't need to go back to the source material, of, who was the supplier in the first place.  
20 Again, I think, as a brand, if we took a view of, begin with the end in mind, and I'm a brand, and I'm a giant brand, and I sell my product, and I make it repairable, I would be encouraging repair centres to be educated and articulated well on the repair of my products, so that more of my products could continue to flow through the ecosystem, not only in the primary  
25 market, but in the secondary markets as well, with the secondary market being the largest growing market in retail across the country and the world.

So, for me, I would always, as a manufacturer, be looking at how might I have a great brand reputation as a secondary market supporter. And I feel  
30 that the best way to do that is not to try and be the big giant that owns everything, and everything must come back to me, or you void a warranty, but absolutely encouraging training and creating toolkits, and more opportunities for small businesses to be able to expand their portfolio or range of products and service offerings, being able to have my sign on the  
35 window that says, 'I'm an authorised repair agent for this brand.'

And my warranty stays, whether I get it repaired by Joe Bloggs down the road or Mary Smith out the back. I think that there's an untapped  
40 opportunity for small businesses to thrive, with manufacturers being able to support proactively a very different, and perhaps Frankenstein style approach to letting go, but it almost slowing down to speed up.

Can we take a slowing down to speed up moment around the repair opportunities? And no one wants – I can imagine in the future, if we're  
45 creating this – if the government's recommendations are so proactive like that that that there's opposition for it, what will happen in the future is, we'll just have big warehouses with tonnes of products sitting idle, because we've

got a backlog of people able to repair these items, and we'll end up dumping them, and those dormant products are part of the real problem right now in the circular economy.

5 We've got to get these things out of the warehouses and into the hands of those users. Rather than just making more product, we need to make more – make – make repair of product more feasible and viable, by ensuring that warranties are supported. Otherwise, consumers will go and buy new. And we're not encouraging a consumer to make a secondary choice if we don't  
10 design a system that supports them to feel trust within the brand.

COMMISSIONER ABRAMSON: Yasmin, thank you. That's a broad policy response, which is very helpful. But I'm also being quite precise here. I'm interested in the experience you have in your organisation of consumers  
15 coming in, and whether they say to you, 'I'm a bit worried, because I got told that I wouldn't have my warranty.' So I'm just asking about your direct experience.

MS GRIGALIUNAS: Our direct experience is, we respond to the customers' concerns proactively, by offering a returns policy on any product purchased  
20 from our business, whether it's warrantied or not, or otherwise. We have a policy that if something ever goes wrong, you can always come back to us, and we will replace or repair your product at no cost to you.

25 And as a business, that's how we respond, because we know that when you're buying a secondary – or a product that has been repaired or rebuilt, there is definitely some, 'Does it come with a warranty?' And we actually have a warranty response template that we humanise. We don't use it as a template, but we humanise it, which basically puts to rest any consumer  
30 concerns that if they buy a product from us, they have no rights.

And understanding that the Australian competition and consumer law requires us to provide that warranty, we are very upfront with our consumers, to proactively say, 'It's as safe to buy from us as it is anybody else, and we  
35 honour (indistinct).'

COMMISSIONER ABRAMSON: Yasmin, if you're going to give us another submission – and I'm making (indistinct) a view here – that would be very helpful, if you could give us some information about that. The other  
40 issue I want to ask is your business model, and you may not want to tell us that in a public forum, but it's about insurance, because one of the big issues has been around – we've talked about warranties, so it's the insurance that sits behind it, and we've noted that a lot of the sort of social enterprises, that they have a relationship with another organisation that provides them with  
45 that cover. How do you provide that insurance?

MS GRIGALIUNAS: We're really fortunate to work with an incredible insurance organisation. We pay for insurance, so we have all the right insurances. We have our insurance assessor come out and do an inspection of our facility, again noting that we're very risk averse, and it's one of - it's quite an expense for us to have that right insurance, but we have insurance across every required category to ensure that if ever - and here's why. Like, with their ethical brand and we care a lot about our brand reputation, and the last thing we want is a consumer to be, you know, inadvertently experiencing something terrible with their product.

5

Our insurer ensures that we handle products that allow us to be able to repair and re-commerce, I guess you could say, the materials. And we have all the correct policies in place to ensure that our organisation is protected, but ultimately that our consumers are protected and that we as a business - you know, touch wood - should anything ever occur - and I know that we're not - there's no guarantees in life. Just like any business, something could go wrong, but we have all the right mitigations in place.

And I suppose in a lot of ways that's why we took a profit-for-purpose model, because we knew as a not for profit and a charity that there would be so much more restriction in what we would be able to give consumers, and consumers were saying this is what we want, so we designed our business model around being able to have the practical capabilities to act as a commercial entity but to ensure that community and commitment and social enterprise was at the core of everything we do.

COMMISSIONER ABRAMSON: Look, that's very helpful because as I think Paul said earlier, some of the claims put to us are around safety and security, so that's very helpful. One final question. In terms of breakdown of products, what are the most popular things that you do get consumers wanting fixed or repaired just, you know, in general terms?

MS GRIGALIUNAS: In general terms, believe it or not, it's actually furniture.

35

COMMISSIONER ABRAMSON: Yes.

MS GRIGALIUNAS: Furniture is huge. Recovering chairs and a lot of other chairs, so office chairs, outdoor chairs. We get a lot of reupholstery requests and we also - we get a little bit of electronics, but most people still feel that electronics are disposable, and one thing we have yet to do is really ramp up our marketing around the capabilities we have with electronics, and predominantly because we know the floodgates will open and it would create a wave of demand that we right now wouldn't have the staffing to be able to deliver on.

40

45

For us, you know, as a social enterprise we're raising capital to scale our business, so for us there's a few chicken and egg things we need to do before we could go to market and say yes, we can repair these products proactively. But if we were to not stimulate the market, the market just brings furniture, mostly household products. We do get a lot of requests around clothing and the mending and ability to have circles of education for sewing has been a real erupting opportunity, in particular the last six months.

COMMISSIONER ABRAMSON: Yasmin, I disclosed yesterday in response to a question that I know how to (indistinct) I'm not saying I would do it, but we did have that conversation yesterday. Look, thank you so much. That's been really helpful.

MS GRIGALIUNAS: Thank you.

COMMISSIONER ABRAMSON: Back to you, Paul.

COMMISSIONER LINDWALL: Thanks, Julie. Yasmin, just one more question about skill availability. Of course Australia does have skills shortages. Unemployment rate is relatively low even due to the pandemic, and you said you had 33 people employed in your circular economy precinct in Brisbane. I'm just (indistinct) about the ability to get people for your type of work and how easy is it. How easy have you found it, and if you wanted to scale up, how could you do that given - I mean, I don't know. If you look at our report on page 66 there's a very good graph showing new electronics prices versus repair of prices and, of course, new products tend to be capital intensive, built in factories so they're quite efficient in building things. So repairing obviously is fairly labour intensive, so I would like some comment around that type of thing.

MS GRIGALIUNAS: It's very labour intensive, and if you looked at dollar for dollar you would not make it as a decision. I will guarantee you that almost all products will cost more to repair than to repurchase. For me, to answer your skills shortage question first, there is no shortage of people wanting to get involved in re-educating themselves around all things circular economy, and right for repair is very much included in that lifecycle. And, you know, we've not gone to market at all to hire staff; they have all come through referrals or people shopping with us who have become interested parties who then come in and learn how to rebuild a base and create this product.

But I feel that there's a value that's difficult to measure, and that is in the actual value of building the human. So we always say we're in the business of building people and then people build our business, and absolutely we need to replicate in scale, and there's a commerciality requirement around that for a business to be able to be self-sustainable and sustaining. At the start you might not - it's like any start up. Like, you might not make a lot of

5 money at the beginning, but if you invest early, then what you will see in years from now is not a skills shortage. I think that anyone can learn how to sew; anyone can learn how to repair. These skills are not the shortage. The shortage right now is the perception of, you know, I guess, the ecosystem, that it's actually worth doing.

10 And the reason it's worth doing is because if we don't, there's going to be an Earth shortage in the future, and I think that we need to sometimes invest now to be able to take the longer term. Begin with the end in mind. Well, the end in mind for me is that we're actually using more non-virgin source materials to remanufacture products in the future. Well, to do that it means we're going to have to strip back some products and get our eyes on the prize to understand what's needed in order to get repairability scalable, and it requires upfront investment right now.

15 Investment of time, investment of tools and investment of team, and that's a shout out and call out to any smart investors out there that software as a service and tech companies, absolutely invest in them, but get involved with these messy companies on the ground that are physically handling products because we're not only building businesses that are scalable; we're building people, and the cost on the future health system when you get to give people jobs and give them something to do in life that's valuable is actually going to be a future-saving cost in other departments across the country.

25 COMMISSIONER LINDWALL: Well, thank you very much for that, Yasmin. I think that's perfect. We're on time. So thank you for speaking today and - - -

30 COMMISSIONER ABRAMSON: Thank you so much.

MS GRIGALIUNAS: Thank you.

35 COMMISSIONER LINDWALL: - - - we much appreciate it, and take care and we hope to come and visit you some time.

MS GRIGALIUNAS: Yes, please do. Thank you so much.

COMMISSIONER ABRAMSON: Thank you.

40 COMMISSIONER LINDWALL: All right. We will now have a 15-minute break and resume at 11 o'clock with the E-Waste Watch Institute.

45 **SHORT ADJOURNMENT** [10.48 am]

**RESUMED** [11.03 am]

5 COMMISSIONER LINDWALL: Okay good, well we'll get started. So, John and Rose, would you like to introduce yourselves and give a bit of presentation and then we'll have some questions after that?

10 MR GERTSAKIS: Yes, thank you. First and foremost, thank you to yourselves the Commission, for its good work in undertaking this inquiry and producing the draft report. My name is John Gertsakis and together with  
15 Rose Read we founded the E-waste Watch Institute a couple of years back. It is a timely and necessary inquiry during a period where Australia is facing a variety of waste related challenges, so we appreciate the opportunity to present here today and share some of our insights, our experiences, our views. E-waste Watch is a not-for-profit organisation focused on projects that can accelerate electronic sustainability, stewardship, and circular solutions across the supply chain, and achieving this through collaboration.

20 E-waste Watch believes that the draft report covers many of the relevant issues associated with repair and product durability, including a right to repair. The draft has identified, we believe, key issues, impacts and proposed solution, some of which are noteworthy and should be pursued with vigour. Especially those related to consumer labelling and the benefits of a star rating scheme to better inform consumers and driver greater desire for repairability outcomes by producers and brands. The Commission's draft recommendation  
25 to look more closely at how reuse and repair can be further improved for e-waste is also to be commended. We do however believe that the Commission's work is not done yet, it is not finished, there is more to do, and that the final report must address several key issues that have been either overlooked, underestimated, or discounted for various reasons.

30 And so, we offer the following comments. While the Commission has noted that the right to repair is a multifaceted policy issue it can do much more to approach the issues in a coherent manner that acknowledges the interconnectedness between consumer law, design, durability, and e-waste  
35 generation. A sidelines approach to these issues will fall short of the necessary policy reforms required. At a time when the Commonwealth Government, State and Territory governments and many local councils are developing and pursuing circular economy policy plans and investments, it's vital that the commission reflect these initiatives in their analysis and  
40 recommendations.

45 Why? Because one of the key tenants of a circular economy is to prolong the life of products, components, and the materials from which they are manufactured. This is not blue-sky policy ambition; it is hardwired into more and more policies and programs worldwide in both business and in government. Yet this is not adequately reflected in the Commission's analysis, in our view, or its recommendations. The term appears only once as

part of a broad overview, it appears a few more times in the full report, which I'm still wading through. But the importance of a circular economy, and the role of repairability and durability is absolutely critical.

5 The point here is that alignment with government policies is essential, these  
policy reforms currently in play include attention to specific work by the  
Commonwealth on repairability, durability, reusability - especially for  
electrical and electronic products, or as I'll call them today e-products.  
Specific work on the role of design to better delivery measurable circular  
10 economy outcomes, and specific work on the opportunities to implement  
interventions across the product life cycle, and across the supply chain to  
avoid and reduce waste arising from e-products. So, there's a lot of work  
going on at the moment at a Commonwealth level that needs to be reflected  
in the finalisation of the Commission's report.

15 E-waste Watch would encourage the Commission to look again at the 28  
recommendations in the government's review of the Product Stewardship Act  
and ensure that they positively inform the final recommendation in the  
Commission's report. All of these recommendations are being adopted by the  
20 Commonwealth and should not be overlooked. An area of concern; E-waste  
Watch is very concerned to see that the commission concluded that because  
we had well-managed landfills that the impacts associated with landfilling  
waste are not significant or worthy of greater attention. Firstly, this is not  
entirely correct, New South Wales alone is running out of landfill space. So,  
25 the imperative is to ensure e-waste is diverted from landfill, that's essential.

Secondly, this observation fails to acknowledge the above-mentioned circular  
economy policies being developed, or that are in place. And the need to  
prolong the life of products; keep them circulating in the economy. A well-  
30 managed landfill being an acceptable solution to managing e-waste is a bit of  
a 1990s view of how to manage our recourses that go into e-products, many  
of which are scares or non-renewable. Thirdly, only TVs, IT equipment and  
mobile phones are adequately addressed through national consumer friendly  
schemes and programs in Australia. Australia has a relatively poor record  
35 when it comes to managing a range of other e-product categories, especially  
solar panels, lighting products, many small appliances, some white goods,  
power tools, batteries, scientific and medical equipment, toys, and a range of  
other consumer electronics, including microwaves, vacuum cleaners etc.

40 In other words, we only have some solutions to some parts of the electrical  
and electronic equipment range. Our point is that the total body of e-waste,  
and electrical and electronic products in Australia, is not managed effectively  
in Australia at present, and that repair and durability is part of the solution to  
addressing many of these e-products. Ask any local council in Australia and  
45 you will quickly discover that desktop analysis of the problem does not  
match their everyday management of the e-waste stream in Australia, and the  
confusion is of cause for consumers, rate payers, house holders, businesses in

those municipalities. In short, the multifaceted aspect of reparability and durability must better address the issues of circularity and the interconnectedness of product life extension and other interventions that can avoid waste from e-waste in the first instance.

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Our policies must not reflect an ambulance chasing approach of less harm, amelioration, and questionable incrementalism. This inquiry highlights that repair and product durability is a critical opportunity for Australia to move forward in addressing waste avoidance and reduction from e-products. It's also an opportunity to ensure an aligned and coordinated approach alongside the very important work being undertaken by all levels of government in Australia to transition to a circular economy. We can't afford to use yesterday's assessment methods, or yesterday's assumptions, to address tomorrow's issues and impacts related to e-products, e-waste, and how to solve some of the challenges. And thus, the importance of the Commission making sure it produces a report recommendation that reflects 2021 and beyond. Ultimately the E-waste Watch Institute is driven by three key questions; are we doing enough? Can we do better? And what are the solutions beyond recycling?

20

And this is where reparability and durability kicks in. We would strongly encourage the commission to adopt these three questions in finalising the report. Again, we thank you for your fine work in the draft report and would be happy to take questions in addition to Rose Read maybe adding some comments as well.

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COMMISSIONER LINDWALL: Well thanks John. Rose, did you want to add comments before we ask questions?

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MS READ: Just a couple of points, Paul, thank you. And also, I would like to acknowledge the traditional owners of the land I'm on, the Gundungurra people here, and past, present, and future elders. Firstly, just congratulations, great to see this is the Productivity Commission's work, excellent, really good. The analysis is excellent, and John has highlighted the positives and some of the areas which need further work. I just wanted to reiterate; the labelling on product durability and reparability will go a significant way in raising and driving greater repair and ensuring more accessibility to repair, so I think that's a big plus. The comments about landfills and the need to integrate with what other states and territories and the commonwealth is doing, there are three states: the ACT, South Australia, and Victoria ban e-waste from landfill. Western Australia is in the process of looking to ban e-waste in their state in 2022, 2023. Queensland is about to start an e-waste action plan, which E-waste Watch is involved in, and the option of using a landfill ban is a way to manage e-waste, so I think as John has mentioned, landfills are not an option for e-waste. And in terms of moving onto improving the management of e-waste there's a - you know the GPS tracking is one useful tool - but I think in terms of trying to drive repair and reuse we

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5 need to look at different aspects of - the current e-waste collection schemes aren't necessarily set up to drive repair or reuse, or necessarily incentivise. Whether that's the exact - is the place to start, to drive that - I think we need to think more openly about that, and look at, you know, understand how products get from A to B and how you can stop them being thrown in the bin in the first place. And intervene there rather than - or else intervene in terms of trying to recover and pull out parts and components before they are recycled. So, they're just the three points that I wanted to raise.

10 COMMISSIONER LINDWALL: Thank you, Rose. I appreciate those comments. Obviously when we look at a whole report there's lots of aspects that we've looked at, across a number of areas. And they each have a legislative issue. So, I agree that it's important to look at it from cohesive, coherent manner, but in the end if you're going to address a whole lot of things, they'll have to be seen through different prisms. Otherwise I don't think that there's a clear legislative framework that you could otherwise achieve. But we'll look at that more. I'd like to ask a bit about product labelling. Could I start with that first? Now, there is a product labelling scheme for reparability in France.

20 Should we adopt the French scheme, if you know much about it, or should we have our own scheme? And what are the benefits and the costs, or the merits and demerits, of having a coherent worldwide product labelling scheme for reparability and durability, versus Australia going its own way?

25 MR GERTSAKIS: Maybe I'll start off on that one. I think there's a need to make sure that whatever takes place, or is developed in Australia, works in the Australian context. Having said that, we do need to harmonise. Many of the producers, brands, manufacturers, are developing product for a world market. And therefore some degree of harmonisation there is important. So rather than say do we copy the French, or not, I'd rather start from a point of work closely with industry and look at existing labelling programs, existing compliance infrastructure in Australia. And the example here is - a very successful one, I would add - is energy star rating labelling in Australia, and water efficiency labelling Australia for certain product categories. Programs developed in close collaboration with industry.

40 Compliance infrastructure working to certification standards. I would be looking to Australia to learn from what the French are doing - it's early days - what's working, what's not, and other labelling programs. But really to not add another labelling program from the ground up, but to look at how we work with the existing energy star, water efficiency, as it relates to the product categories that it's relevant. So, I think that's particularly important. The infrastructure is there. The compliance (indistinct) are there. It's about the relevant standards that would have to be developed. And this is where we could look to the French and learn from them. But also again making sure

that we work closely with manufacturers - OEM suppliers in Australia - in the development of that solution.

5 COMMISSIONER LINDWALL: Now, in terms of the labelling, of course labelling has a cost and you would - if you want to have a labelling like this, you would want to have it to influence the customer at the point of sale, presumably. So, it would have to be on the physical device in the shop, as well as online presumably. Are you confident that there is a benefit of  
10 having a labelling scheme in Australia on reparability and durability, and that the individual consumer would - it would influence their behaviour, in terms of what they buy?

15 MR GERTSAKIS: Yes, we're very confident. We're very confident because if you use as a baseline the evolution of energy star, water efficiency, and how that has played out, and the role it plays in the purchase of those goods over time - it hasn't happened overnight. Those programs have been in place for a long time. But what's key here is - and it's not just about doing a label. It is about the marketing, the communications, the consumer  
20 education associated with that. It also provides brands and suppliers an opportunity to differentiate in the marketplace around their performance. So, quite confident. And it's an obvious area where the cost is (indistinct) being internalised in the purchase of a new product. And that's where labelling kicks in. Rose?

25 MS READ: I think there's - I'll draw your attention - there was a consumer survey done late last year Passion and - John, was it - - -

MR GERTSAKIS: The Power and the Passion.

30 MS READ: The Power and the Passion - where 2000 survey conducted by the Bravery and Republic of Everyone, which really shows a significant shift in consumer behaviour and consumer expectations of their brands. They expect brands to be socially responsible, and environmentally responsible. And that includes being able to repair or to have recycled content, or have  
35 different (indistinct) you know, so - and I'll share the - I'm happy to forward that link through and that report. Because I think it's a very insightful report. And, you know, the EPAs of New South Wales have been doing consumer surveys on willingness to, you know, environmental consumer behaviour and that - or, consumer behaviour from an environmental perspective.

40 And, you know, we are seeing a significant shift where people are actually prepared pay more for product that are doing - that have a social good and environmental good to those. And, you know, that is, you know, up to, you know, anywhere between five to ten per cent more on the price point.

45 MR GERTSAKIS: The other point, if I may - it's not the consumer label in isolation. The consumer label is an opportunity to leverage new drivers for

5 new product development. So, it's about giving the consumers choice between Product A and Product B, and what different brands are doing to design those products to have a longer life span, to be more repairable. So there is a direct connection between the purpose of that label to both educate and inform, but also to drive design improvement, engineer - and product development engineering improvement.

10 COMMISSIONER LINDWALL: Now, you could go further of course and have minimum design standards for reparability in Australia. That would, of course, potentially mean that a lot of products that are sold in Australia would no longer be able to be sold. Would you argue for such a - quite a - a substantial change in what would - if we had that type of approach?

15 MR GERTSAKIS: I would propose that solutions in this space be developed with key stakeholders. With the brands, with consumer and environment groups, doing that collaboratively. So that would be my view - is that collaboration on the development of those responses is really, really important.

20 COMMISSIONER LINDWALL: Now, what about - and one the previous participants - yesterday, I think it was - spoke about government procurement policy, as well as cooperation procurement policy. In other words, in terms of laptops and so forth, that they minimise - they have in the procurement policy a requirement for reparability and also a minimum life span. What do you think of that? Is that something you would advocate?

MR GERTSAKIS: Yes, absolutely. Rose, over to you.

30 MS READ: Yes, I think procurement is a very effective way, and probably one of the most effective ways government can influence. And I would strongly recommend that greater emphasis is placed in the procurement policies on durability, requirement for reparability, in - you know, electronic products being purchased. Yes, I think that's a really important thing. Yes, just the other point - just going back to the point before about minimum design standards. I think, you know, you need to look at - there's some minimum principles that need to be applied at least. And, you know, I support John's comment in terms of anything would need to be developed in collaboration with the affected industries.

40 But, you know, there are - the product either has to be recyclable - fully recyclable, fully compostable, and repairable and reusable. So there's some very clear minimums that have to happen there. By simply doing that, we'll also raise the bar.

45 COMMISSIONER LINDWALL: Okay.

MR GERTSAKIS: A couple of other points in relation to that - the Environment Minister's Priority List talks about electrical and electronic products. There are specific actions in there. One of the specific actions is around design for durability, reparability, reusability, recyclability. So, again, there is context there. There is an objective there. It's a priority action in the e-product space that highlights the significance of this issue. The other point of (indistinct) procurement to highlight, if it wasn't highlighted yesterday - and from my own direct experience in working with business - if there's a group of customers that big brands, OEMs really take notice of in certain categories, are big buyers, fleet buyers, those in government or big cooperate entities buy 1000, 2000, 5000, whatever they might be. Phones, laptops, dishwashers in the tearooms, whatever.

The minute you have a procurement process that really deals with reparability, durability, et cetera, recyclability with those fleet buying tenders, you will start to see change. That's in addition to what the general consumer market is saying and wanting from parts, but fleet buyers and the role of procurement there is a great opportunity to really influence and bring around change. And a lot of that is really about how to get positive procurement going in government and to make sure that environmental and social objectives are genuinely integrated.

COMMISSIONER LINDWALL: Okay. I should turn to Julie now otherwise we will run out of time for her questions.

COMMISSIONER ABRAMSON: No, that's all good. Thank you. John, you said that our approach to a number of the recycling is piecemeal and you referred to the television and recycling but said there were a lot of other things. Like, how would you deal with that given the way that the product stewardship schemes work at present?

MR GERTSAKIS: Look, this is a really important area of work, Julie. I think this is where we do need to look at what are the outcomes we want to achieve for e-products; what are the other categories that aren't yet covered; how do we look at - you know, the question might be, you know, do we expand the scope or do we develop new measures, new programs for certain areas. You know, the issues and brands, for example, associated with small products, small appliances, might be very different to how we want to deal with televisions, big IT products, et cetera. But I believe there is great scope to make sure that we look across the range of e-products, everything that contains a battery, has a cord, and what that means.

You know, we're at a great point here with your inquiry and what the Department of Agriculture, Water and Environment are doing to take a fresh look at how we deal with e-waste and to avoid it in the first place across those different categories, but the time is certainly right to look at how we deal with a whole lot of products - electronic (indistinct words) - that are

currently going to landfill or being dumped or not being reused and repaired. And again, my point - and I'd underscore this - is that the solutions to this, both at a policy level and an operational level, need to involve the producers, the manufacturers and the environment consumer groups. But it is producers and brands that can redesign products, reengineer them. It is - they're a key player, so - - -

COMMISSIONER LINDWALL: No. Thank you for that. One of the other issues is the availability of recyclers. And I know we've spoken to you about this, so I absolutely get your point about the circular economy and about design, but thinking about where we are now and the products that we have now, especially things like solar panels. What are your views about what we could do in terms of the recycling industry?

MR GERTSAKIS: I'll start off and Rose can add to this. But, you know, we have the recycling modernisation fund. We have the modern manufacturing fund to invest in companies to develop, to commercialise, to train. There are government investment programs there that can support the creation of additional infrastructure to deal with this. The one thing I would add, Julie, is that sometimes I think this capacity issue is brought out as a bit of a red herring. You know, if there is a reliability of supply, of feed stock, of electrical and electronic products to go into a process, the investors will come. If there is certainty there, the investors will come. If there is certainty there of the feed stock and volume, the technology and recycling repair processing businesses will come. So I'd be very cautious about automatically accepting that we've got a capacity issue in Australia.

COMMISSIONER ABRAMSON: Rose. Thanks, John.

MS READ: Yes. No, just to build onto that, there's probably - you know, John talks about certainty of supply and that does drive investment by recycling companies. So there's a couple of triggers that really do that, and one of them is banning the export of unprocessed e-waste would be a really good start; and then the other thing is actually expanding the scope of the NTCRS to include all e-waste products. It was very clear that by - the NTCRS did a - had had a significant impact on growing e-waste recycling in Australia, but it was limited to TVs, computers and their accessories, but you went from 18 per cent to 64 per cent recovery, collection of that suite of e-waste.

But that only represents about 10 to 20 per cent of electronic products put onto the market. So if you expanded the scope of the NTCRS to include all electronic products, then all of a sudden there is a huge volume and there is more need. And if you run that in parallel with a ban on exporting unprocessed e-waste so there is an incentive for companies to do secondary processing to start to recover the precious metals to deal with the plastics

here in Australia, you know, there is an opportunity. And there are companies that are out there.

5 There's, you know, companies like Glencore who are looking at a whole range - who have - or Nyrstar or - and then we have our own steel industry who wants to go into green steel and have more steel going - you know, scrap going into their facilities. So they are two triggers that will - in addition to, you know, any additional funding - you know, seed funding the Commonwealth can provide to help with cap X expenditure. So there's - so  
10 yeah, that's what I would suggest.

COMMISSIONER ABRAMSON: One thing - I might struggle a bit here so I will rely on my fellow Commissioner Paul because I'm about to ask you an economic question, and, of course, I'm actually a lawyer. But it's just about  
15 the baseline evidence for the cost benefit evidence behind the product stewardship schemes. Are you able to provide us with some further detail on that? So like the economic data that sits behind it. You can take it on notice if you want to.

20 MR GERTSAKIS: And there is information that we can send you. But again, the - this is a great question for the Commonwealth environment department given all of the regulatory impact statement work that was done for the NTCRS, really quite important. So - and also the willingness to pay work that was done, the choice modelling that was done to underpin a  
25 decision to intervene with the regulatory instrument there. And there was a lot of work done there by PwC around the economics of the benefit there.

COMMISSIONER ABRAMSON: Thanks, John.

30 MS READ: The other aspect with the cost benefit analysis is also looking at carbon emissions reduction and avoidance which is not really probably taken into account or wasn't taken into account very well back when the NTCRS was developed. But, you know, it's very clear. You'll see from the New South Wales waste strategy and sustainable materials that they're looking to -  
35 they recognise that recycling and recovery of these materials has significant carbon emission reduction benefits, and these aspects need to be costed into that, especially given that many European countries - or Europe is looking to charge for tax on imports with - carbon tax on imports and so on, and so - and the US is looking at something similar. So, you know, we need to build those  
40 emissions reduction benefits of recovery and reuse and durability into these cost benefit analyses. And this is about moving forward in our economic thinking and not using 1980s economics.

COMMISSIONER LINDWALL: Yes.

45 COMMISSIONER ABRAMSON: Thank you. Thank you very much. Back to you, Paul.

5 COMMISSIONER LINDWALL: We've spoken - or you've spoken a lot about e-waste. E-waste, of course, is growing more rapidly than general waste, but it's still a small percentage. Is there anything particular about e-waste that you focus on particularly rather than the general waste stream? Like, you're in favour of a ban on e-waste in landfill, but not necessarily a ban on general waste disposal in landfill even though there's hazardous waste in e-waste as well as general waste.

10 MR GERTSAKIS: Our focus is on electrical, and I'll try and - I'll leave it to other organisations - - -

COMMISSIONER LINDWALL: Okay.

15 MR GERTSAKIS: - - - or Rose might comment on other product classes. However, again, we need to be careful we don't reduce things to a sort of tonnes-type view of what the problem is. Electrical and electronic products contain scarce and non-renewable materials, rare earths, precious metals. It's not about whether it's a small volume or a large volume. We've got to look at  
20 the various fractions, materials, substances that go into these products and, again, in line with circular economy thinking, we've got to recover these materials and keep them circulating in the economy. They're scarce or they're non-renewable. The current known stock of copper that we know of  
25 in the world is about 30 years. You know, if it's not a small amount or a big - going to landfill is irrelevant. We need to get that material back and use it in the production of new goods. So again, caution around it's a small waste stream; it's a big waste stream.

30 MS READ: And I think the other point is the amount of embodied energy that's in those materials to create those products is massive. The effort to mine, to refine, to process, to manufacture is massive, and to simply put that back in the ground is not appropriate. And the hazardous waste is, you know - the hazardous materials in those - the ability to manage those is quite good and, you know, I think with appropriate e-waste collection and controls  
35 around that, such as the Basel Convention and so on, limits and controls - ensures the appropriate management of those materials - those hazardous materials.

40 COMMISSIONER LINDWALL: Okay. No, that's fine. I don't think I have any particular other questions. Yes, about solar panels. Now, in our report citing evidence from Victoria, by 2035 the largest component of e-waste will be solar panels. So what is the best way of repairing and reusing and recycling solar panels, do you know?

45 MR GERTSAKIS: Well - - -

MS READ: Yes, Paul, I think it is a massively growing waste stream. And, you know, there is a lot of work that needs to be done - a lot of those panels can be reused, repurposed, and there needs to be some sort of incentive to try and drive that. The other part is also setting up a recycling process. And  
5 similar to, you know, we don't want to see these panels being packed up and exported offshore. So, once again, banning export of unprocessed PVs would be a part of the regulatory reforms that could help drive greater recovery, reuse, repair and recycling of those systems. And - there was a third (indistinct) I was going to say, which I've lost.

10 MR GERTSAKIS: If I can just add one (indistinct) what we really need, what Australia needs in this space, is a national product stewardship program for solar panels that addresses issues of product life, reparability, et cetera. Organisations such as the Clean Energy Council, the Smart Energy Council,  
15 have been looking at possibilities and solutions here, but it is - it's very, very timely and necessary that we have a national scheme for solar panels. And that, again, procurement is key here. Where are the organisations that are building these, you know, utility scale solar farms? You know, you don't have to do terribly much in terms of (indistinct) at the procurement stage  
20 making sure there is a product lifecycle management plan associated with the volume of PV coming out at end of life. Both to deal with reparability or recyclability.

COMMISSIONER LINDWALL: (Indistinct) - - -

25 MS READ: (Indistinct) - sorry.

COMMISSIONER LINDWALL: No, please.

30 MS READ: No, and that also applies for, you know, solar installers at a residential level. You know, there is various certifications that approve someone to be an installer, and they need to have an end of use or repairable or reuse pathway for the panels they're taking off a house. And it is a requirement for - we do need a national product stewardship scheme for PVs.  
35 It does need to bring together both the SEC - Smart Energy Council and the Clean Energy Council - together with government need to work through collaboratively and to drive solutions - to identify the key problems and the solutions. And there would need to be some form of regulatory framework to drive it, given the number of companies and organisations involved in both  
40 bringing panels into the country, installing them, and removing them and so on.

COMMISSIONER LINDWALL: Okay, well I think that's the time for us now. SO, thank you very much, John and Rose.

45 MS READ: Thank you very much.

MR GERTSAKIS: Thank you very much for the opportunity.

COMMISSIONER LINDWALL: Okay, thank you.

5 MS READ: Yes, thank you very much for the opportunity. Well done. Bye.

COMMISSIONER LINDWALL: Could I now invite Ben Rice who is in person here in Canberra.

10 COMMISSIONER ABRAMSON: That's kind of exciting. Because Ben's the first in-person person for the three days.

MR RICE: Well, I have to say it's very exciting for me as well to be out of the house and about, so (indistinct).

15

COMMISSIONER LINDWALL: So, Ben, the camera is up here.

MR RICE: Great.

20 COMMISSIONER LINDWALL: And you can see Julie there. So, you do tend to move your head one side to the other a bit.

MR RICE: (Indistinct).

25 COMMISSIONER ABRAMSON: Hello Ben.

MR RICE: Hello.

30 COMMISSIONER LINDWALL: But if you'd like to introduce yourself and say whatever you'd like to tell straight after that.

MR RICE: Certainly. Thank you very much. So my name is Ben Rice. I'm the Executive Officer of the Australian Digital Alliance. I'd like to begin by acknowledging the traditional owners of the land where the ADA is based, here in Canberra, the Ngunnawal people, on behalf of the ADA I'd like to pay respects to their elders past and present and emerging. I'd also like to thank the Commission, and the Commissioners and the Secretariat for inviting us to speak today. The ADA would really welcome this opportunity to provide some evidence to the Commission's inquiry into some issues associated with the Right to Repair.

45 The ADA is a non-profit coalition of public and private sector groups, formed to provide an effective voice for public interest perspectives in copyright policy. Our members include universities, schools, disability groups, libraries, archives, galleries, museums, research organisations, technology companies and individuals. Our objective is to advocate for copyright laws that provide reasonable incentives for creators and innovators,

while supporting the wider public interest through access and dissemination of knowledge and information. The comments that I will make today will be limited to the copyright issues outlined in the Commission's draft report. And, in particular, the economic and societal benefits associated with pursuing copyright reforms that improve access to repair information.

At the outset I'd like to acknowledge and endorse the submission made by Griffith University. In particular, we emphasise the point made in that submission that many consumer goods that require repairing do not directly interfere with the intellectual property of manufacturers. But despite this, what we see time and time again is manufacturers continuing to cite the protection of IP as one of the key reasons for their opposition to a right to repair. Our position is that intellectual property laws should not be operating to prevent smart consumer product or good from working or from being repaired. Broadly, the ADA supports the introduction of a fair use exception under the Australian Copyright Act, or as an alternative of second best approach, the introduction of a fair dealing for the right to - a fair dealing for repair exception.

There's a large body of evidence contained in at least eight governmental reviews, spanning the last 23 years, including the Productivity Commission's own review in 2016 of intellectual property. These reviews have all established that flexible copyright exceptions would provide benefits to users and consumers, whilst maintaining strong and substantial protections for copyright owners. So, I'll go through some of the - the two suggestions that were made in the Commission's draft report to introduce an exception that would allow reproduction or copying for repair. So, under Australian copyright law, as the Commission knows there is currently no exception that permits reproduction for the purposes of repair. The best practice model globally for a flexible future-proof copyright system is fair use.

Fair use allows the use of copyright material, as long as they are fair, and sets out factors that courts and users must weigh up when determining whether a particular use falls within the scope of the copyright exception. Fair use has been adopted in jurisdictions that lead in technological development worldwide, including the US, Singapore, South Korea and Israel. And, again, I'd note that the Commission has previously recommended the adoption of fair use in its 2017 Intellectual Property Report. Other independent international studies have also looked at the experiences that countries that have adopted fair use have had. And what these studies have confirmed is that fair use is associated with higher revenues in high technology industries without an increase in litigation or harming the revenue of copyright intensive industries, such as publishing and entertainment and consumer manufacturing as well.

What we consider is that an additional fair dealing exception for repair would be the second best option. As shown by many of the studies over the years,

5 fair dealing exceptions are not able to adapt to the new technologies and changes in consumer behaviour in the ways that a flexible, future-proofed copyright exception like fair use would be able to. We'd particularly like to draw attention to draft report's suggestion that fair use is less certain in some ways than fair dealing. The Australian Law Reform Commission in its report in 2012 and 2013 has examined this claim in great detail, and what they concluded was that fair use is no less certain under Australian - is no less certain than Australian's fair dealing copyright exceptions.

10 Research by scholars in the US has shown that up to 80 per cent of fair use cases in the US are confirmed on appeal. And what we'd submit is that this is hardly evidence of an uncertain or unpredictable doctrine. What evidence from the US has also shown is that industry best practice guidelines can be adopted. They can provide users with more confidence when relying on  
15 exceptions like fair use. These guidelines have been even relied upon by industries like the insurance companies, and the insurance sector. And there is no reason why similar guidelines couldn't be developed here to guide consumers and manufacturers as well.

20 Independent analysis of the experience in Israel has shown that there is no appreciable increase in litigation resulting from the adoption of fair use. What we can also suggest is that should the Commission recommend the introduction of a fair dealing exception for the purposes of repair, that additional fairness factors would most likely need to be adopted, and these  
25 would need to be examined more closely and in greater detail, if that is the option that the Commission chooses to go forward with.

I will talk a little bit about the proposal to amend copyright laws to allow  
30 repairers to legally access information hidden by TPMs as well. So, as the Commission is aware, manufacturers' use of TPMs is a key barrier to reparability due to the fact that Australian copyright law generally prohibits the circumvention of TPMs. It's common for TPMs to be used globally to prevent the use of generic replacement parts, and in an attempt to restrict independent repairers from accessing software that's essential to diagnose or  
35 run machinery, even when that machinery has nothing to do with copyright or the creative content.

40 Legal action has been brought in the US under the anti-circumvention provisions seeking to prevent the manufacture and sale of universal garage door openers and generic printer cartridges, purely because these items have recognition software built into them. As the Commission knows, US law was amended in 2018 to permit the circumvention of TPMs in order to fix and maintain lawfully acquired consumer electronics. Although the amendments only apply to certain categories of devices and must be renewed within three  
45 years. So in Australia under our current Copyright Act, it's a criminal offence to circumvent the TPM to access copyright content without permission, even if the use you wish to make of the protected content is legal.

5 Regulation 40 of the Copyright Regulations 2017 sets out a number of exceptions to this prohibition, which includes certain permitted uses by disability groups, educational and cultural institutions, as well as the making of interoperable products. However, it does not currently include  
10 circumvention for the purpose of repair. And what the effect of this is, is that currently it's unlawful to circumvent a TPM for an otherwise lawful purpose, unless a specific TPM exception applies. This has the effect of extending copyright owners' rights, enabling them to prevent otherwise legal uses, and essentially creating a right of access. So, for these reasons we would submit that it's an imperative that any new fair use or fair dealing for repair exception be matched with an exception permitting the circumvention of TPMs if this is necessary in order to rely on the new right of repair exception.

15 I'll touch briefly on the issue of contractual override protections as well, that we greatly support (indistinct) Copyright Act. Copyright exceptions are fundamental to defining the boundaries of the grant of copyright. They provide certain public benefits, determined by democratic means. And we would submit that (indistinct) contracts and EULAs should not be able to be  
20 used to rewrite the copyright balance that parliament has deemed appropriate. And we would strongly support the protection of all exceptions against (indistinct) by contract. Thank you very much.

25 COMMISSIONER LINDWALL: Thank you very much, Ben. That was excellent. I'll ask a couple of questions and then turn to Julie. Firstly, what happens - obviously the purpose of having the exception in copyright law is to allow repair to happen if we were to go to a fair use or fair dealing route. What happens if the TPM is not able to be circumvented, or the repair manual is not able to be copied because you can't get access to the original  
30 any way, because it's secret or something like that?

MR RICE: Do you mean in a practical sense?

35 COMMISSIONER LINDWALL: In a practical sense, yes.

MR RICE: Well, practically I think what we've found the experience being is that it becomes either impossible, or very difficult, to access that repair information. Either needing to go directly to the copyright owner, or the owner of the product. And you're essentially beholden to the process that  
40 that person or that organisation sets in place to get around either the TPM or to provide access to that material. And so we don't have a huge amount of direct or anecdotal evidence from consumers that have had this, but certainly the problem is real and exists there.

45 COMMISSIONER LINDWALL: So I guess in terms of - see, an alternative approach would be some sort of positive obligation on the manufacturer to

provide diagnostic equipment and circumventer to TPM. Would you then still need to have the copyright law changes?

5 MR RICE: Certainly even if there was a positive obligation to provide that sort of material, it would still technically be a copyright infringement to reproduce and copy that material.

COMMISSIONER LINDWALL: Yes, okay.

10 MR RICE: Theoretically without the direct permission of the (indistinct).

COMMISSIONER LINDWALL: Now, noting that the US does have fair use as an exception - and I understand that the US Free Trade Agreement with Australia prohibits it pretty much - how would we effect the change? I mean we've articulated in the report a bit about it, but I'd like your view on that.

15 MR RICE: Yes, certainly. So, both the ALRC and, again, the Productivity Commission, have gone into detail about how that change could be effected. I think, in particular, it would be unlikely for a case to be made against the introduction of that sort of exception, given that the US and these other jurisdictions do already have this copyright system in place. And also under the - in terms of TPMS - under the Free Trade Agreement, there is a mechanism in place there for review of TPM obligations and how those would be rewritten and implemented.

20 25 COMMISSIONER LINDWALL: Okay. And earlier testimony spoke about the need for some sort of similar exemption, or exception, to things such as patents and trademarks and so on. Do you have any comment on that?

30 MR RICE: No, the ADA is primarily concerned with copyright reform and copyright aspects of the right to repair. So, I can certainly provide any information in more detail that you'd like. But I'd need to get back (indistinct).

35 COMMISSIONER LINDWALL: That's fine. Julie?

COMMISSIONER ABRAMSON: Thank you. Ben, I might get some of the technical detail wrong here - it's quite a complex area - so just bear with me on this. Earlier we heard some testimony which said that actually what we're proposing with the TPM changes was too narrow. And there was a whole conversation about embedded software, and we were encouraged to look more broadly at the issue. So, I'm just interested in your views on that.

40 45 MR RICE: Sorry, Julie, if you wouldn't mind just elaborating a little bit on the embedded software part of that. I missed the testimony from earlier, apologies (indistinct).

5 COMMISSIONER ABRAMSON: That's all right. The point was made to us that the way that we've crafted how you would be able to deal with the TPM issue - this is a general point, Ben- was too narrow. That we should have actually - we're not thinking about the broader issues here, we're just looking at a very narrow exception. So it's your view on that.

10 MR RICE: Yes, well I'd certainly - I could go into a little bit more detail and probably provide the Commission a closer look at what is being proposed - -

COMMISSIONER ABRAMSON: Yes, you can take it on notice, Ben, if that's easier. And also we can put to you the comments that were put to us and ask you to respond in your submission, if that would be easier for you.

15 MR RICE: That would be fantastic. And certainly we've made previous submissions to the ACCC's inquiry into aftermarket sales of agricultural machinery, where we've looked at the issue of TPMs, (indistinct) in greater detail. So I can certainly provide some more of that information as well to the Commission.

20 COMMISSIONER ABRAMSON: That would be really helpful. The other thing is you mentioned that US copyright scholars, who had made some commentary about fair use and its ability to be used - so I'm just kind of interested in you expanding a bit on that. You made the point that it's really not that uncertain, which of course is everything that keeps being put to the Commissioner - oh well, it's all too uncertain.

25 MR RICE: Sure, well I think even without having to look at US scholarship, you know, there's a wealth of evidence here that our own governmental agencies - the ALRC, the Copyright Law Review Committee, and previous iterations of the Attorney General's Department, studies conducted by Mr (indistinct), research by Deloitte Access Economics, that have all found that fair use is no less certain than having fair dealing exceptions in place. And, in fact, there are broader benefits that are associated with flexible copyright exceptions where the trade-off is - the value increase there is certainly worthwhile.

30 COMMISSIONER ABRAMSON: Thank you, Ben. The final thing which I'll also ask you to take on notice, lest the Commissioner make a fool of herself with her understanding of copyright law, is that you noted that there's no anti-circumvention exception for repair, but we're interested to know what you think of our identified repair exception in regulation 40, and we're happy for you to take that on notice.

35 MR RICE: Sure, absolutely. Again, we've made previous submissions to the ACCC, so we'd be certainly happy to provide all of the technical detail on that as well.

COMMISSIONER ABRAMSON: Thank you. Thanks very much, Ben.  
Back to you, Paul.

5 COMMISSIONER LINDWALL: Ben, look, I have been at the PC for a  
while and we've put in a number of reports that have recommended, well, in  
the case of the books report, parallel importation of books. Obviously you  
mentioned the IP report about a fair use exception, and they've been  
consistently blocked by - well, not accepted by government, and my  
10 observation is a lot comes down to books, as in the publishing industry in  
particular, so I'm asking you, is it possible to craft a fair use - and I'm a non-  
lawyer - fair use exception which excludes the publishing industry in  
particular but would still address all of the issues we're talking about, right to  
repair? If the government was so minded to do so.

15 MR RICE: If the government was so minded to do so, I don't think it would  
make sense to create a fair use exception that was - that specifically carved  
out industries like the publishing industry, and I think to go to your point,  
what we see as a bigger problem around the introduction of fair use and the  
20 sort of - the conflict that arises there, is not so much a lack of understanding  
but a situation in which messaging from some sectors can be quite strong and  
is actually - sort of overrides the message that we would get from individual  
authors and creators, and so I think what we've found here in Australia is that  
particularly the publishing sector is quite a loud body and has a lot of sway in  
25 these conversations.

But the conversations that we have with individual authors and creators, who  
actually would benefit from these exceptions like fair use, and would rely on  
exceptions like fair use to create more works, are certainly far more positive  
30 and supportive of having these - that sort of flexibility in place.

COMMISSIONER LINDWALL: Well, from my perspective fair use is a  
sensible way forward. It has been proposed by the Commission, and like the  
original debates about tariff reduction, sometimes a good idea takes a while  
35 to get through and one hopes that perhaps government in some time will be  
adopting something like that, but I'm not saying that's where we're going in  
this report. That's my just personal view right now, having said what we've  
done in the past. So, Ben, thank you very much, unless you've got any final  
points.

40 MR RICE: No, just again, thanks very much for inviting us to speak today.

COMMISSIONER LINDWALL: Thank you very much for your appearance  
today.

45 COMMISSIONER ABRAMSON: Thanks a lot, Ben. Thank you.

MR RICE: Thank you.

5 COMMISSIONER LINDWALL: Much appreciated. Thanks, Ben. We've now got Ari Bouras from Interactive Pty Ltd. And Ari is online, if I'm not mistaken.

MR BOURAS: yes, hello, I'm here, but I'm told that my video is not able to work because the host has stopped it.

10 COMMISSIONER LINDWALL: I think it will be able to - - -

COMMISSIONER ABRAMSON: That's all right.

15 COMMISSIONER LINDWALL: They'll switch it on shortly.

MR BOURAS: Here we go.

COMMISSIONER ABRAMSON: Yes.

20 MR BOURAS: Here we go. Hello.

COMMISSIONER ABRAMSON: One of our control mechanisms, Ari.

25 MR BOURAS: No, that's fine. Not a problem. I'm not offended.

COMMISSIONER LINDWALL: So, Ari, if you could introduce yourself and give a little bit of a presentation, that would be perfect.

30 MR BOURAS: I will, thank you. Thank you, firstly to the Commission and to the Commissioners in general for this opportunity. I say that on behalf of Interactive. What I intend to do over the course of my presentation, which I'll try and keep relatively short, will be specific - talk specifically around some issues in our industry. Broadly you'd call our industry as IT, but there are particular elements of IT that I'll touch on, and as advances in technology  
35 manufacturing now means that there - the full spectrum of consumable products, be it for home or for business purposes have, or will in the future have, a form of IT hardware or microchips, and therefore microcode and things of that form inside them, all the way from, say, toasters to heavy  
40 machinery to cars and whatnot.

There probably is a broader application for the items and the issues that I'll raise through my presentation, but I'll keep it, through the course of it, specific to the sort of IT equipment that we deal with on a day to day basis. What I intend to do is explain quickly who we are, the key issues within our  
45 industry, our observations, concerns, and thoughts, and I'll aim to share with you what we hope will be for you some clarity regarding some of those

items, some of the subject matter, and as I said, I'll try and complete with plenty of time for you to ask questions.

5 So, I'll kick off quickly with who Interactive is. We were established in 1988. We're a privately owned Australian multiservice IT provider. We employ more than 550 staff across Australia. The key element of Interactive's service offering is - or a key element, and it's the historical one, and so it was the first offering that we had and continues to constitute about 50 per cent of our activity, is what's broadly called hardware maintenance services which, for 10 the most part, involves the repairing, servicing, and maintenance of customer services - servers and IT hardware and their related machine code (indistinct). I'll explain further what machine code is.

15 We provide those services to our customers across a range of vendor products, so most larger IT or even smaller IT manufacturers you can think of, we service their products for our customers. We employ our own IT engineers, have done for over 30 years, and we have a large amount of spare parts in our warehouses in metro, regional, and remote locations for all of the hardware that we repair and maintain. So, that's part of our service offering and as a result we typically can promise and deliver equal or better service 20 levels than anyone in the market, and we are the largest non-manufacturing company provider of these services in Australia.

25 So often a manufacturer, let's say - I won't use a name but you can think of one of the large ones, will provide these services and offer them to the market for themselves and sometimes for their competitors. We're the only one who provides these services, of our size, that is not also a manufacturer. Interactive's customers include government departments, agencies, hospitals, health care services, ambulance services, not-for-profits, utilities, transport 30 companies, telcos, financial services insurance organisations, media outlets, et cetera. So we offer this - - -

COMMISSIONER LINDWALL: Anything not a consumer?

35 MR BOURAS: As a general - yes, we don't - if someone wants to they can, but most people don't hold the sort of IT in their home that we service, but if they do and they want to we would do it for them as well. So we have contracts for small businesses, as small as a fish and chip shop that for whatever reasons seem to want to have their own - for the way they run their 40 business want to have their own IT hardware, and I think historically one of our oldest customers is an ice cream parlour, all the way to the largest companies in the country.

45 So, in terms of some of the background, I just want to explain quickly what I'm talking about when I speak of machine code because it's sort of the key tenet to a lot of what I'll mention. So you'll hear the term machine code or firmware, and for clarity, what machine code is, well, when I talk about, is

I'm referring to all the code that's provided for a machine and included in that (indistinct) machine's firmware and its micro codes. So inside the machine - so the machine can be, as I said, in our industry, any device. It will have within it, within - usually it's the chip that sits within that piece of equipment as a general rule, there's a thing called micro code. So you don't see it. It's not like software that you interact with, and the word firmware means the same as machine code, and those two terms are used interchangeably.

COMMISSIONER ABRAMSON: Ari, could I ask you - I was listening very carefully but could I just ask you to repeat that definition that you have for - -

MR BOURAS: Yes, sure.

COMMISSIONER ABRAMSON: Yes.

MR BOURAS: Yes, so machine code - in simple terms, machine code sits inside the hardware.

COMMISSIONER ABRAMSON: Yes.

MR BOURAS: So - and it usually sits inside the chip. There is usually a chip, or two or three or four, or many inside various types of hardware, and usually is embedded in that hardware. So it's not something that you interact with as a user.

COMMISSIONER ABRAMSON: Yes.

MR BOURAS: It sits inside the hardware, and it exists to help the hardware to function, but yes, it is not something you as a consumer would know that it exists.

COMMISSIONER ABRAMSON: Yes, thanks.

MR BOURAS: Okay, and in the industry it's often referred to as firmware, and the reason for that is to create a distinction between code that is software, that - the way consumers think of software, and it's called firmware because it deals with the firm elements of what you're utilising, the hardware.

COMMISSIONER ABRAMSON: Yes.

MR BOURAS: We wish to highlight concerns relating to the conditional or restricted supply of access to updates of this firmware for microcode and the ability to attend to those updates for some major IT hardware companies. And we've made those observations. The ability to update the firmware throughout the useful life of the device is an essential input, or an element, to the provision of our hardware maintenance services for our Australian

customers. And to be clear, we're not experts in maintenance in our industry. I'm primarily referring to repairing or fixing a device that's no longer working.

5 So, a digital lock - I'm just going to talk now - and I see in your report you talk about digital lock, so I'm going to use that language.

COMMISSIONER ABRAMSON: Yes.

10 MR BOURAS: From our perspective, in the past few years we've observed a number of IT hardware companies or manufacturers implementing or seeking to implement versions of what I think you would refer to as a digital lock, as a way of seeking, it seems, to control or limit access to updates to firmware or microcode. At a high level we've observed instances where the customer  
15 needs to enter into a direct hardware maintenance (indistinct) contract with that company, as opposed to third party provider like ourselves, as the only way to practically access updates to this firmware. And just so you know, the life of ten years firmware could be updated on a device more than annually.

20 It is typically considered in our industry to be a fix to what is essentially a bug. So the microcode has been informed in a certain way. It was intended to try and ensure that the hardware operates optimally. And for whatever they've noted there's something they could do to update the microcode, or the firmware, so that it works better than it did when it was first implemented  
25 in the hardware. So what's the impact of this? This conduct effectively tries to tie the ongoing functionality and performance of the hardware, or equipment, to the acquisition directly with the manufacturer only of maintenance services. So, therefore, it significantly restricts the customer's access to firmware updates, and therefore their ability to access something  
30 that is critical for the hardware to work and for them to operate their business. Or if they're not a business, just to operate their agency or their organisation.

The conduct essentially precludes customers from being able to self-repair.  
35 So, keep in mind some companies - small or large, or organisations, government agencies - will have their own engineers. They don't even need a company like ours, or the direct input or assistance of a manufacturer, they hire IT engineers. They can also not access the firmware. As well as obviously, from our perspective, precluding competition in the market.  
40 Because whether it's the customer or a third party supplier such as ourselves, without being able to access the firmware we can't implement - without access to the firmware updates - we can't implement those updates and therefore get the benefit of that.

45 In essence, what this does is it ties the supplier - the key input to the supply of the hardware maintenance services - from the provider directly, or the manufacturer directly. So, in doing so, what these manufacturers have, or

5 seem to intend to do, is to attempt to create a form of a monopoly for the repair and maintenance of hardware that they have produced. And the impact of that is simple - what is likely to occur eventually is that the prices for maintenance and fixing would go up, whilst the service levels (indistinct) lack of competition would of course go down.

10 We've observed that what manufacturers are doing in terms of their attempt to justify or explain the conduct is to make representations regarding intellectual property rights which we don't consider to be in any way reasonable or correct. Again, firmware is a specific type of computer code that is installed within the device. And it provides a low level control of a device's hardware. Some devices, such as computers and servers, which is what we're involved in, receive essential firmware updates over the entire lifetime of the device. And those updates are provided for a number of reasons. Primarily (indistinct) fixes. Sometimes they also attempt things like security issues as well as, you know, effectively what the hardware was built to do, it's not able to do it because the microcode is not quite right. So, it fixes those performance issues.

20 And what the microcode or firmware is intended to do is to help the hardware strive for 100 per cent error-free operability. Now, during the life of the device these updates are only installed to provide enhanced hardware operability, as I mentioned. They cannot, and they do not, create increased capability. Such as, for example, increase in speed. A piece of firmware or microcode cannot make something physically do something other than what it was built to do. And I'll now start giving you a bit more detail on those distinctions. So, in other words, firmware is better characterised as a tool which is used to ensure the hardware is operating in a manner that it was originally intended and built to do.

30 It cannot enhance or improve what is, in our industry called, a piece of tin, or hardware. Now, this contrast - and that's why we use the term, 'firmware,' more regularly than microcode - this contrast with software - that as consumers we consider software - is important. Because, with software - which is something that you use, you interact with - you know, those pretty pictures and the processes that you use when you use different types of the software - from a computer game, to an Excel spreadsheet to an Access database, to whatever it might be - when a piece of software is updated you see the benefit. You utilise that benefit because the product itself is the software.

45 So when you get an update for software, often it can enhance - or will enhance - the software's capability, what the software can do. But firmware cannot enhance hardware's capability. It is a very important distinction. Now, I go back to some of the justifications that have been used, or where we see, you know, potentially being used in this area. Which is to say, well, there's an intellectual property right here that we need to protect. We, the

5 manufacturer. Because the firmware update we say is an enhancement. And that is not correct, because it can only fairly and reasonably be characterised as a fix to a known problem inside a devices firmware, or microcode. It cannot - I say it again - alter or enhance IT hardware, or IT devices, or any device that has some technology component that requires firmware in it.

10 It is physically impossible to change the hardware because of an update to firmware. Therefore to present it as anything more than a fix - as some kind of enhancement - is just not genuine. Now, I appreciate people can blur reality with Hollywood. And if you watch movies like the Avengers, or Christopher Nolan films or the Transformers movies, maybe you can conflate the two somehow as something that they are not. But in the reality that we live in, a piece of microcode or firmware cannot suddenly change the physical existence of a piece of hardware. It cannot make a piece of hardware inside your computer or serve as something other than what it is. 15 To suggest that it can is, quite literally, a fantasy.

20 Therefore, what are our concerns and what sort of action do we see available - I suppose, in the first instance, to the Commission. As indicated by your draft report, it seems that this conduct may be occurring - and, worryingly, may soon become the norm - because these types of right to repair issues are not the subject of bespoke regulation under the CCA or the ACL, which are broader in their existence and drafting, and therefore they don't specifically address the circumstances that I've detailed today. It's not uncommon I 25 know for the law to be catching up with technology - which is probably one reason why we're having this discussion today - but, of course, we must continue to strive to do that.

30 I'm not going to make too many grand statements, but that's just one that I note it's not something that we should be perplexed by that it's happening, but as we see this sort of behaviour, we're encouraged - and we wish to obviously encourage the Commission - to seek to attend to the existence of this sort of behaviour with, where possible, some more specific legislation. We've got serious concerns regarding the existence and the potential impact 35 that this conduct poses on both competition for the supply of these services, and for customer choice, including the customer's ability to do their own fix. And therefore not only does it remove self-repair, it removes the competition.

40 The driver of restricting access to firmware appears pretty simple to understand. By monopolising, potentially, the repair of maintenance for a particular product that a manufacturer makes, what it does is it doesn't just create some form of loyalty, what it does is it increases the market's perception, potentially, of the value of that manufacturer's stock, or it's general value in a market place, because it ties to one off purchase and yearly 45 revenue. And for those of you who are economists and strong in understanding the machinations of what we broadly call the market, annuity revenue is the flavour of the month and has been for some years. And so

what manufacturers seem to be wanting to do is to tie these 12 to 24 and 36 month maintenance or fixed contracts to the one off purchase that was historically the driver of their business model.

5 From our perspective, the ultimate impact of this on a consumer competition is likely to be the following - consumers are, or will be unable, to repair and maintain their own IT hardware or devices. Third party providers such as ourselves will have to eventually exit the market, or we'll just go out of business. Consumers, therefore, will lose choice of repairer. Service levels  
10 inevitably in that circumstance would decrease, and (indistinct) will conversely - which is unfair - would increase. Also there would be an increase in the downtime of critical IT infrastructure as a result of all that, and therefore the negative impact on systems and the related services into the community would increase. Because this is - again, these aren't just services  
15 for private enterprise. They are services that are critical for government agencies and not for profits.

And, as a result of all this, e-waste will increase because two things happen - parties like, such as ourselves and consumers - if we can repair IT hardware,  
20 we are more likely to - what's called in the industry - sweat the asset. We will try and keep these assets for longer. Manufacturers have points in time where they say, 'We now consider that item to be obsolete and no longer repairable,' and they can choose when to stop providing service for particular bits of hardware that will drive consumers to have to buy regenerated fleets  
25 of product. Or if it's just one server that they have sitting in the corner, in any event they will have to throw the old one away and replace it with a new one, because companies like ourselves - and a large chunk of our business - is providing service for hardware that the manufacturer no longer wishes to provide service for themselves.

30 And, again, if you're wishing to and have the skills to self-repair, as long as you can access the firmware updates you can do that. You can attend to the hardware component and also attend to the firmware component yourself. We suggest the ways to address these issues include legislation that expressly  
35 requires the manufacturers to openly provide unrestricted access to firmware updates. For consumers and users and third party providers, regardless of whether the consumer has a repair contract with that manufacturer directly or not. Amending copyright laws I think was being touched on prior to my presentation - to enable consumers and third party repairers to access, copy  
40 and share firmware and related updates and remove any form of right for a digital lock to prohibit that access.

And to prohibit manufacturers' warranties from being voided if consumers do not use the repairers and spare parts specified directly from the manufacturer.  
45 That's the summary of the - or that's the conclusion - and I'm open to questions.

COMMISSIONER LINDWALL: Thank you, Ari. No, I fully understand what you mean by firmware. I mean, for example I've just updated the firmware in my Roland digital piano, and I also did it for my Canon Digital SLR. But they were freely available. So what you're saying is that it's  
5 become more common that manufacturers are not providing free firmware updates. Is that what you're saying?

MR BOURAS: Yes, we're seeing that trend. And as I say, it is becoming more lucrative for them than it perhaps was, or more important for them to be  
10 seeking annuity revenue in the market, so they tie the two together potentially.

COMMISSIONER LINDWALL: And in your category of repairing servers and computers at businesses, which type of area are you most seeing that  
15 issue arising? Is it in the servers, or - - -

MR BOURAS: It's primarily in the server business.

COMMISSIONER LINDWALL: So that's things that a consumer would normally not buy. So, for example, I've updated firmware in my laptop  
20 computer, which I assume businesses would buy those type of things too. I'm wondering if this is something they think they can - excuse the language - screw the businesses more than the consumer?

MR BOURAS: Yes, this probably ties to the earlier point that I made at the start of my presentation. Like any behaviour, it starts somewhere. And so to  
25 your point - whether it's because of the lure of also the annuity revenue that that would bring. But also, of course, as you lock down the ability to self-repair or use a third party to repair a product, you determine the lifespan of  
30 that product. So, it would drive two things - it would drive the behaviours around replacing existing hardware with new hardware, because you don't sweat the asset for as long, but also the driver is the annuity revenue of repair.

To the point you've made though, it would always - as it always has, I think -  
35 started with the more lucrative end of the market, and then once it becomes - if we allow it - once it becomes the norm then it will trickle down - I don't want to use some form of an analogy like (indistinct) trickle-down economics - but essentially it will trickle down into, most likely, into the rest of the  
40 market, and over time it becomes the norm.

COMMISSIONER LINDWALL: I can understand that. Now, what about - you've mainly spoken about firmware updates here, which are provided by the manufacturer. What about other things that you might do in your  
45 business to repair and maintain servers, et cetera, for - I would imagine you might, for example, switch out memory or change hard discs and that type of stuff as well. Is that part of your - - -

MR BOURAS: Yes, we haven't - for the purposes of what - there's obviously only a certain amount of time, and we'll probably put some more into our (indistinct) written report to you - but we haven't to date had too many difficulties around accessing, let's say, spare parts. Because we've  
5 been in the game for so long, and there are multiple entry points for us here internationally to get access to them. Or also I'd say manuals and the type. So we haven't had that problem to date. However, we note that in other parts of the industry that is a problem.

10 COMMISSIONER LINDWALL: Yes, okay. No, that's good. And I get your point about firmware not being able to improve - obviously a bit of hardware has a certain capacity. If it's a CPU it can only go so fast. I mean, presumably I'd suppose, a firmware could be used to throttle the performance of a piece of hardware - make it lower performance than it's designed for.  
15 But I'm not if you ever observed that happening. I mean, you see it in the automotive industry where, say, a motorcycle will be detuned by the firmware to prevent it operating at full capacity. And then people try and get around that to try and increase the performance of their motorbike.

20 MR BOURAS: Look, we're - anecdotally we've seen - or we've heard of instances where firmware - and there's software, obviously from an operating way of perspective, that can do certain things as well with respect to how the hardware functions. But primarily what we look at is the firmware  
25 component. And obviously I think Apple, for example - and this is not my view of Apple - but, you know, they, I think - in terms of their operating environment as opposed to the firmware - there were claims made that they were doing certain things to decrease that. That's not currently a concern for us. We've heard anecdotally those things, but that isn't currently front of  
30 mind in terms of our concerns.

COMMISSIONER LINDWALL: No, all right. Julie?

35 COMMISSIONER ABRAMSON: Thank you very much. And, Ari, can I thank you. You made a very complicated issue for a non-computer person easy to understand. So thank you for that. I wanted to ask you a question to which I probably know what your answer might be, but it's around the competition issue. Because if a substantial player in the market is using that power in a way - in this case, in a refusal to deal - there are arguments that  
40 the competition provisions actually catch that. So, I'm aware of some of the issues might that, you know, you have to have consumer relationships with the players in the market. But I'm just interested in what you think might be defective about those competition provisions, or is it just an access to justice type issue?

45 MR BOURAS: There's possibly a bit of the latter. But the reason I've made that point around the intellectual property claim is that the justification that

we have seen - it's limited to date in terms of how much it's happening. And even within the manufacturers themselves who have indicated that they will - or they've started to do this - they have particular products to do it with. They are making the claim which I have attempted to debunk, which is that  
5 an update to firmware has an intellectual property right component to it, because it's an enhancement.

COMMISSIONER ABRAMSON: Yes.

10 MR BOURAS: And I think they are therefore - if someone was to run that, and I won't - I'll just have to be careful how I put this, but if someone was to run that argument, in my view they are looking to find gaps in the legislation to operate within.

15 COMMISSIONER ABRAMSON: Yes.

MR BOURAS: And they are - if I was to be harsh, they would be running what I would call a George Costanza defence, and if you convince yourself of something, well - and so if you can convince yourself that a firmer update  
20 can do something other than what the laws of chemistry and physics say it can do, well then, you run that argument, and I think, you know, just looking at it, just observing it from what we can see, someone, someone who's thought they were really clever, came up with that some time ago as a way around some of the legislation you referred to you, and we have - and we'll,  
25 in more detail in our submission to you, and if nothing is done to push back against that then effectively, you know, the horse may bolt at some point.

COMMISSIONER ABRAMSON: Ari, that's a very helpful explanation. You not doubt are in contact with colleagues overseas in Europe and the US.  
30 Are they experiencing the same problems, and you can take this on notice if it's easier, and what might be some of the local solutions to that? Because it's usually - if there's a big provider, they're usually behaving that way right round the world; it's not a particularly Australia problem, so interested in your views on that.

35 MR BOURAS: For those that have attempted it in the last, well, less than a decade now, it is usually from a global - it's following in Australia a global edict in terms of that behaviour.

40 COMMISSIONER ABRAMSON: Yes.

MR BOURAS: And so in some jurisdictions they've had less of a difficulty running some of the justifications - pardon me - for that behaviour. As much as, you know, I say in express terms we don't have things that deal with it, it  
45 seems, within our suite of legislation, there is enough to - there is enough that's meant they've had to do more than nuance their behaviours in Australia, but they have attempted to find ways to at least play it out here. We are

seeing it the States, obviously under the Biden administration, some attempt to sharpen up where they - what their posture is. Of course they've got a very different legal structure there and I don't profess to understand the difference between each of the states and their federal legislation, but they, I think,  
5 recognise that they sit behind jurisdictions like ours and elements of Europe, but it's a fairly inconsistent - whereas I see - it seems that the globe is, or, you know, countries across the globe are starting to intersect more consistently in areas like privacy, it seems only recently that this - and it's probably been driven more at the - what you would call the consumer end of the right to  
10 repair that the international community seems to be, again, intersecting more consistently around this topic, but I think we are still very much behind the technology.

COMMISSIONER ABRAMSON: Thank you, Ari. One final question if I  
15 may, Paul. It's a bit of a technical competition question. It's really about the primary market, because when you talked, I think, about other parts, it was obviously you could swap things in and out, but the firmware is a proprietary thing so I'm making an assumption here that there are only a few major  
20 players in that primary market and that's - because we're thinking about market power here.

MR BOURAS: Yes, so let me try - I'll explain it with a few bits of  
information perhaps. As there's been a move broadly to - you might have  
25 heard in the market, to cloud and software as a service products - - -

COMMISSIONER ABRAMSON: Yes.

MR BOURAS: There are certain applications - so from our perspective,  
there are certain applications that still, for whatever reason, are best placed  
30 what's called - in what's called an on-premise solution. So you maintain the server either in your environment or you have a third party. We also provide what's called private cloud solutions to people, where they can either move their own kit into a cloud or we provide them - we build a cloud for them,  
35 and a cloud is just a glorified form of what's called - traditionally used to be called a farm or an IT environment for someone.

You can have it yourself or you can give it to someone to build for you or  
house for you, and in those instances those applications, they can only - you  
40 can't move from them, and you move from them on a decade by decade basis, if ever. Historically they're not something that - even the IPs nowadays, there's a bit - there's something you can - that you can run in the cloud which we probably never thought would be possible years ago, but there's certain  
applications that still haven't ended up in that sphere of technology.

COMMISSIONER ABRAMSON: This is a structural issue, from what  
45 you're saying, Ari.

MR BOURAS: Yes.

COMMISSIONER ABRAMSON: Yes.

5 MR BOURAS: So there's only going to be certain players that are providing  
a certain type of hardware that that software can only work on the way we  
want it to work, okay? So there are certain applications that you just can't  
move to the cloud effectively, is what I'm saying, and you can't replace them  
with software as a service option. Not surprisingly, that is the type of  
10 hardware that is being targeted first, because that has got a sustainable tail in  
it from a maintenance perspective.

COMMISSIONER ABRAMSON: And you've got the - you've got a lock-in.  
It's a lock-in.

15 MR BOURAS: So if you can achieve - you could, as a manufacturer,  
achieve an ability to lock the access to firmware, if I have this critical - and  
it's critical - they're critical applications. They're not - you know, they're not  
so you can build Excel spreadsheets. They're usually HR applications or  
20 workflow applications, and they're things that government departments  
would never want anyone to know about even exist, right?

COMMISSIONER ABRAMSON: Yes.

25 MR BOURAS: And it's also a great - also from a cyber security perspective  
often it might be considered better to run those sorts of applications on  
(indistinct). So, it's this sort of - and it might not be the most expensive  
hardware in the world either, but it's hardware that is somehow connected to  
business activities where there would be a tail attached to that hardware and  
30 you are unlikely from a business process perspective to - your IT department  
is unlikely, in the next five to 10 years, to say "Hey, you know what we  
should do? We should go the cloud on that."

COMMISSIONER ABRAMSON: Yes.

35 MR BOURAS: And so therefore you need that hardware. You'll always  
need that hardware. That is where they are targeting first, and if they can get  
their wins there, logically, and I'm not going to present these people like  
they're the devil, but if you just think commercially, if I can get my win there,  
40 if I can justify control of the fixing of that hardware and therefore people  
needing to secure themselves, buy an insurance policy basically every year  
that if something goes wrong they've got a guarantee from me that I'm going  
to fix it within whatever period of time, and they pay me a chunk of money  
for that, and the way to do that is to say, well, the only way you can access  
45 firmware updates, which will ensure the operability of your hardware for the  
life of the product - the only way you can do that is if you buy hardware  
maintenance services from me as well.

5 If I can do that at this top end then I'll figure out what I'm going to do with  
the rest of the product mix, because with a lot of that product mix, for  
example if you look at the laptops a lot of us are using, most people go  
through them in three years, and the warranty period might be somewhere in  
that period of time. Rarely are people worried about that type of work on  
these devices, but it's still applicable there. It's - and who knows where  
10 devices might go over time. There are - we're seeing in the car industry  
we've moved to larger periods of time for warranty and for how long you'll  
sweat an asset. E-waste is an issue.

15 Manufacturers - some manufacturers might start moving towards a laptop  
that, you know, could last - should last 10 years, will always be updated,  
whatever it might be, and so that behaviour could move back into all kinds of  
parts of the market. Again, this issue of firmware, to the point that has been  
made also by members of the Commission, as technology moves more and  
more into general consumer goods, and when we say consumers it could -  
just the cards could cost you a few hundred thousand dollars - these sorts of  
20 behaviours, if they become the norm at the top end of the technology that will  
permeate most likely through the rest of the market.

25 And so the concern is absolutely for us as a business the direct impact on us,  
but we can see very simply, because of what we do, the broader impact that  
this could have on the market.

COMMISSIONER ABRAMSON: Ari, this has been really incredibly  
helpful testimony, so I'd really encourage you to put in a submission if you  
have the ability to do that.

30 MR BOURAS: We will be.

COMMISSIONER ABRAMSON: No, that's - it's been very, very helpful,  
thank you. Back to you, Paul.

35 COMMISSIONER LINDWALL: Thank you, Julie. Just a couple of quick  
things, Ari, before we conclude. One, what's the usual reason for firmware  
updates to be provided?

40 MR BOURAS: There's two instances where you would normally do it.  
Usually the organisation that's - so the manufacturer has had feedback over  
time, usually during that warranty period or soon after it, that there are some  
issues with the firmware.

45 COMMISSIONER LINDWALL: Yes.

MR BOURAS: And so they're fixing the firmware. Those things can be  
performance, they can be security related in more recent times, but essentially

5 what they're doing is they're just updating the firmware so that the hardware is better at doing - you know, maybe the hardware's heating up too quickly. Maybe, you know, it's not sort of - I'll use layman's terms - it's not sparking up the way that it should. Maybe there's a security risk that they hadn't realised as part of the way that the items have been configured and its interaction with the microcode. So essentially what you're doing is you're updating the microcode so it can do its job better.

10 COMMISSIONER LINDWALL: Better, yes.

MR BOURAS: The other reason you'll sometimes do it, or you'll need it, is if there's been a - if you haven't been updating the microcode or the firmware and then, let's say, a hard drive fails, and then you go to install new hardware, you'll normally need to do - you'll need to patch up, basically, to a certain level of firmware, and so if that's now restricted you can't change out those elements of the device.

20 COMMISSIONER LINDWALL: No, I understand. All right. No, that's good, and one final quick question. Have you seen any - because one way a manufacturer might be able to extract a different approach here is by providing, through a subsidiary perhaps, the - retaining the ownership of the hardware and then of course it's like you're leasing the product from the manufacturer rather than buying it. Have you seen any movement in that type of space?

25 MR BOURAS: Well we don't but we would probably be precluded from conversations against those. So I can say to you, having in my previous life, and for those of you who are involved in government funding for government agencies, there was a real push in the - say, in the 2000s, the earlier 2000s to late - so before 2010, for these - - -

30 COMMISSIONER LINDWALL: Outsourcing?

35 MR BOURAS: Yes, or operational type leases rather than right - so for large pieces of equipment. I was in the health space, so you know, new MRIs and whatnot. It was - it had become fashionable for whatever reason, on the books, to have them as operational leases. In those instances the - there would be a maintenance contract that would often be tied to that lease for whatever - I can't remember exactly what the policy reasons were for that. Then we moved to a model before I left health - so in that instance let's say a company like ours wouldn't see - - -

40 COMMISSIONER LINDWALL: Yes.

45 MR BOURAS: We wouldn't be involved in the procurement. A tender would go, we wouldn't get invited, and if we did we'd look at it and think, well, it's got nothing to do with us.

COMMISSIONER LINDWALL: I understand.

5 MR BOURAS: And then of course we move more to these one-off funding  
packages where a certain amount of money would be allocated to a  
government agency or to a stream of them. They would then buy the  
equipment. In that instance they might go to market when that item reaches  
its warranty period three years later, on average; it could be earlier or later  
10 than that. Then we could get a look in, but until the item reaches its warranty  
period we are generally not involved and so we don't really know the  
mechanics throughout though the lens of what we do day to day in terms of  
how the market operates in that space.

15 COMMISSIONER LINDWALL: Yes. No, that's all right. Good. Well  
thank you very much for participating today, Ari.

MR BOURAS: Thank you.

20 COMMISSIONER ABRAMSON: Ari, that's been really, really helpful. We  
might come back to you on some particular things just to make sure we've  
understood - well, this Commissioner has understood what you've said. So  
thank you so much.

25 MR BOURAS: Not a problem. Absolutely happy to help, thank you.

COMMISSIONER LINDWALL: All right. Well we might now have a  
lunch break until - and resume at 1.30 with AREMA and Refrigerants  
Australia.

30 COMMISSIONER ABRAMSON: Thanks, Paul.

COMMISSIONER LINDWALL: Thanks, Julie.

35 **LUNCHEON ADJOURNMENT** **[12.33 pm]**

**RESUMED**

**[1.28 pm]**

5 COMMISSIONER LINDWALL: Is Greg Picker from the Air Refrigerant  
Equipment and Manufacturer's Association and Refrigerants Australia there?

MR PICKER: I am.

10 COMMISSIONER LINDWALL: Hello. How are you, Greg?

MR PICKER: Not bad. How are you?

15 COMMISSIONER LINDWALL: Fine, thank you. Would you like to  
introduce yourself and give a bit of a presentation?

MR PICKER: Sure, I'd be delighted to do that. So, you said where I'm from.  
Just a tiny bit on the organisations: Refrigerants Australia represents the  
refrigerant supply chain, so importers of refrigerant, importers of equipment  
20 containing refrigerant, wholesalers, people who work with the equipment as  
well as Refrigerant Reclaim Australia, so we cover the life cycle of  
refrigerants, and AREMA, which is the Association of Air Conditioning and  
Refrigerant Manufacturers Association are all the people that make mainly  
air conditioners, so Daikin, Fujitsu, the large companies that you would  
25 recognise. So we represent, I don't know, 80, 85 per cent of air conditioners  
sold in the country.

So just to explain the sort of equipment that I'm talking about, I'm basically  
talking about all air conditioners and refrigerators above a certain size, so I'm  
not talking about your domestic fridges. We don't deal with domestic fridges  
30 but anything else that's refrigeration system, and in terms of air conditioners  
I'm talking primarily about split system air conditioners for domestic use, so  
the things that are installed on walls, or floors or cabinets, wherever they may  
be installed, as well as larger units and car air conditioners. I'm not talking  
about portable units such as plug in or things that sit in windows.

35 COMMISSIONER LINDWALL: So ducted type of things you would cover,  
obviously?

40 MR PICKER: Certainly ducted, but even things that aren't ducted and are  
smaller than that.

COMMISSIONER LINDWALL: Okay.

45 MR PICKER: But anything that's - anything that has to be installed, where  
there's wiring that needs to be done, car air conditioners as well, which will  
become important. There are three or four main points that I'd like to cover.  
I guess the first is just some of the safety issues around repairing these

5 systems. As a result of the Kigali Amendment to the Montreal Protocol we're changing the sorts of refrigerants used in Australia and globally. We have domestic legislation that covers this as well. What's important to realise about this is increasingly we're going to be shifting towards flammable refrigerants for all sorts of technical reasons that I can bore you with if you really want to know, but it's an automatic result of that requirement.

10 There are safety risks and increasingly the industry is getting additional training to ensure that they're safe when they fix materials. So in terms of right to repair getting people to work on systems, there will be increased risk. One of the bigger problems that we do have as an industry is - and all those refrigerants - most of those refrigerants are covered, and because of the global warming potential, their climate impact, we have - the Ozone Protection and Synthetic Greenhouse Gas Management Act requires that they be dealt with by trained and licenced individuals. Industry and government 15 in a bipartisan way supported that legislation, initially in 2004 and there were revisions in - major revisions in 2017, and so for those reasons there is both a safety and environmental reason about why there's control on refrigerant and why we'd have concern about opening that up for the environmental issues and safety issues as well. 20

25 There's another linked problem that's - I hopefully can explain better than I just explained the other one, that's worth understanding, and that's that there is a small segment of our industry and people that market directly to DIYers that sell hydrocarbon refrigerants. Hydrocarbons - propane and butane, stuff that you'll run in your barbeque. The problem is that market is used very much for repair and it is invariably in equipment not designed for it, unsafe to do so. They do it for a variety of reasons. One, you don't need a licence to buy the material and to use it because you can't control adequately barbeque gas, which is what this is. Secondly, it's cheap and it's reasonably easy. The problem is, of course, it's going into equipment that's not designed for it. 30

35 So there is a coroner's report; there were two deaths in Australia in 2014. In 2007 there was a death in New Zealand. We've had multiple injuries from car fires, from refrigeration systems having leaked and fires in a fish and chip shop in Adelaide a few years - two years ago, in a café in Adelaide, so there is real dangers with encouraging repair when the main gases that are designed to be used are controlled and yet the replacement gases have inherent safety risks. 40

COMMISSIONER LINDWALL: So just a quick one to clarify that. You're saying, Greg, that a person has as car air conditioner, for example, and they're putting basically LPG in as a refrigerant?

45 MR PICKER: Yes, that's exactly what they're doing, and people are marketing that directly to them. There was a fire in Perth in a truck - in a tree lopping truck in Perth in 2014. Two guys were badly burned. Imagine four

little flamethrowers, effectively, and spent months in - literally months in hospital. It's a problem that we're striking with. So I don't have a problem with people repairing things. We have a problem with people repairing things when what they do is unsafe. I guess what that also gets me to is, you  
5 know, is there adequate capacity for repair in Australia? And I would argue that there is.

As a result of this licencing scheme we do have a good idea of how many people are licensed to do repair. Now, it's between 80 and 90,000.  
10 Apologies, I didn't get the most updated numbers, but it's about 85,000, about half - slightly over half in stationary systems and half in car systems, mobile systems, which are reasonably well spread across Australia, and interestingly, and it was interesting in reading the documentation, that most of these people work across a variety of - you know, they're not dedicated to a particular  
15 manufacturer.

If you buy or have an air conditioner serviced and you approach a company to do that, they typically represent multiple manufacturers and they pick the system that best suits, and so everybody can repair everyone else's system.  
20 So we don't have, I don't believe, the problem that other industry sectors do, in that, you know, you're tied to repair a particular manufacturer's products. It's not something that exists for us. So, similarly, as a result - sorry, I'll just scroll ahead - I guess a couple of other things to say. We know lifespan is pretty good. So a recently unpublished study indicated that the average point  
25 when a product - sorry, this was about split system air conditioners - were turned over was 13.7 years. That study included quite a number of air conditioners actually that were at the ANU that were damaged in the hailstorm a few years ago in Canberra.

30 COMMISSIONER LINDWALL: Yes.

MR PICKER: So 13.7 is probably an underestimate and there will be some systems that come out when people do renovations or whatever and the system needs to change as a result. So 13.7 is a low estimate of lifespan, and  
35 so, you know, I'm not overly worried about product obsolescence. You know, people - I think there's broad understanding that systems are designed to last for 10 to 15 years. I think it's worth pointing out that there's a lot of variability in that. Obviously there are environmental factors. You know, one of the things that would be hard in terms of - and I'm jumping ahead a  
40 little bit but it seems appropriate to do - so in terms of durability and (indistinct) sort of claim is that when you have systems where there are exposures - there's exposure to particularly humid and salty air, you're going to get corrosion; they're not going to last as long.

45 Amusingly- I ran an event called Future Air with leading people internationally two or three years ago, and one of the questions that they were asked of me in one of the presentations - we did the roadshow around the

country - was why couldn't they get a system that had the efficiency of a European system, the price of a Chinese system, and the durability of an American system, and that's - you know, the problem was, of course, you get what you pay for, and when people tend to buy - if there's a tendency to buy less well-manufactured products you get a tendency toward shorter lifespans, and those are trade-offs that consumers make all the time. Sometimes they're not very cognisant of the choices they're making, but it's hard to be consistent.

10 Look, the last thing I'd like to say - I'd like to say a couple of things about waste very briefly. In relation to the product stewardship scheme there was an investigation in 2013/2014 of split system air conditioners by the then Department of the Environment. They came out with an assessment that cost recovery was not in place for split system air conditioners. I wonder about that but I also wonder about - so I mean, I think there are some merits to consider e-waste are just very - we have a good system.

20 Refrigerant Reclaim Australia collected refrigerant at the end of equipment life. It's worked well. It's one of the top one or two systems for this industry, focused systems, any system in the world to collect and destroy refrigerant at the end of its life. It's worked well. It's industry owned, it's industry operated. It's been that way for 30 plus years. I'm reluctant to move towards a system that - I'd rather have a chance and encouragement to make those sorts of voluntary systems and expand them rather than having a legislated solution. I worry about the costs involved in that. And, similarly, I worry in terms of the idea of GPS trackers - there is a significant cost involved in that. There's a significant logistical challenge. And I just really worry about the practicality of those approaches to manage e-waste. And, so I guess in this context, do I think e-waste is a problem for Australia, yes I do. Do I think it's a problem for this industry - yes, though not in the same way.

35 Most air conditioners are - the viable products, anyway - are recovered, because they've got lots of metals - copper, aluminium and the like in them. So, you don't tend to throw them out, you more tend to see them sitting in the (indistinct) of our suburbs, because people know they have - you know, you can take it to a scrap yard and get money for them. So, is there a problem, yes, but I'm just very cautious about how we approach this. And I don't know that a right to repair approach should be how we look at split-system air conditioners. Just very quickly, other policy issues. I've talked about the durability estimate. I will say that the (indistinct) complaints process may have merit, but I think there's got to be some sort of possibility to have, you know, some sort of either overview or consultation through that process.

45 I use in my notes of course the example of flooding, where after floods we get a whole lot of complaints, manufacturers report, from people saying, 'Well, the system went under water and now it doesn't work.' I use that as a silly example, but the point is we've had a few people lobby about gecko

intrusions in some places, and can you make some components gecko-proof. There are some things we can't solve, even if consumers - you know, for the most part manufacturers will solve what issues they can, it's an advantage. So, am I saying that there's not a place for this, no I'm not. What I'm saying  
5 is we have to have something that insured that what's being proposed (indistinct) is rational. And so there should be some sort of communication through the process, if it was to go ahead.

I worry about labelling just because - in terms issues about that - just because  
10 air conditioners and refrigeration systems are already subject to significant labelling requirements in relation to energy efficiency, in relation to noise, in relation to output. And they're quite stringent, and there's only - I mean, at time literally there's only so many places you can stick labels. So, you know, consumer information is fine, I would just think about how you would do  
15 that. And, lastly, just the broadest point of all is, you know, as I have indicated, that there's quite a lot of regulation on our products already. So I think we want to be careful with what we do. Is it a targeted way, and will help improve the - both the repair of the system and ensuring that people know both their consumer rights and that the waste is well-managed.  
20

Anyway, I hope that sort of covers - you have the notes, I hope that explains a bit more. Ask me some questions. Tell me what I didn't make clear.

COMMISSIONER LINDWALL: Thank you, Greg. How much CFCs are  
25 still around in air conditioners and so forth at the moment, do you think?

MR PICKER: CFCs - very, very, very little. Nothing in domestic stuff, nothing that people are going to repair. Where you'll see - well, that's not true - you may see CFCs - so we have a study that looks at car systems that  
30 come in for repair. Every year or two we get a car out of the 700 (indistinct) that had CFCs in them. Split system air conditioners and the like - not at all there. In air conditioning it would be the big systems.

COMMISSIONER LINDWALL: Okay, yes. And could you describe how -  
35 Refrigerant Reclaim Australia, what does it do? So, say your members would go and repair, or want to dispose of, a refrigerant - like an air conditioning unit - and then they supply the refrigerant to Reclaim Australia, or how is it managed and what actually happens to the refrigerant?

MR PICKER: Sure, and let me tell - there's two parts to the answer. Let me  
40 tell you historically, and tell you a little bit how it changed. Because both are pertinent. Historically, what happened is the industry recognised it had a problem in terms of how it was seen to and how refrigerants were managed. So off its own bat it created Refrigerant Reclaim Australia, RRA. It did it in  
45 roughly 1989, 1990. It was industry funded, and so basically there was ACCC permissions given for industry to collect a levy for all bulk refrigerant imported into Australia. So that's refrigerant big bottles for service. The

money from that levy is taken and invested. When a contractor takes refrigerant out its system at the end of its life, or when there's been a problem and the refrigerant is no longer up to spec, it gets returned to a wholesaler.

5 The contractor gets paid for that. So it gets paid at the moment \$3.50 a kilo, and then the wholesaler collects it, returns it to RRA, reverse supply chain logistics, to (indistinct) and then it is taken to destruction - there's a site in Melbourne, there's also a site in Gladstone. And that's where it goes for destruction. And the wholesaler is paid for its efforts in doing that. So, full  
10 tanks of gas come out, tanks with used refrigerant come back.

COMMISSIONER LINDWALL: Okay.

15 MR PICKER: In 2004 the system was expanded to cover pre-charged equipment. So that when you bring in an air conditioner into Australia, the smaller ones, they already have refrigerant in them. They have to be - one of the licence requirements there is that they must be part of an approved product stewardship scheme. There is only one - it's Refrigerant Reclaim Australia. So they all join that. The same process works in reverse. The  
20 only other thing to realise is it is illegal to vent refrigerant. So if you've vented, as opposed to returning it, you are also breaking the law. Now, to be absolutely clear about that - catching someone who is venting has only happened two or three times in Australia, and it's when people have been  
25 bullish enough to be honest to admit that they've done it to a compliance officer from the department.

Self-notification that you've broken the law is not the only way you can prove that it actually happened.

30 COMMISSIONER LINDWALL: Well, that seems a fairly sensible approach for that. And if it's working with the voluntary scheme. Now, what about for the rest of it though, the other materials, there's no other scheme, but as you say generally it's pretty high value metals and that, which are - there's an incentive to take them for recycling anyway, isn't there?

35 MR PICKER: That's exactly right, and part of what's happened as results of minimum energy performance standards is we'd have increasing amount of copper and the like added because of the good heat transfer product capacities. And so as a result, you know, air conditioners are worth a lot of  
40 money in raw materials. You can get, you know - we've all heard a story about people stealing wire and stuff because of the value of copper. Air conditioners are another source.

45 COMMISSIONER LINDWALL: Yes. On other parts of our inquiry, which you really haven't touched on about - and I know that you're in an industry association rather than selling directly - but about warranties, as in

manufacturer warranties and the Australian Consumer Law. Is there anything you can comment on that?

5

MR PICKER: Well, my problem is I don't see it as much.

COMMISSIONER LINDWALL: Yes.

10 MR PICKER: So, I don't have direct line of sight of that. My sense from talking - look, I'm going to say what you're going to expect me to say, but I (indistinct) - the sense I have is companies will go a long way in today's day and age to avoid a negative review. So, they will - if there's a problem with the system it is typically worth getting the system fixed or replaced under warranty, rather than suffering the negative review. The few times that I know that that hasn't happened has been - actually, that flooding example. 15 Though, interestingly, in one of the flooding examples it turns out it was the - and this was only in one example - but it was the installer who actually told the home owner that - who said - the homeowner said to them, 'I'm not sure you want to put the system there, we get quite a lot of flooding,' to which the installer, being - I suspect - lazy - said, 'It will be fine, (indistinct) there 20 won't be a problem.' And of course it flooded, there was a problem.

And in that instance - even in that instance what happened is there was a deal struck between the installer and the manufacturer, where the manufacturer sold the installer a system at cost, and the installer on his own bat replaced it.

25

COMMISSIONER LINDWALL: Yes.

30 MR PICKER: So even in that instance, where it clearly wasn't the manufacturer's responsibility, they still looked for a solution that works for consumers. You know, these aren't - this is equipment that tends to be installed. It's not smaller air conditioner systems, portables that you would throw away.

35 COMMISSIONER LINDWALL: Yes. No, I understand.

MR PICKER: You know, so people get them installed for a house. It's a big deal.

40 COMMISSIONER LINDWALL: And I can understand the safety issues there of course too, and environmental if it's, I mean, illegally vented or accidentally vented too. So I might get Julie to ask some questions.

45 COMMISSIONER ABRAMSON: Thanks very much, Greg. As you were talking I was thinking about my air conditioning issues and thinking "Oh". No, it's all good.

MR PICKER: Ask. I can do my best.

COMMISSIONER ABRAMSON: No, I had a very good installer who said actually, to me, "No, I don't think you really want to put this split system there", so I was quite grateful for that advice. I've got a couple of questions, Greg. The first one is, are your brands that both of the industry associations cover covered by the EU Ecodesign Directives on spare part availability and information, and if so, are they available in Australia, or do you have issues sometimes getting spare parts?

MR PICKER: I know that most of - so it's not a definitive answer. I know that certainly some of the companies will operate in Europe and therefore are covered by that scheme. Not all will, so it depends very much on who does - you know, what company you're talking about. The companies that tend to supply householders tend to be covered. They tend to be the larger companies that have a global presence. Do they have problems getting spare parts? Everybody's had problems getting spare parts over the last 18 months. In a normal situation do they have problems? Not for the majority of products and not for the majority of spare parts, and my caution is if something - it needs to be replaced, that is, you know, truly odd, could we have a problem here in Australia that would be different than in Europe? Yes, we might. I think you'd get it, I just think it would take some time. I mean, I don't think it's that someone's going to say no. I think someone's just going to have to order it from overseas and it might take a few weeks to arrive. I don't think it's that it wouldn't be available, it's just that if it was something that tends not to happen, you know, there are some things that it's just - and that's the - I just want to be careful to say that that's - that would be my best guess.

COMMISSIONER ABRAMSON: Yes. No, that's fine, Greg, and how long - like, the air conditioners obviously have a long lifespan in terms of domestic product, which is what we're talking about. So two questions. First of all, how long will manufacturers hold spare parts for a particular brand, and then the second question is about critical components. So one of the issues that we heard with dishwashers is whilst the dishwasher manufacturer kept spare parts, like a rotor arm, it didn't actually keep and of the spare parts that the rotor arm fitted into, so you get one part fixed but not another part. So the first question was, length of time that spare parts might be available for, and then this concept of critical component parts.

MR PICKER: So the first thing to realise is most of the air conditioners I'm talking about, we have a register; they're required to register for MEPS purposes, for Minimum Energy Performance Standards Purposes.

COMMISSIONER ABRAMSON: Yes.

MR PICKER: The registrations last five years and the reason I say that is there is a broad expectation, when they did all the consultation, that products

would be on the market for at least five years before they were replaced by a newer model, and we know that there are a number of products that continue past five years that get registered more than once. So as long as you have products that continue in the market spare parts are going to be on the market. My understanding is certainly for, you know, more than a decade for - and let me make an important exception in a second, but for the mainstream providers spare parts aren't an issue.

Where we're far more likely to have an issue is when there is someone who - and they won't be my members, in all likelihood, who will bring in a container or two or typically inexpensive Asian-manufactured products to sell in the nonmainstream ways. There you will have significant difficulty in getting spare parts, but often you're not going to be able to find, three or five years later, who the manufacturer or the domestic importer was because they get an opportunity to import on a speculative basis and that's what happens. So making a - and they're registered as well, so making a distinction here between the more established companies with names that you'll recognise, I really don't think you're going to have a problem with spare parts, and particularly critical spare parts.

You also benefit - the consumer benefits for those companies because they tend to sell more and they tend to invest in the market, so all of the main brands have quite established networks across Australian states and territories, and so they do supply them with spare parts, and often the spare parts are usable from one model to another.

COMMISSIONER ABRAMSON: Yes, thanks, Greg. There's one final question. Your air conditioners go into very inhospitable places in Australia and they go into difficult, remote and rural places, so one of the complaints that has been made to us is that a lot of manufacturers stand behind their products, you know, for - especially for high quality. The cost of getting that product, which is often in - is actually installed to a city location means that what's happening is if the manufacturer does support it they're actually sending out a new air conditioner, because it's just not cost effective to repair something onsite. Have you got some views about that?

MR PICKER: Well, sure, and I guess what I'd say is - I mean, from a manufacturer's perspective, and I mean, I'm going to create a completely imaginary example.

COMMISSIONER ABRAMSON: Yes, sure.

MR PICKER: You know, you sell a split system out in Broken Hill and it breaks down, and as a manufacturer, if you don't have someone in Broken Hill, if you don't have a representative there - actually Broken Hill is probably too big - you probably do, but using that as an example - and you

have to send someone out, the problem is if you go out and don't happen to have the part with you, which is likely if you're going out for a diagnosis - - -

COMMISSIONER ABRAMSON: Yes.

5

MR PICKER: You know, you then have to take two trips, at least, and you know, and particularly if you make (indistinct). So from the manufacturer's perspective it is far less risky and less expensive, and also tends to lead towards the consumer being happier, if you replace it and you know it works. If I have to travel for a day-and-a-half to get somewhere and then you - and then - you know, go back and forth, that becomes long, it becomes expensive, and there's a risk of course that even after two trips, if there's a problem that wasn't diagnosed initially it's still there.

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I would just point out that just because that system is pulled out doesn't mean it's not refurbished and used in another way.

20

COMMISSIONER ABRAMSON: Yes, I was actually going to ask you about refurbishment and happy to take that on notice and perhaps give us some detail in your written submission about that, how many units are refurbished.

MR PICKER: Sure.

25

COMMISSIONER ABRAMSON: Thank you.

30

MR PICKER: No worries. The one thing I would say is I suspect they wouldn't be put back in the market, that they would go to training providers, they'd go to TAFEs, you know, those sorts of things.

COMMISSIONER LINDWALL: Yes.

MR PICKER: Because you wouldn't sell it again as new of course.

35

COMMISSIONER ABRAMSON: Yes. No, thank you very much, Greg.

MR PICKER: No worries.

40

COMMISSIONER LINDWALL: Okay. Greg, just a couple of quick things now. Firstly, because this right to repair is about the environment as well as other aspects of repair, how would - can you comment upon how air conditioner units, the larger ones, have changed in efficiency - in energy efficiency over the last 10 to 20 years, and - because we have had testimony, say, on washing machines and dishwashers from Choice say there's been substantial gains there, so I'd be interested to hear about that on air conditioning units.

45

MR PICKER: According to the Department of Industry split system air conditioning units, which are really what are used for residences in terms of the stuff that my guys cover, are 60 per cent more energy efficient than they were 20 years ago, with two-thirds of that happening over the last decade. So it's, you know, significant improvements. So of it's happened through the fact that things are better sealed, but again there's more copper, as I indicated, being used - a whole range of benefits. This has led to increased sophistication in software and in other things, and for everything of course there's a trade-off right? If you design it carefully you also change the tolerances which are possible when it's repaired, and that's one of the implications of the fact of them being more efficient.

COMMISSIONER LINDWALL: Okay, and therefore there's also firmware updates, and we heard testimony before about that. So do the manufacturers normally provide the firmware updates for their air conditioning units free of charge?

MR PICKER: I believe so, yes.

COMMISSIONER LINDWALL: Yes, and finally, the final quick question, which is a bit obscure I suppose, is do most of the - is there any benefit of having a three-phase system versus a normal two-phase?

MR PICKER: Sorry. I had a conversation with someone about this not that long ago.

COMMISSIONER ABRAMSON: A personal question is it, Commissioner Paul?

COMMISSIONER LINDWALL: No, no. Well, maybe.

MR PICKER: Let's just say maybe is the best answer I'm going to give you. It depends on how the premises is already set up, and if it can handle three phase.

COMMISSIONER LINDWALL: Okay. Yes.

MR PICKER: Certainly, you have the capacity to do more if it is three phase, than if not. But I wouldn't be changing my home, you know, from a normal phase to a three phase or my air conditioning system. At least not normally.

COMMISSIONER LINDWALL: Yes. Thank you very much Greg for appearing today.

COMMISSIONER ABRAMSON: Greg - could I just ask Greg one final question, please, Paul. Just to take on notice, Greg. We've heard a lot about

5 washing machines and dryers, and all those things having embedded technology and motherboards. And once that goes then the system is no longer worth operating. So, I'd just be interested in your written submission - which I'm assuming you're putting in - if you could give us some information about how much embedded technology now is part of an air conditioning system. Thank you. Sorry, Paul.

COMMISSIONER LINDWALL: That's all right. No, that's good.

10 MR PICKER: And, look, the very quick answer is quite a lot.

COMMISSIONER LINDWALL: Yes.

15 COMMISSIONER ABRAMSON: Thank you. Thanks a lot, Greg. That was really interesting.

MR PICKER: No worries.

20 COMMISSIONER LINDWALL: Thank you, Greg. Take care. And I now invite James Voortman from the Australian Automotive Dealer Association to appear. Hi James - oh, you're here in person, that's right.

MR VOORTMAN: (Indistinct).

25 COMMISSIONER ABRAMSON: It's quite exciting, James. You're only number 2 of appearances in person.

30 MR VOORTMAN: My office is less than a kilometre down the road, so it would have been impersonal of me to appear (indistinct) - - -

COMMISSIONER LINDWALL: Now, the camera is there, and the video is here. So - - -

35 MR VOORTMAN: Do you have a preference? Would you like me to look - - -

COMMISSIONER LINDWALL: No.

40 MR VOORTMAN: Okay.

COMMISSIONER ABRAMSON: No, I'm not precious at all. You look where you need to look.

45 MR VOORTMAN: Okay.

COMMISSIONER LINDWALL: So, James, if you just introduce yourself and - like the others.

MR VOORTMAN: Absolutely. So, James Voortman. I'm from the Australian Automotive Dealer Association. We represent all of Australia's franchised new car dealers, which is around 3000 dealerships located all  
5 across Australia. Our members are franchised to global car manufacturers, and we're authorised to sell their products, and also service and repair these vehicles. As you'd know, our industry is slightly - a bit of a frontrunner on the right to repair issue. We've been debating this issue for approximately a decade. (Indistinct) recently laws made regarding the sharing of service and  
10 repair information that passed the parliament and will take effect on 1 July next year.

Look, while we approached our initial submission from the perspective of, you know, sort of information sharing and the strict right to repair, the draft  
15 report that's been issued by the Commission has prompted us to, sort of, take note of several of the findings and recommendations and we'd probably like to make the following points in today's presentation. Firstly, we think it's important to enhance the ACL through improving the indemnification rights for suppliers under the ACL. And I'll speak about that in more detail in a  
20 second. Secondly, you know, I think there's a common thing around the automotive industry not having the voiding clauses in its warranties. And I think that's a result of some of the strides we've made over the past five years, as there has been more scrutiny on this industry in relation to our interaction with consumer law.

25 We'll make the point that we don't think obsolescence is a concern in our industry. But we think there is an issue with product withdrawal, and some of those issues related to spare parts. And I'm talking there about manufacturers like Holden most recently pulling out of the market and  
30 leaving many customers here in Australia. We probably think that there are some difficulties around, sort of, a minimum expected durability for vehicles. And we'll talk to that in more detail. And then, you know, the same around the super complaints process. We'll probably just, you know, (indistinct) the rationale for that. And then finally happy to talk very briefly about e-waste,  
35 the probably one sort of intersection of our industries, the emergence of electric vehicles, and what that means for all of the lithium ion batteries that will be coming (indistinct).

40 COMMISSIONER LINDWALL: Yes.

MR VOORTMAN: Would you like me to elaborate on each of those?

COMMISSIONER LINDWALL: Yes, that would be good.

45 COMMISSIONER ABRAMSON: Yes.

MR VOORTMAN: Okay. So, look, the dealers, as I said, are the retailers. And under the Australian Consumer Law we have the responsibility to provide consumers with remedies. We then, in turn, have the rights under the ACL - under section 274 - to seek indemnification from the manufacturer.

5 Now, the problem we have in our industry is that we're franchised to some of the biggest organisations in the world. All of them are Fortune 100 companies, and there's a massive power imbalance. And the agreements we have with manufacturers often constrain our abilities to resolve consumer law complaints.

10

So what might often look like a dealer being difficult, is really a dealer caught between the customer and the manufacturer. And this was a finding of the ACCC inquiry. It was also something that the Consumer Affairs Minister sort of found in August of 2019, when they had one of their meetings and issued a communique. And they actually instructed those governments to go back and develop a regulatory impact statement which looked at ways to improve suppliers' rights, but also to restrict the ability of a manufacturer to take action against a supplier. Two years later, unfortunately we haven't seen much progress.

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COMMISSIONER LINDWALL: Okay.

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MR VOORTMAN: There has been a pandemic, but we'd be hoping that a finding out of this final report could, sort of, ask for (indistinct) on that front. So that's probably our main observation on the ACL. Moving onto the issue of voiding of warranties, you know, and whether we need further education. I think the comment was made by the Commission that there isn't - there aren't many voiding clauses in, you know, new car warranties. But there is still a perception amongst consumers that they need a service or repair within the network to maintain their warranty. I think it's probably gotten better. We had about, you know, five years of intense scrutiny from the ACCC that started with a, sort of, a new car retail study. They've reached enforceable undertakings with a number of manufacturers, they've taken a number of manufacturers to court.

25

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We've worked with them to distribute information at the point of sale which improves consumers' knowledge around the interaction between manufacture warranty, ACL rights and extended warranty. And, you know, I guess - you know, I was looking at a few manufacturer warranties before I came here, and they all make it very clear that the ACL is pre-eminent. I didn't see any voiding clauses. And, you know, some of them went over and beyond the ACL - sorry, beyond what they would previously, and give consumers the right to a 60 day replacement or money back guarantee, in the event that their vehicle fails. So, look, I think you know, we have come a long way, and it's been a result of scrutiny. But, you know, that's just a comment.

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We then move onto premature solutions. And we haven't seen - we don't believe there's a, you know, there is a premature obsolescence issue in the automotive industry. I think manufacturers compete pretty fiercely on, you know, the durability of their vehicles. I saw - and I reference it in some of the notes - in 1995 the average, sort of, life span of a vehicle was around eight and half years. I think today it's around 11 years. If you look at the average age of vehicles in Australia, I think for light vehicles its 10.4 years, for light commercials it's 10.8. It would probably be even higher if we didn't have, sort of, hailstorms and accidents and the like. But I think the point there is that the vehicles are made to last. It's a selling point. And that, you know, I don't think it's anything - - -

COMMISSIONER LINDWALL: Well, they're expensive products (indistinct).

MR VOORTMAN: That's right. What I would say though is that we are concerned around product withdrawal. And Australia is an incredibly competitive automotive market. We've got many manufacturers competing fiercely here, supplying, you know, I think we've got around 60 manufacturers selling hundreds and hundreds of models, which is a lot more than in places like the United States or the European Union. And, you know, Australia is seen as a relatively easy place for manufacturers to set up shop. But unfortunately we do see them coming and going fairly often. And I can count around six or seven in the past decade.

COMMISSIONER LINDWALL: You mean importers? Well, the manufacturers who import their vehicles.

MR VOORTMAN: Yes, that's right.

COMMISSIONER LINDWALL: They don't make them in Australia.

MR VOORTMAN: No, they don't. No, that's right. So, you know, there has been a number over the years. And that's their choice to stop supplying vehicles in the market. But obviously they often leave a number of dealers who have invested in that brand, and more importantly a number of customers who have bought those vehicles in their wake. And, you know, up until last year it was more lower volume brands. But when Holden was withdrawn from the market by General Motors it left one and a half million registered cars in Australia. It's the second, you know - sort of, Toyota is the vehicle brand with the most registrations in Australia, and Holden would be second. And, you know, I guess we're just concerned that, you know, as the automotive industry rationalises a lot more of these manufacturers are going to make decisions about, you know, whether they consolidate or whether they withdraw from certain markets. And Holden, for example, has said that they'll be committed to their fleet for 10 years.

5 But we're already hearing unfortunate cases from those dealers who were retained as service, sort of, dealers around parts availability. Now, that might be something related to the pandemic which has caused disruption in supply chains. But we're also hearing that there's becoming a lot of stringency around warranty and claims are getting knocked back whereas in previous years if you were more conscious about growing a brand and winning back customers, you'd probably do more to honour those warranties.

10 COMMISSIONER LINDWALL: Yes.

MR VOORTMAN: So, I think that's something we're concerned about in the future. Moving on, durability. Look, this is a tricky one. As I said in my previous, sort of, response, we believe that durability has become a selling point. And I think it's going to be very difficult in many ways to come up with a reliable estimate of durability in the automotive sector. And that's because, you know, I think there are so many factors which influence the durability on a car, ranging from, you know, have you serviced and maintained the car properly, frequency of use, what kind of fuel you use, driving style, have you modified the car, accident history, et cetera, et cetera.

20 A lot of factors there. Also, a product with many components - batteries will have different lifespan to touch screens, to seatbelts, to tyres, et cetera.

25 COMMISSIONER LINDWALL: It depends where you live too, presumably.

MR VOORTMAN: Yes.

30 COMMISSIONER LINDWALL: In cold versus hot, salty versus not.

MR VOORTMAN: That's right, yes. And, you know, I think people tell you that cars in Australia generally last longer than they would in colder climates. And then, you know, I think it's also - the automotive industry is slightly different to most. And maybe I'm just saying this because I haven't thought more broadly. But there's a strong culture of repair in this industry. I think consumers generally understand that when they buy a car it has to be maintained and occasionally repaired. And I just worry that if we put a, sort of, certain timeframe on a vehicle, that might muddy the waters and, you know, it might confuse them in relation to how that sits alongside their warranty, but also it might give them an expectation that they presently don't have.

45 And then I'm also concerned (indistinct) our industries around something like a durability recommendation be coming into effect as standard. We've just gone through a pretty gruelling process in our industry. We are required by law to put fuel consumption labels on the windscreen of all cars supplied in the Australian market. It's a requirement of the Australian Design Rules

administered by the Infrastructure Department. And, to put it in context, those consumption labels are - do not represent world driving. It's a laboratory test and its purpose is that when someone buys a new car they can compare. But, as you'd know, everyone drives differently. Some people like to tow caravans. So that label doesn't always represent real world driving. But recently we've had a case - - -

COMMISSIONER LINDWALL: Some people like to get off the traffic lights first every time.

MR VOORTMAN: That's right, exactly. And recently we had a case which went to VCAT in Victoria in which a consumer took both the dealer and the manufacturer to VCAT and said that I'm not achieving these in the real world, and VCAT found in his favour, and the Victorian Supreme Court found in his favour too. The Supreme Court threw out two of the findings which were around consumer guarantees, but upheld one around misleading and deceptive conduct. So, we've got a situation here where you don't apply the label, you're breaking the law, but you do apply the label you're, sort of, misleading the consumer. Now, I'm not saying that's exactly how it will play out with - - -

COMMISSIONER LINDWALL: I assume that the labels - I haven't even looked at the label for a while - have some sort of qualifier that it was done - - -

MR VOORTMAN: It does, yes. It does, which is even more concerning. And it's prompting us to think do we need an even stronger qualifiers as part of the, sort of, sales documentation. But, look, if we are, sort of, inclined to go down the durability rating for vehicles, you do think we need to work pretty strongly with industry on that, and that we'd have to have pretty wide ranges. And, as I said, we'd be fearful of them becoming standards. Look, we completely agree with the need to review the mandatory data sharing arrangement after three years. This is something dealers did not agree with when it was first raised.

Obviously we are the beneficiaries of being authorised manufacturers, but I'm proud to say that my members over the years have come to accept the fact that this is something that the community wants, and we've, sort of, gotten on board and we're working with the independent repairs sector, and the manufacturers. So, we'll be working in good faith to make it work, put appropriate, sort of, protections around the sharing of that information. And I think in three years' time it would be good to see how we can improve that system.

Super complaints - I guess, when I spoke to members about this the main question from them was what is the problem we're trying to solve. We're all under the impression that consumer groups can already lodge, sort of, these

complaints to the ACCC. In fact, I think the New Car Retail Study was largely driven by the fact that there were many complaints in the industry. You know - - -

5 COMMISSIONER ABRAMSON: James, I might help you there. It's not in a systemic or systematic way. So, there are many instances - it's in force overseas - many instances - and I'm reluctant to name a brand here - but there was a particular car that had a lot of problems with it. But people didn't know - they were all getting the fob off, and they didn't know that somebody  
10 else had the same problem. So, it's really about that. Sure, people can go to a regulator, but the difficulty is the regulator may not join the dots, and also it's not really the ACCC is a systemic regulator, it doesn't respond to particular instances with particular individuals.

15 I should also say - and I take your views on board about this - it would have very strict guidelines around it, and it would be developed with industry and consumers. So, it would be quite a careful remedy in the hands of designated consumer groups that would have to meet certain requirements.

20 MR VOORTMAN: Yes, okay. And, look, we - I guess, yes, I do know that individuals can complain. But do we need a formal mechanism for consumer groups to, sort of, lodge those complaints? Or is that happening already? I mean, I did a casual, sort of, search online earlier, and I found that, sort of, organisations such as Choice, you know, have, sort of, brought forward a lot  
25 of these complaints to the ACCC's attention. But I do take your point in, sort of, formalising it, developing it along with industry and putting some processes around it. I guess we just want to ensure that we're part of that process.

30 COMMISSIONER ABRAMSON: No, I understand.

MR VOORTMAN: Okay. Look, not too much to say about e-waste. As I referenced earlier, you know, we are on the cusp of a, sort of, a major  
35 emergence of electric vehicles. One of the issues people have started turning their mind to (indistinct) is how we deal with the batteries that will be left over. I'm very confident that government and industry will work together towards a, sort of, some kind of solution. One area I'm a bit nervous about in our industry, which probably hasn't come to the fore in this inquiry yet, is the Specialist and Enthusiast Vehicle Scheme, which is a scheme being run by  
40 the Infrastructure Department which allows individuals to bring in specialist and enthusiast vehicles.

And at the moment there are a number of electric vehicles on the list - these are used vehicles - which are up to eight years old. And I'm just nervous that  
45 we, you know, through that scheme we're inadvertently going to allow a number of vehicles which are, sort of, towards the end of their battery life, coming in, essentially being made the problem of Australia to dispose of

those batteries, rather than the home market. So, that's probably more of an observation, and I will leave it at that and take any questions.

5 COMMISSIONER LINDWALL: Yes. Okay. Well, thanks very much, James. Getting starting on your last point there, the electric vehicles - how big are the batteries? I haven't actually looked at them. Are they very large batteries, I assume?

10 MR VOORTMAN: They are very large. I think they form the majority of the vehicle's chassis.

COMMISSIONER LINDWALL: Yes.

15 MR VOORTMAN: So not your typical lithium-ion battery that can't go in your suitcase.

20 COMMISSIONER LINDWALL: No, I didn't think so. And what would the implications - and it's not really in our terms of reference, but part of your industry obviously, given that the UK has announced that it's moving towards electric vehicles by 2035.

25 MR VOORTMAN: Yes. So, yes, the ban on ICE vehicles. Look, it's difficult to say. You know, we haven't had any indication from government here in Australia that they're looking at doing so, but you can't move away from the fact that many other markets are doing it, and the UK would be, along with Japan, the two big (indistinct words) market, so - - -

COMMISSIONER LINDWALL: Yes, yes.

30 MR VOORTMAN: So, look, the implications are that at some stage we would, you know, probably start getting fewer makes and models than we are at the moment because no one is developing specifically for Australia. But look, it's difficult for us to say at this point. All we know is that a lot of manufacturers are investing their dollars on electric vehicle and a future away from ICE vehicles. So that is something we're going to have to transition to. There are many effects for our members because servicing revenue, margins on new cars, it's all, sort of, very different under an electric vehicle future.

40 COMMISSIONER LINDWALL: And in terms of e-waste to especially - modern cars, of course - there are a lot of computers in them. When they reach the end of life and they can't be repaired economically anymore, the existing systems that you have in the industry are pretty effective, do you think, of safely and environmentally friendly extracting those resources and reusing them, repairing other products (indistinct words).

45 MR VOORTMAN: Look, I'm probably not the most qualified to speak on this, and I notice that later in the agenda you've got - - -

COMMISSIONER LINDWALL: Yes.

5 MR VOORTMAN: - - - Richard Dudley from the Motor Trades Association, and he would probably be more of an expert on that subject matter. But look, from my understanding there is sort of a fairly burgeoning vehicle recycling sector. I think many of the players within that sector would like, sort of, more sort of regulations around how it is done.

10 COMMISSIONER LINDWALL: Yes, yes.

15 MR VOORTMAN: There are, sort of, some components within a vehicle that are under product stewardship schemes, tyres, oil, and there's been talk around batteries which is quite, sort of, topical given the emergence of electric. So look, my understanding is there is an industry; the question is how prepared is that industry to deal with what's coming because it might be a lot of vehicles reaching their end of life very soon if we are going to move away from ICE very quickly.

20 COMMISSIONER LINDWALL: Yes, yes. And the change that was made to the consumer law - I'm not sure exactly when, and Julie might be able to answer that part - where a number of minor faults becomes a major fault, and then you need to replace rather than repair. That's fairly recent, isn't it, that change?

25 MR VOORTMAN: It is fairly recent.

COMMISSIONER LINDWALL: And what have been the implications for the industry?

30 MR VOORTMAN: Look, on that particular sort of change, I think it is too soon to say, but what I can say around consumer law and consumers' awareness of their rights, that has certainly grown in the automotive industry over the past sort of 10 years.

35 MR VOORTMAN: There was the big - the famous campaign around 'I bought a Jeep'.

40 COMMISSIONER LINDWALL: Yes.

COMMISSIONER ABRAMSON: Yes, I was trying to avoid the Jeep man issue.

45 MR VOORTMAN: And, you know, the work of the ACCC and the consumer groups. Consumers are very aware of their rights in relation to the automotive sector and, you know, a lot of state governments have also been pushing it, particularly the Queensland Government, and there's been a

debate around lemon laws. So, you know, I don't think we've had enough time to see yet what the change to the ACL has meant in a practical sense, but, you know, what I can say is over the past decade consumers are well aware of their rights, more so than ever.

5

COMMISSIONER LINDWALL: I've been in Canberra long enough to have seen well before the Jeep when someone parked a Russian-made vehicle outside the Soviet embassy, as it was then in Manuka and I don't think he got a benefit from doing that actually. Julie.

10

COMMISSIONER ABRAMSON: Thank you. Thanks very much, James. I just want to ask you some questions about the warranties, and you did touch on this a bit. As you know, our position at the moment is that there should be some text which states that entitlements to consumer guarantees under the ACL do not require consumers to use authorised repair services or parts, but I'm sure you're aware in America it actually goes further and prohibits manufacturer warranties from containing terms that require consumers to use authorised repair services or parts to keep the warranty coverage, and I'm just wondering what your views are on that.

20

MR VOORTMAN: Look, I think, you know - and correct me if I'm wrong. I think the Commission might've mentioned that at a glance at the current manufacture warranties in the automotive sector is that they don't have any of those sort of voiding terms. So, you know, I would think that that is not something we would oppose if you were to make that change and bring it in line with the United States. I had a look at a couple before I came here and I must say those are probably some of the (indistinct) that have achieved enforceable undertakings with the ACCC. And to me it seems like they actually do make it very clear, firstly, that ACL takes pre-eminence over manufacturer warranty; and secondly, that repairing the vehicle, you know sort of outside of the authorised network does not void the warranty. So I don't think that's something we would oppose.

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COMMISSIONER ABRAMSON: Excellent. That's all I wanted to ask, James. Thank you.

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COMMISSIONER LINDWALL: And James, in the point that you raised there about the regulation impact statement and two years later not much has been happening in terms of consumer - sorry - your member rights versus manufacturer rights.

MR VOORTMAN: Yes.

45

COMMISSIONER LINDWALL: What did you actually want us to do?

MR VOORTMAN: Look, I think from a recommendation sort of - if we finalise recommendations in this report I would just say something along the

lines that the communicate sort of agreed to by the consumer affairs ministers gets sort of progressed or progress was made on that, yes.

COMMISSIONER LINDWALL: Okay. Drawing that - - -

5

MR VOORTMAN: We'll put it - I'll make the point more eloquently in the submission.

COMMISSIONER LINDWALL: All right. That will be fantastic. All right. Now, do I have any other questions I think at this time anyway? So - no, that's been very helpful. Thank you very much.

10

MR VOORTMAN: Okay.

COMMISSIONER LINDWALL: Thanks, James.

15

MR VOORTMAN: Thank you.

COMMISSIONER ABRAMSON: Thanks, James.

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MR VOORTMAN: Thank you.

COMMISSIONER LINDWALL: Now, is Alix Ziebell here?

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MS ZIEBELL: Hello.

COMMISSIONER LINDWALL: Welcome, Alix. Please come up.

COMMISSIONER ABRAMSON: Another person in person form. This is getting very exciting.

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MS ZIEBELL: I saw you both in person at the Right to Repair Summit a couple of weeks ago.

COMMISSIONER LINDWALL: That's right, yes.

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COMMISSIONER ABRAMSON: Yes. Alix, that was the last time I was allowed out of my state.

MS ZIEBELL: Well, what a great event to be allowed out for.

40

COMMISSIONER LINDWALL: Indeed it was, yes.

COMMISSIONER ABRAMSON: Excellent.

45

COMMISSIONER LINDWALL: Now, Alix, if you would like to introduce yourself and perhaps say what you would like to.

MS ZIEBELL: Thank you. I'm Alix Ziebell. I'm the Director of Policy and Government Relations at the Australian Academy of Technology and Engineering. We are one of Australia's five learned academies and we are  
5 located directly across the road from here, so thank you; it's been very convenient. I am here today to speak with you about the right to repair in terms of waste and the right to repair as one of the methods to avoid waste in Australia. ATSE wrote a major report that was published last year called  
10 Towards a Waste-Free Future and I have a copy that you are welcome to.

10 COMMISSIONER LINDWALL: Thank you.

MS ZIEBELL: Which looked at three potential solutions to - technology-based solutions to waste that included design, product stewardship and  
15 advance resource recovery, and as part of that work we did quite a lot of looking into the right to repair as a waste-avoidance technique. ATSE sees huge potential for technology to positively disrupt the waste and resource recovery sector in Australia and the manufacturing sector and support our transition toward a circular economy. Our report emphasised the critical  
20 importance of maximising the productivity of finite natural resources by deliberately designing products, systems, and infrastructure to make better use of these materials, including through repair and extending the life of products.

25 Technology will help us to design products that are more durable, reusable, repairable and able to be remanufactured or disassembled once they reach the end of their first life. Most relevant to this inquiry, the ATSE report recommended a legislated consumer right to repair products, and we're  
30 pleased to see this has been implemented in a recent amendment to the Competition and Consumer Act. ATSE recommended this right begin with electronics, given the amount of waste and the value of the resources contained in electronics. I absolutely understand that this right is directly initially at high value consumer products, but we urge the Commission to  
35 also consider the productivity losses associated with waste, and in particular wasting products that contain high value materials, rather than repairing or remanufacturing them.

40 E-waste, in particular, is a key focus of the right to repair internationally, with electronic products filling almost every aspect of our lives, we're faced with a mountain of broken devices. Consumers are increasingly demanding repair services. But, as we know, and as you discussed Paul at the Repair Summit a few weeks ago, broken devices often need to be sent to the manufacturer for a diagnosis of the issue, and then if possible an extremely  
45 costly repair. Local repairers are frequently unable to repair devices due to the inaccessibility of the device's software, information or technology. In many cases it's often easier, quicker and cheaper to purchase a new device,

rather than repair. In addition to the expensive consumer costs, unfixable devices contribute to the mounting problem of e-waste.

5 The consumer movement dubbed the Right to Repair, as you probably know, began in Massachusetts in 2012. And it shows that people are increasingly holding manufacturers accountable for the durability and the sustainability credentials of their products. Some small businesses will repair products, but as we know there are issues with warranties and monopolies. Intellectual property and copyright laws restrict small businesses such as mechanics and  
10 electronic repairers from being able to access the information required to repair goods, and they have called for government regulation to permit a right to repair. More than 30 states in the US now have introduced Right to Repair bills.

15 Europe has new standards for appliance durability, which include a requirement for manufacturers to supply spare parts for up to 10 years for some whitegoods. And these regulations also require manufacturers to make maintenance and repair instructions available to professional repairers. As the Commission will be aware, to improve reuse and reparability, the  
20 National Waste Action Plan proposes that governments review and report on recommendations to introduce laws to improve consumers' right to repair options. And it also calls on all governments to support community based reuse and repair centres, enabling communities to avoid creating waste.

25 More products designed to be repaired and regulations allowing a right to repair would create a substantial increase in small businesses offering these services. For example, in 2018 Sweden introduced a number of tax incentives and concessions for consumers to repair household items such as  
30 whitegoods, rather than replacing them. And this had the effect of reducing the cost of repair by the (indistinct) consumer by as much as 85 per cent, and stimulating jobs in the repair service industry. ATSE's submission to the Productivity Commission's Inquiry into the Right to Repair made three recommendations - create a legislated consumer right to repair products, beginning with electronics, target manufacturing grant programs and tax  
35 incentives toward innovative design for waste avoidance and minimisation, including reparability, create standards and certification systems for reused, repaired and remanufactured goods to build consumer confidence and promote sustainable design.

40 We welcome the Committee's draft report, which we note focuses on whether consumers face barriers to repair, and that require a government policy response. We strongly support a legislated consumer right to repair products, because this will enable better outcomes for consumers and reduce environmental impact. Repairing products rather than replacing them  
45 represents better value for the consumers' money and creates a loyalty relationship between the consumer and the manufacturer. Repairing and

remanufacturing products for resale is also more cost effective than making new product, and it requires less resources, avoiding waste.

5 Repair economies support job growth through the development of small local businesses offering these services. It diverts substantial valuable resources from landfill, particularly in e-waste which contains environmentally harmful substances in much higher quantities than other products. Our report  
Towards a Waste-Free Future found that consumers are increasingly  
10 demanding repair services, particularly for electronics, and that unfixable devices are contributing to this mounting problem of e-waste. I'm done.

15 COMMISSIONER LINDWALL: Could I ask straight off what - when you say we should have a legislated consumer right to repair, what exactly would you mean by that, Alix?

MS ZIEBELL: I think it would mirror fairly closely what we have seen in the recent amendments for the auto-repair industry. So, I am probably not -  
20 ATSE is made up of applied scientists, engineers, and industrial specialists, essentially. But what we would like to see is, as the Productivity Commission would like to see, the removal of the barriers. So the removal of copyright and IP issues that prevent independent repairers from having the ability to repair these things. So the - - -

25 COMMISSIONER LINDWALL: So it covers everything from IP through, in some cases, a positive obligation to product stewardship schemes. So, it's not just one lot of legislation, isn't it?

30 MS ZIEBELL: I think what we meant by that particular recommendation was more specifically in line with the consumer law amendments that have been made recently, in terms of removing the barriers. So, we'd like to see - if I had something that is broken that I have bought, I would like the right to be able to repair it and not face any negative consequences for that. I was thinking the other day about what my grandparents might have thought about me having to argue for that right. If you think about people who were living  
35 during war time, it would - I think you would have faced a lot more scrutiny and public taboo for not repairing your products or your goods.

40 And now we have to argue that we have the right to repair things that we own. Which seems anathema to me and to our fellows, and to, I think, an engineering mindset in general that you have this incredibly complex beautifully designed piece of machinery or technology, and you have to throw it away because it has something mildly wrong with it that could quite easily be repaired.

45 COMMISSIONER LINDWALL: Some of that to do with spare parts availability, obviously. Some of it's with software and firmware. But what about - obviously in technological devices, because of the rapid change in

technology a lot of consumers will prefer something newer because it's changed quite a bit since the last time they bought it.

5 MS ZIEBELL: Absolutely.

COMMISSIONER LINDWALL: Are you talking - you're not talking about substantial changes, like if you bought a phone and you had it for three years, maybe holding it for four years is a big change, but saying it should last 20 years might mean that you're holding something that looks like a brick.

10 MS ZIEBELL: Potentially. But, I mean, if you look at a circular economy, the same person doesn't have to hold that phone for 20 years.

COMMISSIONER LINDWALL: Exactly.

15 MS ZIEBELL: So if they then have - through a product stewardship scheme or something similar, the ability to hand that back to - or give it to a local business who can then either refurbish or remanufacture that particular piece of technology for resale, it continues to have its first life. It can be reused. If  
20 that piece of technology is so outdated that it can't be used by anybody else, it can be disassembled to then increase the availability of those spare parts, as we were talking about. So there are definitely options, I think, that would assist people to continue to keep up with the ever-increasing pace of  
25 technology. And also enable us not to leave people behind.

So, potentially, as that technology travels down the scale it can be used for free by people, it can be loaned by people.

COMMISSIONER LINDWALL: Yes.

30 MS ZIEBELL: We also looked in the report beyond repair to things like products as a service. So, where you would then, in a sense, lease that product, but that product - the manufacturer is then obliged to repair and maintain that product for you. And, as I said in my remarks, it creates this  
35 loyalty relationship between consumers and manufacturers, where manufacturers are therefore incentivised to make products that are of a high quality, are sustainable, have these credentials that are becoming more and more desirable for the consumer.

40 COMMISSIONER LINDWALL: Of course, there would be a tension between that and independent repairers. Because if the manufacturer's only leasing it to you, they won't allow you to take it to an independent repairer, so - - -

45 MS ZIEBELL: Indeed. But you would have the right to repair it through the manufacturer. It would be part of your, sort of, your negotiation, I suppose, with them. You would give up potentially some of your rights to take it to an

independent repairer, but in return you might get a cheaper price, or you might get better returns in another way.

5 COMMISSIONER LINDWALL: Yes. In terms of product stewardship schemes, and the NTCRS is one of them, of course - that's the only one that's co-regulatory in Australia at the moment - what do you think of - I mean, and you see that we proposed that it should be allowable to take repair into account, rather than just recycling - what did you think about what we said, and where do you see our product stewardship schemes - where are they good, and where are they not so good? How would you improve them?  
10 Because no system is perfect by definition.

15 MS ZIEBELL: No, not at all. And I know that you heard from Rose Read and John Gertsakis earlier this morning. I wasn't able to hear their evidence, but I'm sure they would put it much more eloquently than I'm about to. But we really, in our consultations, would push for what's more commonly known as extended producer responsibility.

20 So, in a sort of simplistic way, you could create a three-tiered system where, if a product is either manufactured or imported into Australia, it needs to have an end-of-life plan. So if that plan is that there's extended - if there's a stewardship scheme where the manufacturer or importer is going to take that back holus bolus, and they have a plan for what to do with it, and it's not going to go into landfill, then that's obviously a low impact on the consumer,  
25 low impact on the taxpayer.

That person or manufacturer would have, in effect, an incentive where - in our design, we should be incentivised to create that pathway. The second level would be what's now sort of co-regulated, where they would not necessarily take that product back, but there is a pathway for that. It is fully  
30 recyclable; it can be repaired or re-manufactured. It's not going to go into landfill again.

35 We do think that there is a need for some kind of regulation and penalty for products that do not have a plan for that product's end of life, whether that be repair, re-manufacture, or recycling. What that would in effect do is send a price signal to the consumer at the very beginning of all of this, to show that there is a cost. The product that you are buying - in effect people -  
40 manufacturers are incentivised to make them as low-quality as possible, to make them as cheap as possible, so that the consumer then purchases that product.

45 But at the end of that product's lifecycle, someone is still paying for it, whether that's the community near the landfill; whether that's the people using the water that has toxic chemicals in it; whether it's the platypus that gets the beer can thing around its neck; someone is paying for that product. So if we can regulate, to put that cost upfront to the consumer, it would

change consumer behaviour toward that more positive, sustainable produced product, which otherwise would be more expensive.

5 COMMISSIONER LINDWALL: Yes. And – but of course, you have to be aware of the impact upon the less well-off people, low-income people.

10 MS ZIEBELL: Indeed, which is why it can't just be a straight (indistinct) increase in price. What you need to do is also equivalently tip the scales in the other direction as well, to make sure that people who are doing the right thing, and who are buying sustainable products, and who are making sustainable products are incentivised to do that.

15 COMMISSIONER LINDWALL: Now, just one more question, and then we'll turn to Julie. On labelling and design – and of course we've pointed to the French labelling scheme, and there's always a debate about whether you go it alone, and try and improve on what's out there, or do you just copy it. I'm interested in your thoughts about that, and also about design.

20 One way of getting things that are more repairable would be, Australia set design standards. But the implication of that could be that certain products don't come to Australia, and maybe that's good, maybe that's bad; it depends on who you speak to, I guess. But Australia is not that small a market; well, (indistinct) a big market, so we have some influence, but not a huge amount of influence.

25 So I guess my question on the labelling and design is, how much should we leverage our size with our countries, who are also interested in getting better outcomes for the environment, versus trying to go it alone, if you like?

30 MS ZIEBELL: Trade is not my speciality, but I will have a go. This is the third in a series of reports. So the reports are actually on technology readiness in Australia, and they look, on a 10-year horizon, to 2030, whether Australia is ready to adapt, adopt, or develop technology solutions to face complex problems. So this one was on waste. We did one on health as well,  
35 and the first one was on the transport industry.

40 And I heard your previous speaker talking about dumping behaviour in Australia, and that is something that we very much found in the transport report, was that Australia's slow uptake of LEVs is essentially creating a dumping ground for the dirtiest, the most outdated, and the least sustainable cars in the world. And I would imagine that that extends to many of these other products as well.

45 Yes, we don't have the capacity to make them ourselves here at the moment, but this is also a question of what kind of country we want to be in the future. So I would fully support standards for better design products, for two reasons. One, it prevents us becoming a dumping ground for bad technology.

Two, it creates an even playing ground for Australian developers and Australian manufacturers who might want to do that.

5 So we have the capacity, we have the research strength, we have the small business, we have the manufacturing capability, the skills to develop some really incredible technology in Australia that could become an export market for our economy. As long as these cheap, badly made, unsustainable products are allowed to continue to be imported, it is smothering that capability. It is smothering the development of those sectors.

10 So it really is a choice for Australia, as far as I'm concerned, in terms of what kind of country we want to be in the future. And if we want to be that leading-edge, sustainable technology country, we would need to provide some support to the sectors of our economy which would be hurt by these particular regulations. But we need to do it in a deliberate and well-communicated way, and say, 'We've made this choice. This is where we're going in the future. We are going to support you to come with us.'

20 COMMISSIONER LINDWALL: All right, thank you. Julie.

COMMISSIONER ABRAMSON: Thank you. Thanks very much, Alix. I just wanted to ask some questions about some of the EU regulations, and what practical effect you think they might have in Australia. So, where there is a requirement to have repair supplies for a particular period of time, and given that we import a lot of products – we don't make them, mainly, here – so I was just wondering about your view about that, Alix.

25 MS ZIEBELL: Well, it does present a bit of an opportunity, as far as I'm concerned, for developing the capacity to make them in Australia. So if we create a market, I'm fairly confident that we would be also creating the capability in Australia to do those thing. If not – COVID has created some complications there, so it would be something that you would need to speak to industry about, what their supply chains look like, and what the capability would be to do that.

35 I wouldn't suggest, necessarily, that we would put such a stringent requirement in place. As you mentioned, Europe is a huge market, and they are quite close to their supply chains. Having said that, though, we heard a lot in the development of this report that, as a dominantly importing country, it's impossible for Australia to put any kind of barriers up at the border. But the EU is also an importing country, and they have put those barriers up, and people adapt, and they start to design products that meet those standards.

40 So it's – again, not my specialty, in terms of EU regulations, but I think that there would be – you will hear, if you ask industry this question, that it's impossible. I would advise, seek some further expert opinions if that's the advice that you're given.

5 COMMISSIONER ABRAMSON: Thank you, Alix. There's an additional point to that, is holding cost. So we've heard a lot about how expensive it is to retain spare parts, et cetera. Do you have any information on that, given that you work with a lot of engineers?

10 MS ZIEBELL: I don't, but I can imagine what they would say, which is that the technology for things like 3D printing is incredibly – is accelerating exponentially. And we have the capacity, if we had these regulations on the right to repair, for example, and the specifications for these parts were made available to repairers, to 3D print those parts, and they wouldn't have to hold anything. They could be made on demand. And further, we have – one of our fellows you're probably quite aware of, Veena Sahajwalla, who - - -

15 COMMISSIONER ABRAMSON: Yes.

20 MS ZIEBELL: - - - who is very keen on creating a closed loop with these particular circumstances; so, making those spare parts out of waste. Rather than importing raw materials, pure raw materials, we could be creating this lovely closed loop where we gather the requisite materials to make certain parts and stockpile those, and then make parts on demand.

25 COMMISSIONER ABRAMSON: Thank you. One final question, if I may, Paul. In your Towards a Waste-Free Future, you mention the idea of the promotion of urban mining. This is very interesting, Alix. Can you explain to me what urban mining is, and how it might incentivise consumers?

30 MS ZIEBELL: Interestingly, I've heard just in the last week that there are multiple definitions of urban mining.

COMMISSIONER ABRAMSON: I'd like yours.

35 MS ZIEBELL: We envisaged urban mining – again, with Veena's support; Veena was on the expert working group for this report – as essentially gathering the materials – so the whole expert working group on this report really didn't see products as products, they saw them as most engineers do, as collections of raw materials and resources. And something that came through again and again was resource productivity. So, you've dug this thing out of the ground, that took lots of energy and resources, and then given that value proposition you need to use it over and over and over again so that you're not continuing to dig up raw materials and throwing these materials into the ground.

45 So, Vena's idea of urban mining is essentially looking at products, determining what raw materials are in them, finding a use for those materials and sort of marrying the two up. So, she's created micro factories which could do that for e-waste where you stockpile e-waste essentially and then

what normally happens is you have to truck the e-waste to a facility, or you stockpile it at that facility, and it sort of slowly chugs through it. Vena's micro factories are the size of a shipping container, and they can be taken anywhere in a city, in a rural area, whatever you like and then turn that e-waste into valuable resources. There is another definition of urban mining which is a bit different, and I'm still getting my head around it, which essentially that we should put absolutely everything into landfill and then use technology, that will be developed in the future, to sift through and find those raw materials. So, I'm not as confident explaining that one, but I think it's an interesting idea if you're into the idea of urban mining.

COMMISSIONER ABRAMSON: Thank you. Thank you very much and thanks for your evidence Alix, back to you Paul.

COMMISSIONER LINDWALL: Well, it's a bit like if you look at goldmines, there's ones that are in operation and then there's potential ones and it depends on the value of gold at the time so if the gold price is sufficiently high it's economic to mine this, and otherwise it's not.

MS ZIEBELL: Indeed.

COMMISSIONER LINDWALL: So, I can see that in conception, and of course the technology changes over time so you can actually mind things, in that sense, less expensively than you may have in the past. So, it does make some sense to me, although I don't know about the technology. I was going to comment a bit about the productivity - since we are the Productivity Commission - and efficiency and productivity obviously is critically important to do things to recycle and repair using less resources than you would have in the past. And resources include human labour, and capital and so on, so how can we drive productivity growth in recycling and repair to make it even more competitive than it might presently be?

MS ZIEBELL: Disincentivise waste. Make it more expensive to chuck something away without having first done that. That's going to be a long-term proposition, and it's going to be unpopular, but that's essentially - you know, the market drives most of these changes and that's the biggest that you've got, to change the equation. And that's where I was going with the product stewardship vision is that somehow, you've got to tip the scales to make being more productive, or using resources more productively, a better economic outcome. That will naturally happen as resources are finite, they will decline, and it will become more economically viable for people to recover resources than to go for virgin resources. That's not currently the case. Particularly - I mean plastic is the wicked problem that everybody is talking about. I don't have the answer for tomorrow, but that's essentially - it's an economic questions, which again is not my speciality.

COMMISSIONER LINDWALL: Well competition will help drive it to change, so we have to be careful to not create monopolies of recyclers and so on. Yes, that was one point.

5 MS ZIEBELL: Well, it sort of goes back to that point where I was talking about creating a relationship between manufacturers and consumers because at some point, as I say, it's going to become cheaper for a manufacturer - they're going to be incentivised to try and get that valuable mobile phone, computer, whatever it is that contains all of these resources. It's going to be  
10 an economically better decision to try and get it back off their consumer rather than let that consumer waste it somehow.

COMMISSIONER LINDWALL: Now I wanted to just comment briefly on the point you made about putting in special Australian standards for products and that, which we have had for example in the Australian Design Rules for motor vehicles, and we had originally - as a student of economic history -  
15 very high tariffs in passenger motor vehicles. An outcome of that was actually quite perverse, it led to very high priced, very inefficient, very environmentally unfriendly vehicles because there was no competitive pressure on the Australian industry at the time. So, I'm just saying, as an  
20 economist, when you want to incentivise efficiencies you still need overseas competition, otherwise you might get - probably would get - manufacturers in Australia who have become quite sleepy, and they don't develop things according to what you want. So, I'm just warning against perverse effects  
25 from certain policies.

MS ZIEBELL: Absolutely. I'm glad that that's top of mind.

COMMISSIONER LINDWALL: So, anything else, Alix, that you'd like to  
30 point out? I mean you've gone through a whole lot of things today.

MS ZIEBELL: No, happy to.

COMMISSIONER LINDWALL: Well, thank you very much for appearing  
35 then,

MS ZIEBELL: My pleasure, thank you for the opportunity.

COMMISSIONER ABRAMSON: Thank you Alix.  
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COMMISSIONER LINDWALL: And we might just - it's just on almost 3:00, we'll resume at 3:15 with Pete McCann from the Tractor and Machinery Association of Australia.

45 COMMISSIONER ABRAMSON: Thank you. Thanks Paul.

COMMISSIONER LINDWALL: Thanks Jules

**SHORT ADJOURNMENT**

**[2.56 pm]**

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**RESUMED**

**[3.13 pm]**

10 COMMISSIONER LINDWALL: Ready to go, Julie?

COMMISSIONER ABRAMSON: I am.

COMMISSIONER LINDWALL: Pete's here.

15 MR McCANN: In person.

COMMISSIONER LINDWALL: In person.

20 MR McCANN: She's not excited as the last person. I'm disappointed.

COMMISSIONER ABRAMSON: I am very excited, Pete. I just am trying to remember which is my work WhatsApp group, and which is the WhatsApp group for my family who seem to think that I'm just sitting at home doing nothing. But it's lovely to see you and thank you for coming in person.

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MR McCANN: And thank you for the invitation.

30 COMMISSIONER LINDWALL: So, Pete, would you like to introduce yourself.

MR McCANN: Yes. Firstly, thank you to Paul and Julie for the invitation to present. I'm here to represent the Tractor & Machinery Association of Australia. It's a member based industry organisation which was established over 70 years ago, and it represents importers, manufacturers, sellers of agriculture and machinery in Australia. The members include John Deere Limited, CNH Industrial, AGCO, Kubota, Landpower Group and Power Farming Group. And it includes 160 independent dealerships. I'd like to clearly state that the TMA does not oppose the right to repair.

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However, if the right to repair includes modifying this area, we do oppose. We have concerns about safety and the cost that these recommendations for farmers - recommendations for farmers and dealers and the flow on effect, impact to their communities. We also have concerns over the haste of which this is moving off the back of the ACCC report. For the record, the ACCC report surveyed around 355 individuals. The survey size we see was extremely inadequate. It represents 0.004 per cent of the farming industry

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within Australia. We would like to see a larger sample size to ensure all areas of the farming industry is fairly covered. I've been fortunate to listen to the entire series of the public hearings. This is day 3 for me.

5 COMMISSIONER ABRAMSON: We should give you an award, Pete.

COMMISSIONER LINDWALL: I think so. I think there should be an award.

10 MR McCANN: I might have missed a couple of minutes here and there. I would say I have learnt an awful lot. And I would also like to say I think agriculture - the agricultural industry has got the circular economy down pat, because we don't throw anything away. We either reuse it or change it into something else. The one thing I think that has astounded me is the opinion  
15 that the manufacturers are out to take advantage of our customers. I can't comment for the automotive or the whitegoods, or mobile phones, but I can guarantee you this is not the case in the agricultural industry. The majority of our dealers are franchises. The company I work for directly - and I know for a fact John Deere is the same - we don't own any of our retail stores. It's all  
20 done through franchisees.

Most of our dealerships are small businesses and owned by local people. And the people see their customer base on a daily basis in town or at Saturday sport. These dealerships also grow the regional economy by more -  
25 more than often are the largest employers within that town. They employ countless apprentices to ensure we grow our talent pool and keep up with the demand of our customers. The NFF says the right to repair will solve the issues of access to farmers, but we firmly believe that there's a broader issue of the capacity in the industry. It's actually a lack of people and man power  
30 within the actual regional areas.

To put it simply, we need more people in regional areas to do the work. From my company's point of view, last year our dealer network advertised  
35 799 jobs and we only could fill 50 per cent of that 799. 60 per cent of those jobs were actually for technicians. And obviously the number across the industry could easily be multiplied by four, as we are only one company. The agricultural industry does not have the industry volume of automotive. Looking at the average total industry volume for ag over the last ten years -  
40 so that does include our regular four year droughts that we're coming accustomed to - we sell around about 13 and a half thousand tractors a year. So it's not a big number.

This number is split across many suppliers, so the NFF claims that the market isn't competitive actually surprised me. And then if we look at the data and  
45 the claims that customers are locked into a brand, there's two streams of agricultural data that's collected. One being agronomic, which is crop performance yield data. The second piece of data is machine data. So, fuel

usage, performance capabilities, and et cetera. To speak for my brand, we have zero interest or access to the customer's agronomic data. That is purely the producer's data and their choice on who they share it with.

5 The machine data we can see. But keep in mind the customer has to give permission to the dealer to even view his machine data. So if he doesn't want it viewed, he doesn't have to have it viewed by the dealer. Why is the machine data so important? Not only does it help us design better, stronger, more reliable machines. More importantly, we are using it as an early  
10 warning system. We now have the information to send a mechanic on a 300 kilometre round trip with the correct part to fix the machine before it actually breaks down. Previously the tractor would break. The technician would then drive out 300 kilometres, diagnose, drive back 300 kilometres, get the part, drive back again. And obviously there's a kilometre rate attached to that  
15 travel. Very similar to the air conditioner gentleman talking about Broken Hill. As the data builds we start to understand trends across the machinery and understand weak points so we can continually improve our products. One component that has come up a lot in the last couple of days is parts.

20 You've heard claims made about time limits and availability of aftermarket parts and servicing and restrictive repair networks. The availability of parts has proven a challenge, I think, for anybody in the last 12 months. And completely out of our control. The industry is exploring every opportunity to ensure we have significant supply of parts are readily available in Australia,  
25 both now and into the future. Farmers can access parts freely and easily at any time. We don't believe there is a single manufacturer in agriculture that restricts access to parts. And when you look at the parts that are sold through our dealers, the vast majority of parts are actually going to - across the counter to the end user to complete his own repairs.

30 And if you look at that in a percentage, 40 per cent of our parts going across the dealership parts counter. Forty per cent go to the back of the building to supply the service guys. And 60 per cent go across the front counter to the farmer directly. Another component - we've heard a lot about warranties -  
35 I've learnt a lot about warranties, especially consumer warranties. You've also heard that there are restrictions. The use of independent repairers for non-critical work will generally not automatically void a TMA member's warranty. However, if the work is undertaken by an independent repairer that causes a fault to develop, then this will not be covered under the TMA  
40 member's warranties.

This is reasonable, as a manufacturer should not be liable to repair what was - that was only necessary due to the third party defective repair, or the failure to properly maintain the unit. We are keen to explore how we can improve  
45 our language, and the clarity on what is covered and what isn't. And we look forward to further round table discussions on this topic.

Now, I left this one to second last because it's safety. And we've heard a lot about safety in the last three days. To hear the safety being referred to as a red herring is a great concern to the TMA. Safe Work Australia reports that in 2018 agriculture had the second highest traumatic injury and fatalities number. The Commission I'm sure would agree that each of those fatalities is a tragedy, and no one should make light of safety. Over the last five years of data from 2014 to 2018, the majority of fatalities in agricultures, 69 per cent of them, have involved a farm vehicle. So, Paul, yesterday you asked what I thought was a very important question to Sue from the NFF. And, in my opinion, you didn't actually receive an adequate answer. I'd like to answer that for you now.

From memory, you asked are these machines complex to drive and are they complex to repair. I would say they are both complex to drive, complex to fix, and then complex to even diagnose. They can be extremely dangerous. For example, if you look at a spray rig which we use to spray the crop, these machines have got a span of 140 foot, or 42 metres. They travel at 40 kilometres an hour, and they apply chemical at that speed. So in the same mind that - thinking in the same way, that spray rig has a pressurised cab to keep our customer safe. There's also other technology to tell him about droplet size and pressures. There's even a mobile weather station on there. So he can record and track when he sprayed, where he sprayed, and what the conditions were.

At the end of the day, a car doesn't have blades that spin or cut, or spray and et cetera. They're two very different types of machines and they do two very different jobs. Ag machinery is not the same as a car, and it should not be treated as such. As you can imagine, it's imperative that all this equipment is working. And we train our technicians year round via online, face to face - to ensure we protect our customers from any harm day to day - and also our dealer staff. So, in closing, we are proposing a series of round table meetings with the ACCC, the Productivity Commission, the NFF, the dealers, third party repairers, our growers, to discuss a path forward that not only addresses the safety concerns, it also ensure small businesses within our rural communities can survive.

And let's not forget the actual struggle that has been highlighted by the NFF is the time it takes to repair machines. The implementation of the Right to Repair Bill will not fix this for the ag industry. Our issue is far greater, with a lack of people in regional Australia. If the recommendations were implemented in their current form, we are concerned repairs will be made by people who do not have the required training, and that may result in the machines not being fixed correctly the first time. That will then lead to an increase in down time and other breakdowns which will create a knock on effect and actually be an expense to the customer.

5 Farmers cannot afford to have their machinery to be out of operation for any great lengths of time. They rely on it for their business. Anyone repairing or maintaining these machines needs to fix them right, and they need to do it the first time. Or farmers will end up bearing the additional costs. These are often complex machines, and need to be maintained and repaired by people with a required level of training and experience. We've also published a statement of principles - a document that outlines our support for the Australian farmers and the dealerships. And this is available on our TMA website. That's it. Fire away.

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COMMISSIONER LINDWALL: Thank you, Pete. Well, I think you could distinguish between your dealer repairers and independent repairers who are qualified, and of course the farmers themselves whose - and having lived on a farm, and (indistinct) if you're more and more remote, you get more and more self-reliant. So I can see where a lot of farmers like to do things themselves. And that's probably more than the average car owner, by the way. I mean, when we're talking about the motor vehicle industry, we're probably talking about either having it done at the authorised dealer, or an independent repairer who has good qualifications and that. Less so someone doing it themselves. It's quite different here. And I can see this frustration from a farmer. Because, as you say, a lack of availability of people to fix things, and they're in the middle of Australia, remote (indistinct) somewhere. How do you resolve that?

25 I mean it's good to say that you need to have more people, but we can't have people everywhere in Australia. So, can you be clearer about the types of things that are safe for the average farmer to repair and maintain, versus things that are not.

30 MR McCANN: Yes, I guess one question I've always had with the right to repair is there's a right to repair, or a right to service. I guess, you know, I don't think we've ever really gone down the road of understanding - you know, from a service point of view, for one of my farmers to, you know, replace a pulley or drop the oil out, or spin a filter on, we have no dramas with that whatsoever. You know, even to the point of - as Sue said, she has her own mechanic on - we have a lot of growers that do that. And they work in conjunction with the dealerships, especially at peak times when, you know, because the - the biggest thing with farmer is there's never one farmer that's busy. They're all busy at that certain time.

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45 So, again, you know, going off the telematics side of it - and, you know, having that early warning to actually get ahead of - and farmers are getting very good at actually bringing machines - or booking machines in to say - this is before the season, come and run your eye over it. If there's any changes we need to make, we can do them now before the season starts and the machine actually goes into the field, you know, crop ready as we call it. To go from there. Probably the most concerning thing, I think, you know

going back to the people side of it, is each manufacturer has got an exceptionally robust apprentice scheme to try and bring young people in. In the old days of being a mechanic and, you know, being paid 50 grand a year to swing spanners and work in the heat and et cetera has changed dramatically.

You know, this is why we don't even refer to them as mechanics anymore. They're technicians. Because there is a lot of stuff that they are doing from - not only spinning spanners, but you know, diagnostics, you know, the control panels, looking at actually a tractor without standing in front of it and saying, okay, it's not performing right, what could - with the diagnosis, what could possibly be not right with that, and what do we need to load up and take out there. From that point of view. So, it's an education from our side of it. And I think the part that's getting lost is that, you know, we - our number one focus is to keep those machines moving at all costs. Because we have such a small customer base. You know, we don't have the enjoyment of 10 million cars. It's just not there.

So, yes, I don't know what the fix is straight away. But, yes, I think it's going to be - it's something that we definitely need to (indistinct) - - -

COMMISSIONER LINDWALL: (Indistinct) about diagnosis, because when I was on another inquiry talking to the Royal Flying Doctors Service - because they have a similar issue. They have medical practitioners, and they have to move them out to remote parts of Australia. And they now have a device that can measure the - what do you call it - cardio rhythms remotely, like an echocardiogram. And then the doctor can look at it remotely and then determine whether to go or not, or whether it's just simply something that a tablet needs to be taken. So that type of thing surely is something that - - -

MR McCANN: The telematics side, and actually being able to monitor their machines and look for trends - you know, because we've got a lot of, you know, history in regards to a machine working at 40 degrees in Moree doing X-amount of work, and fuel burn and all these, I guess, parameters, to actually say, well hold on that just doesn't look right, you know. And even to the point where we've got service technicians now - they'll make a phone call and say, 'Have you done something? Have you changed something?' You know, even to the point of inflating tyres. When we get down to the point, we actually know that there's a tyre flat.

And, again, our industry is moving at a rate of knots towards autonomy. And it's driven from, again, the same problem we have with manpower in the regions, in we can't get - you know, especially this year there's no backpackers, you know, for harvest and et cetera. So, that's even becoming more reliant on the telematics. Hopefully Telstra will catch up one day so we'll actually have mobile phone service everywhere. But that's a different story.

COMMISSIONER LINDWALL: There are solutions to that.

MR McCANN: There is.

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COMMISSIONER LINDWALL: I mean, you're right, and we did an agricultural report - regulation report - a few years ago about the injuries and deaths caused in agriculture. But don't you think it might be mostly the operation of the machine, rather than the repair of the machine, that's causing the injuries and deaths. I mean, how many do you have data on - how many farmers are injured or die from actually repairing their equipment, as opposed to just operating (indistinct).

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MR McCANN: There's probably - because a lot of the repairs are done on farm. So, they're not brought into a dealership, because of the size, and et cetera. I think probably the larger one is injuries sustained because there's - you know, there's not a workshop full of people. It's one person doing something. You know, we have had farmers that have been trapped by a fall, or you know, a transmission falling on them, and they have actually died because no one found them. Because they're by themselves.

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COMMISSIONER LINDWALL: Of course.

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MR McCANN: The other part of it is if it's not repaired properly, or something isn't put on properly, and then, you know, someone's running it up, or as we say - you know, putting it and just starting it and running it and something comes off, you know, the amount of moving parts in a machine, I think, is what - - -

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COMMISSIONER LINDWALL: Yes, well they're very complicated (indistinct).

MR McCANN: Yes, correct.

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COMMISSIONER LINDWALL: Could I ask, Pete - and then I'll turn over to Julie - - -

MR McCANN: Yes.

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COMMISSIONER LINDWALL: Recently President Biden signed an executive order which is quite long - I had a look at it - giving instruction to the US Federal Trade Commission about a whole lot of things including on tractors, or agricultural machinery. And given that a lot of agriculture machinery is made in the United States obviously, what are the implications for Australia from that executive order (indistinct).

MR McCANN: Yes, at the moment we're still - as you said it's quite an in depth report. We're still kind of understanding it and talking to, obviously, all of our - the head offices over in the US to understand what they're going to do. I think it will be a good thing for the industry, because it will open it up a little bit. And, you know, there will always be, to a certain extent I think, farmers will engage for fixing what they can - especially if they're under pressure. And there will always be, you know, a certain amount that will actually say, no, it's, you know, it's passed. Or there will be the guys, you know, you get to those corporate - the corporate farms where, you know, they have a service agreement with the dealership. So, the phone call is - it's something like, 'Right, you come out.' So, it will be interesting to see how that all flows through and what kind of parameters are put in place.

And you are right - most of the machinery - well, it's pretty well built all over the world, but they've all got head offices, and there is a portion of it built in the US, (indistinct).

COMMISSIONER LINDWALL: I'm sorry, Julie. I've got one more question. (Indistinct) others, actually, but this one is about what was submitted by the Motor Transport Association earlier, which you were here for, where they feel like - (indistinct) like your franchisees, they are squeezed by the customer and the big manufacturer in the United States. Is that still - -

MR McCANN: I think there's - squeezed in what way?

COMMISSIONER LINDWALL: Well, they try and push warranty repairs. I mean, I heard it previously too where a customer who owns a motor vehicle goes to the dealer to get it repaired, and the - and there's very strong contracts between the franchisee and the - say, General Motors or Toyota, or whatever. And they basically push back the cost to the franchisee, rather than taking it on to the manufacturer.

MR McCANN: Yes, it's probably not as prevalent in our industry. Again, because I think it's just - it's mainly driven from the size.

COMMISSIONER LINDWALL: Yes.

MR McCANN: You know, agriculture is very much a relationship industry. You know, we've got dealers just in my company that have been dealers with us for 70 years. And we've got guys that are three years. So a massive range. But, yes, it's more - you know, we're always - you know, even you look at, you know, breakdowns. You know, we keep a - again, in reference to my company - we keep a fleet of machines at planting time to do a replacement. If we can't fix your certain machine in 24 hours we'll send you a new one to use while we fix your other one. Because of, again - - -

COMMISSIONER LINDWALL: Because it's so time sensitive.

MR McCANN: Yes.

5 COMMISSIONER LINDWALL: So, Julie, sorry?

COMMISSIONER ABRAMSON: Thank you, Pete. I just want to test out some ideas, Pete. It's not necessarily that this is the Commission's view. But if everything is so working well in terms of parts and all of those types of  
10 issues, how come there's so much noise, and how come the ACCC had said that there's something that needs to be addressed? And bear in mind, Pete, that we're pleased to have you here today, and we're testing ideas.

MR McCANN: No, no. It's a hard question to answer. Because after sitting  
15 through three days, and hearing consumers and whitegoods, and phones and recycling, I was kind of scratching my head a little bit to understand - it's a strange bucket for the ag industry to be in. I think the greater concern is that - you know, going back to my earlier statement - is we haven't got a really good snapshot of what the growers are feeling. From 355 people, that's - in  
20 my eyes - that's not a lot of people to talk to. You know, it is - I actually think it should be a lot wider. And I know their survey went for a lot longer than they did, because we had Covid and et cetera.

And, you know, farmers are not overly excited about sitting in front of a  
25 computer and answering a survey. But in all honesty, Julie, I don't really know, to be honest. Because, you know, we - from my - again, talking from my point of view - we bend over backwards to keep our farmers going. And, again, from my side of it, you know, I want to keep my customers. I don't want John Deere to get them, or AGCO. So, you know, we do go over and  
30 above to maintain our customer base, because there aren't - and the other thing is, we're not creating new farmers. We're not opening up new land. If anything, the industry is actually (indistinct) at a rate of knots.

COMMISSIONER LINDWALL: Consolidating.

35 MR McCANN: You know, we have seen some changes with what's happening with China and the, you know, the money coming out. But, you know, gone are the days where, you know - I'm off a family farm at 5000 acres. You know, and that manages just to support one family. Hence why  
40 I'm not on the family farm. But, you know, you've got to get the scale now. It's all about scale to obviously spread your risk, and et cetera, and drought and all the other enjoying things of agriculture. So, I can't really answer that, Julie, I'm sorry. I don't really know why.

45 COMMISSIONER ABRAMSON: Thank you Pete. Look, I did want to ask you some very specific questions, I'm happy for you to take them on notice. When you talk about warranties, you talked about restrictions that wouldn't

apply for non-critical work. Well, of course, the million dollar question is what's non-critical work?

5 MR McCANN: So that's more - so the non-critical side of it is more, you know, spinning filters and if there's a bearing that's broken that is replaced by a third party. We're not going to say, 'You've got no warranty because you didn't use our dealer to do that.' It's more the lead in effect that, you know, let's say for argument's sake the third party repairer doesn't put oil in it, or enough oil in it, just for argument's sake, and the engine locks up. The  
10 problem being then is we're not going to be overly keen to go and put a new engine in it, because again it wasn't done properly, or it wasn't done to spec.

Now, that's a very, very basic example. And I would be very shocked that that would happen, but it does. You know, because a lot of the times the  
15 other part of it is that most of these guys, when they are doing repairs they're usually under pressure; (a) there's another job - because I think one thing in the ag industry with third party repairers, then it's not like a (indistinct) of it - there's not 20 of them. It's one guy usually. And this has been another kind of concern that we've got. Those guys are not always breeding up  
20 apprentices to go back into the market, because it's a small outfit. You know, it's one guy, it's a service truck and (indistinct) that runs around, you know, kind of doing the odd parts, or the gap filling, I guess you'd say from that point of view.

25 But, yes, that's probably - I can get you more information on that if you want a better breakdown, Julie?

COMMISSIONER ABRAMSON: Yes, it's actually quite important. The other issue to is why is it then, Pete, that we hear a lot - (indistinct) well, I  
30 understand that - but we get comments and submissions by people - we got one, I think, from grain growers who said, well, because a sensor was misbehaving, it actually stopped the whole machine and then we couldn't get the code for the sensor - I don't want to speak out of turn with grain growers, but it's that type of argument. So, why is that a problem if, you know, the  
35 dealers and the OEMs are assisting farmers?

MR McCANN: Yes, well I think - the only thing I can think that there would be an issue with that is more time limits to get to it. Like, you know, there was - we had a discussion with the NFF about - I think there was a comment  
40 made that there was a person with a machine down for months. Now, that's not, you know, again for our business that's not ideal. You know, this is why we keep machines in house. You know, now there could have been parts supply, definitely. But the other lead into that is what we do for parts is we will - also from those machines that we keep in our kind of manufacturers'  
45 inventory within Australia, is we rob them.

5 So, we'll go and take that sensor off a machine and send it out, again all purely focused on getting that guy going. So, you know, there possibly could have been an issue of supply, you know. I'm pretty comfortable to say our guys don't sit there and say to a customer, 'No, we're not going to give you the code,' you know, or we're not going to help you out. Again, it's very hard to make an assumption on very limited information, I suppose from that point (indistinct).

10 COMMISSIONER ABRAMSON: Look, thank you Pete. And you can - I'm sure you'll respond on this in your submission - but I have read through your statements of principles, so it will be interesting to have some background in your submission about how that came about. And, as I said, thank you for being here today. So, thank you.

15 MR McCANN: No problems, thank you.

COMMISSIONER LINDWALL: Thank you Pete.

20 COMMISSIONER ABRAMSON: Back to you, Paul.

COMMISSIONER LINDWALL: Also about the round tables you were talking about - - -

25 MR McCANN: Yes, we'd be very interested in that. And just for our firmware, which has come up in the last little while, we are moving towards firmware over the air, because as much as our farmers don't like doing surveys they also don't like pressing, 'update firmware.' So, we're now sending it to them via telematics.

30 COMMISSIONER LINDWALL: Thank you very much (indistinct).

COMMISSIONER ABRAMSON: Thanks a lot, Pete.

35 COMMISSIONER LINDWALL: Now, I'll invite Minister Shane Rattenbury. Shane, how are you today?

MINISTER RATTENBURY: (Indistinct).

40 COMMISSIONER LINDWALL: Excellent, yes.

MINISTER RATTENBURY: (Indistinct) interesting day.

45 COMMISSIONER LINDWALL: Very interesting. You get all sorts of different products, don't we Julie?

MINISTER RATTENBURY: Afternoon, Julie.

COMMISSIONER ABRAMSON: Yes, I've learnt - I have to say, Minister, I've learnt a great deal in the course of this inquiry.

5 MINISTER RATTENBURY: I can tell that from the questions you were just asking.

COMMISSIONER LINDWALL: The confusion is we've got a camera over here, and you'll see her there. So, sometimes you feel like you're doing this, but don't worry too much. So, perhaps, if you wouldn't mind introducing yourself and just give us a statement, that would be (indistinct).

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MINISTER RATTENBURY: Yes, certainly for the opportunity to appear this afternoon. I'm really pleased with the work the Productivity Commission has done on this report, and I'm very interested to see how the public hearings go. Shane Rattenbury, the ACT Minister for Consumer Affairs. And this is an issue I've had an interest in for some time now, including having put the proposal to the Consumer Affairs Ministers that we start this piece of work, and ask the Productivity Commission to undertake this inquiry. So, I'm very grateful for the work that you've done, and I think it's really helping to illuminate this discussion in Australia about where we need to go.

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For my mind, the purpose of the reform in this sort of broad right to repair space is two-fold. One is about consumer rights, and the other is one of environment and sustainability. And I guess the good use of the valuable resources that we extract to do all the things we'd like to do in this world. I think the Productivity Commission's report, and (indistinct) their findings are very welcome. And I was intending to comment on a few of them specifically, if you're happy for me to sort of (indistinct).

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COMMISSIONER LINDWALL: Please. That would be perfect, yes.

MINISTER RATTENBURY: Because I think the work you've done so far really confirms the issues that the ACT Government has been concerned with for some time. And that is there are a number of unnecessary barriers that manufacturers of common household goods, and in particular digital and smart goods, have established that prevent consumers from fully realising their right to have a good repaired at a competitive price. And I do note the really interesting part of your paper - it's actually at page 4, right up front - where you talk about what is the notion of a right to repair. Because I think it is quite broad, and that elaboration you do in that section I think draws the issues out quite well.

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And I think there are a number of facets to it. But that notion of the ability to get repairs, the ability to get parts, the ability for repairers to access the tools and information they need to make those repairs, and to have repairs at a competitive price are some of the key elements of a right to repair in my

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mind. And I think if you talk to people about it, (indistinct) it's very hard to get things repaired. And that raises interesting questions of why is that the case. And that's, in many ways, the heart of this issue. I agree with the Commission that the perspective of manufacturers needs to be taken into account, and that they're integral to finding solutions to some of these issues. And certainly we don't want governments inhibiting innovation.

And we also need to think about the security and intellectual property protection elements. So I think they're all a really important part of this equation. But for my mind, the companies are pretty good at sorting these things out, and there is a role here for governments to perhaps counteract the strong influence that companies have in that space, and seek to rebalance things in consumer's favour a little bit, and also to address those environmental issues. I certainly support, in principle, the recommendations made by the Commission, relating to the improved enforcement of consumer guarantees through the introduction of alternative dispute resolution processes, and also your idea of a super complaints mechanism.

These, I think, would give state and territory governments the capability to intervene more strongly. But also, obviously empower consumers to take up their rights. As you've probably heard me talk about before, the ACT Government has actually legislated a similar measure where we've created a binding conciliation process where our consumer agency - Access Canberra, in this case - can compel a company, or an organisation, to come to the table to actually have a conciliation process with a consumer over - you know, these are for consumer matters under \$5000. I guess our experience is it's very hard for consumers to take matters up. And this is - it hasn't started yet. It's just about to get underway; the legislation comes into force in the next few weeks.

So I can't tell you how it has practically gone so far, but certainly the intent is that it will give consumers greater ability to resolve matters that have proved very difficult to resolve in the past. So, I think the proposal you suggested - this super complaint mechanism - can play a similar role to address one of the shortcomings of the current consumers guarantees is that they still fall to an individual consumer to enforce them, with little in the way of broader mandatory enforcement where a business fails to engage with the consumer. And that's certainly one of the issues we've sought to address. So that is a general consumer problem that I think manifests itself in this space.

The other benefit is potentially the ability for advocacy groups to pursue issues on behalf of a group of consumers, or some vulnerable and disadvantaged consumers. I think there's real merit in your proposal there. So, I think that is a welcome recommendation and one that our legislation - like we say - it provides a bit of a template for. And as it rolls out you may see some of the implementation issues that do or don't arise in that space. I think also having the ACCC working in collaboration with state and territory

regulators to develop and publish estimates for how long certain products can be reasonably expected to last, in other words better inform the consumers about planned obsolescence as the case may be, would be a powerful tool for consumers and advocacy groups as well, and when it's coupled with our  
5 alternative dispute resolution processes I can really see the opportunity for increased and informed estimates and products' durability resulting in more positive outcomes for consumers, and on that point I'd welcome the Commission considering further whether it can identify ways that Australian-based regulators could develop appropriate and reasonably accurate  
10 durability standards for products manufactured overseas.

As you'd be aware, at the moment there are systems for when products come into Australia about various safety standards and the like, and I'm interested in whether we can develop mechanisms for this question of how long a  
15 product is supposed to last and some of those issues that I think - - -

COMMISSIONER LINDWALL: And repairability too, I guess.

MINISTER RATTENBURY: Yes, this sort of space. So that is another  
20 point I was going to touch on. Your analysis of barriers to repair I think is really informative, but it's also quite concerning in the extent to which certain product manufacturers were found to use their stronger bargaining position in the marketplace to dictate both how a consumer might seek a repair as well as frankly encouraging them to take up new products over current versions,  
25 which is at the heart of, I think, some of the - particularly the environmental concerns in this space is.

Repair becomes so difficult that the obvious, and in some ways rational and easy choice, is to throw the product away and just buy another one, which I  
30 think both serves the manufacturer's interests, certainly in these personal products, but does not serve the interests of resource retention and the like. I think, as a matter of principle, consumers should be able to use an independent repair or access the resources needed to repair a product themselves, and that goes to that heart of the definition of a right to repair.  
35 This is really central to reducing waste, particularly where there is that deliberate shortening of a product's lifespan.

On this issue I support the Commission's recommendation that more work be done by Australian governments to improve consumer's awareness of their  
40 statutory consumer guarantees. I think this a broader consumer issue that is particularly relevant in this space. I don't think people have a really good sense of their rights, and there's probably a lot of evidence about what people's rights are or are not, and some of those are probably happily allowed to stand as missed by companies not necessarily being forthcoming about  
45 information.

The last area I thought I'd be useful to touch on is just intellectual property, and then I will stop and we can go to questions and discussion, but I particularly commend the Commission's considered approach on the challenges posed by the conflicts framework that currently exists in Australia regarding the protection of intellectual property and copyright laws. The  
5 government - the ACT Government supports in principle appropriate reforms to Australia's copyright laws in order to better facilitate the sharing of repair information and access to repair information behind digital locks where such use would be - and I think you used the words "fair".

10

We have to find solutions that help people - consumers and the environment, and these vexed situations of clashing of rights and principles. We do need to prioritise consumers and the environment in my view. We also support in principle the development of a positive obligation on manufacturers to make  
15 repair supplies available to third parties. I thought there was a really interesting story recently that came out; you may have seen it - the comments made by Steve Wozniak, one of the founders or co-founders of Apple.

20 COMMISSIONER LINDWALL: Yes.

MINISTER RATTENBURY: And he talked about the fact that it was his ability to tinker with hardware and software to learn from and improve upon products through his own ingenuity. It actually was really integral in  
25 developing the company Apple and its products. His ability to just muck around with things and work out better ways to do it was central to that innovation, and so it is ironic now that Apple is sort of one of the companies that's so often cited in this space as being one that is clamping down on people's ability to repair or tinker with their products.

30 Sorry, there was one other point I wanted to touch on, which was this issue of product design, obsolescence, and e-waste. This is certainly part of what you've talked about and you've made some interesting points in your report about this. Some of the behaviours that the Commissioner has observed, such as the deliberate shortening of a product's lifespan by manufacturing  
35 products using solder that does not allow the product to be opened and repaired, or refusing the supply of component parts or discontinuing software updates. These are a market failure and also need to be countered.

I do strongly believe it's an important consumer right to be able to tinker, get  
40 fixed, change or improve a product, and for people to make the product last as long as they want it to, or at least reasonably so, and so we support the Productivity Commission's recommendation of improving product labelling to increase consumers' awareness of the components of a product, and we also strongly support changing product stewardship programs to include the  
45 counting recycled and repaired goods in their statistics. Such approaches, I think, can have a combined impact of stemming the creation of product turnover and also e-waste by extending the product liability and lifespan.

5 The final comment I'll make in this space is that - and I made this at the  
repair summit the other week, so you will have heard it before, but is I would  
urge you, in your further work - much of your analysis so far as focused on,  
in my reading at least, the end product and the potential for solutions at the  
end of the line for consumers, and I think that's a really important area of  
consideration but I do think that we need to consider more of the upstream  
issues as well. How do we actually get products designed in a way that  
makes them last longer, ensures that they can be unlocked and opened and all  
10 the things that consumers are talking about in this space, and advocates, and  
so I'd welcome the Commission perhaps developing that side of your work  
more thoroughly as you go through your (indistinct) process.

15 We are seeing this more of a feature in the European discussions about a right  
to repair and their sort of Ecodesign Directives and the like, and I think that if  
government doesn't intervene in this space companies will simply keep going  
down the path they are, and so I would argue that there is a market failure in  
this space and therefore there is a role for regulators to look at how these  
issues may be addressed. There's plenty more to say but let me stop there and  
20 allow for more of these questions. Thank you for the opportunity.

COMMISSIONER LINDWALL: Thanks very much, Shane. Could I ask  
upon the points you've made there about the front end? We'll start with  
labelling, for example. There is a French scheme that's been put out about  
25 repairability and durability. To what extent - and because there's costs and  
benefits in this - we can adopt a scheme that's already there, it's know to  
some extent and it allows for some level of harmonisation? Or we could go it  
alone and maybe get a better system. Do you have a view on each of those  
options?

30 MINISTER RATTENBURY: Look, I don't have a fixed view but I'm  
always very conscious, in a global context, which is where Australia does sit,  
and manufacturers are global, we are a small market, and so where we can  
frankly copy others, draw it into certain schemes, I think this is desirable.  
35 There's no need to reinvent the wheel if there's a good scheme out there that  
we could simply join into. You know, the Commission is of course always  
looking at the cost benefit of various things and all those sort of issues, and  
obviously the costs will be cheaper.

40 COMMISSIONER LINDWALL: So obviously the Ecodesign initiative in  
the EU is something we're very interested in, and again, Australia could have  
its own design rules which basically made it much more difficult to bring in  
products which are not easily repairable. The risk of that could be that if we  
overstepped it too far we'd lose a lot of products for less - disadvantaged  
45 people which are less expensive. So there's a balancing act there, but I agree  
that if there is useful overseas experience and there's a larger market we can  
piggyback upon it's probably very helpful. One things that - - -

MINISTER RATTENBURY: In the context of, you know, seeking and negotiating free trade agreements with the European Bloc and others.

5 COMMISSIONER LINDWALL: Exactly.

MINISTER RATTENBURY: I guess the more consistency we have the greater the economic efficiency.

10 COMMISSIONER LINDWALL: Exactly. Now, one of the things that came up, I think it was yesterday, was about procurement policies both by governments and also large corporates where they can actually specify in their policy, like, rather than just value for money maybe you have to - the suppliers have to have reparability as an important part of it. Has the ACT  
15 Government thought about that in its own procurement policies?

MINISTER RATTENBURY: I must confess we have not. No one's raised that issue with us before, but I think it's a very important point. I think as a matter of principle government procurement policy can be a very powerful  
20 way to shift markets, set new standards, and I think we'll certainly take it on as a suggestion to have a look at.

COMMISSIONER LINDWALL: Yes. No, I think it'd be quite interesting, because the labelling can help individuals understand and then perhaps they  
25 can exercise their market power collectively, if you like, by buying things that are more repairable. In the end I think that manufacturers respond to consumer demand, and clearly, you know, governments are fairly large consumers so they have an opportunity to influence there. The other thing that came up was about - and I don't know about the legality of this and I'm  
30 not a lawyer, but Julie is, and - is about the Surveillance Act.

Now, there's a Commonwealth Surveillance Act, and this is with respect to the GPS tracker idea that we've put forward.

35 MINISTER RATTENBURY: Yes.

COMMISSIONER LINDWALL: That because of surveillance Acts, and I don't know whether there's also an ACT surveillance Act, you have to notify people, and it can be quite restrictive, especially if you want to check whether  
40 somebody is going countries where it's poorly disposed of, for example - waste that's been exported. So, I don't know if you have a view on that.

MINISTER RATTENBURY: Well, I thought it was a very interesting idea in your paper, and with the way technology has gone it would be a really  
45 inexpensive way, I should imagine, to add those sort of trackers.

COMMISSIONER LINDWALL: Yes.

5 MINISTER RATTENBURY: I think the nature of any sort of concerns with surveillance goes to informed consent, and being very clear with purchasers that these things are (indistinct) I think these things are manageable if one is up front and transparent, both about the fact that the tracking exists and probably at the back end, having the appropriate safeguards for personal information.

10 COMMISSIONER LINDWALL: In terms of our proposal for changes to copyright laws, to either bring in fair dealing or fair use exceptions for repair, do you have a view on one - you know, fair use versus fair dealing, or, (indistinct)?

15 MINISTER RATTENBURY: No, not that level of detail. I think the principle of where you've gone in the recommendation is very much in the spirit of where we see this policy really needing to go. I don't have a view on sort of the particulars of that area that (indistinct).

20 COMMISSIONER LINDWALL: No, that's all right. And you're a great supporter of, obviously, product stewardship schemes if they're efficiently designed. I mean a lot of what we've said is that these schemes can be improved, and like any scheme they should be reviewed after a certain period of time to see they're meeting their objectives. So, I probably should turn to Julie to ask some questions.

25 MINISTER RATTENBURY: Sorry, Julie, before you do - on that point, though, I think one of the interesting parts of the, sort of, product stewardship schemes is, you know, the e-waste one is a good example - you can take your TV and dump it for free, and all these sort of things - but the risk is that in that broad public understanding that recycling is a good thing, it fails to recognise the step before, which is the potential use or repair.

COMMISSIONER LINDWALL: Yes, exactly.

35 MINISTER RATTENBURY: And so there's a potential perverse outcome where the simplicity of those schemes fails to recognise the value of the product.

COMMISSIONER LINDWALL: Exactly.

40 MINISTER RATTENBURY: And its potential reparability.

45 COMMISSIONER LINDWALL: Yes, and we had testimony of someone yesterday, I think, who pointed out that they'd gone to the NTCRS and found computers that were perfectly useable, so.

MINISTER RATTENBURY: I'm sure.

COMMISSIONER LINDWALL: Yes.

MINISTER RATTENBURY: Yes, I'm sure.

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COMMISSIONER LINDWALL: Julie?

COMMISSIONER ABRAMSON: Thank you. Minister - thank you so much for coming along, it's greatly appreciated. I had a couple of questions. One, I want to ask you because I'm making an assumption about your portfolio responsibilities and your consumer affairs hat meaning that you also have responsibility for some consumer safety - product safety - issues.

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MINISTER RATTENBURY: Yes, I do.

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COMMISSIONER ABRAMSON: We've heard a lot - we were given a lot of testimony - especially by one of the industry groups, that independent repair is inherently unsafe. And we gather that in some particular things - you know, medical technology - you would want to be quite careful, and the TGA regulates that area. But you're a Consumer Affairs Minister with responsibility for safety, so I'm just interested in what crosses your desk and your views about that.

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MINISTER RATTENBURY: I think this is an area that is potentially a vicious cycle. In the sense that if you don't allow repairers to be involved, you get either - and you don't provide the right equipment - people will cut corners, seek to find ways to do things, will be less skilled. Whereas, if you have a healthy and robust repair industry, you will get higher levels of skills and the safety issues will not be as prevalent as perhaps has been suggested by some of the evidence. So, I don't accept that as a principle argument of why you shouldn't have a repair industry. I think it is a risk if you don't have a good repair industry.

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COMMISSIONER ABRAMSON: Thank you, Minister. The other question I wanted to ask - and forgive my ignorance here - you said that the conciliation was limited to \$5000. Is that something to do with the way that your scheme is put together? Or was it a policy decision that disputes under that require the extra assistance?

35

MINISTER RATTENBURY: It really was a policy decision. Partly because we've not done something like this before. We're looking to set a limit on it see - to get a scheme going. The second was that often it's the small matters where it's not worth somebody seeking out legal assistance to take up a matter, and you get a greater power imbalance between the consumer and the manufacturer, or the retailer, or whatever. So, we see that those small consumer matters are a place where there's the most potential to help people who would least be able to help themselves, or it's least economically

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45

worthwhile for them to contest the matter with the manufacturer or the retailers they're having a problem with.

5 And, it gives us a starting point. If we found that the limit was a bit low, we can raise it in the future. We (indistinct) really build a successful system to start with.

10 COMMISSIONER ABRAMSON: Thank you, Minister. The final question I think that I just wanted to ask you about is with super complaints. The paper - well, our draft report - actually put that power with the ACCC, mainly because we'd understood the experience in the past - I know you've been a Consumer Minister for some time - was that most of these type of issues were national issues. And we understood that previously with the (indistinct) labelling, which I think was part of a trial for super complaints with NSW, they tended to be national. That was not to say that we had a closed mind about states and territories, it's just that we formed the view that we thought it would be a matter for a national regulator. I'm just interested in any views that you have, given your experience in the area.

20 MINISTER RATTENBURY: Yes, look, I think you are right to identify that national need, and because of the way federation works, and plenty of products will be sold in Australia, as opposed to a state or territory. And the consumers and the head office of a company might be in different jurisdictions. Having a national approach, I think, is very attractive in that sense. I think my answer to your question - my response would be - ideally you would have both.

COMMISSIONER ABRAMSON: Yes.

30 MINISTER RATTENBURY: That we would have a national power, because that will be the right jurisdiction and the right forum for some issues, and that states and territories would have a mirroring power, as we will have, in a slightly different form, to deal with the issues that best suit that jurisdiction, or that sort of tier of government.

35 COMMISSIONER ABRAMSON: Thank you, Minister. And thank you so much for giving us your valuable time. It's most appreciated. Paul?

40 COMMISSIONER LINDWALL: I don't have much really, except to ask about - do you know much in the work in the ACT in terms of repair cafes? I think I met one at the Repair Summit.

45 MINISTER RATTENBURY: Yes. Yes, look, it's been very popular in the ACT. There's actually probably more repair cafes than even I realise. I've discovered a few new ones recently. What I find really interesting is that, you know, one might argue they've been, sort of, the trend of a particular crowd. But the newest one in Canberra is running out of Tuggeranong, and

it's wildly popular, in the sense that they're having to take bookings, they can't keep up with the pace. And so I think that - - -

COMMISSIONER LINDWALL: And it's not just electronics then?

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MINISTER RATTENBURY: No, it's predominantly electronics, is the feedback I've heard. But it's all sorts of things, you know, it's bicycles, all sorts of products. But mostly - often common electronics - toasters, and these kind of things - that I think people assume should be repairable and want to not just throw them away. And most people do have that value of not wanting to throw things out.

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COMMISSIONER LINDWALL: Yes, exactly. And you see some passionate people there who are very committed.

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MINISTER RATTENBURY: The other place we've seen is a bit of connection with the Men's Sheds.

COMMISSIONER LINDWALL: Yes.

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MINISTER RATTENBURY: So they were set up for a different reason, but I think have become a natural place for those repair cafes to take place, because it's that same notion of tinkering.

25

COMMISSIONER LINDWALL: Exactly. Yes, it is exactly, yes. Well, thank you very much for appearing today Shane.

MINISTER RATTENBURY: I appreciate the opportunity.

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COMMISSIONER LINDWALL: And I take the points that you've just raised and where we should look more at for the final report. And we certainly will.

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MINISTER RATTENBURY: It's easy to say that when you get to read it afterwards. Putting these reports together is very challenging and I appreciate the work the Commission has done (indistinct).

COMMISSIONER LINDWALL: Thank you for coming, yes.

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COMMISSIONER ABRAMSON: Thank you, Minister.

MINISTER RATTENBURY: Thank you, Julie. Nice to see you remotely.

COMMISSIONER LINDWALL: In locked down Melbourne, yes.

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COMMISSIONER ABRAMSON: (Indistinct).

COMMISSIONER LINDWALL: She was lucky to come to the repair summit, it was - - -

5 COMMISSIONER ABRAMSON: Yes, I had to endure my Covid test on return, but I thought it was worth it for the quality of Leanne's Summit.

MINISTER RATTENBURY: Very good. Our thoughts are with you down in Melbourne.

10 COMMISSIONER ABRAMSON: Thank you.

COMMISSIONER LINDWALL: Thank you. Richard?

15 MINISTER RATTENBURY: Thanks again.

COMMISSIONER LINDWALL: Welcome, Richard.

MR DUDLEY: Thank you very much. I appreciate it.

20 COMMISSIONER LINDWALL: If you could give your name and organisation, and perhaps give a little bit of an opening statement, that would be perfect.

25 MR DUDLEY: Richard Dudley, Chief Executive Officer of the Motor Trades Association of Australia. My members are state and territory Motor Trades Associations and Automobile Chambers of Commerce, as the case may be in Victoria and Tasmania. Automotive, I should say, Chambers of Commerce. And their constituents in turn represent the entire supply chain for the automotive industry. So everyone from new car retailers, all the way  
30 through to recyclers, dismantlers and everything in between. Some 53 professions, specific professions, and 13 industries. So, we are the only national federated body that actually represents the entire supply chain. That can make for very interesting meetings.

35 COMMISSIONER LINDWALL: Yes, I can imagine.

40 MR DUDLEY: And it can also make for some advantages as well, where we can see a whole range of issues that are applicable to each of those industries in the sector that perhaps those that are closest to it can't. We thank the Commission, not only for the opportunity to address you here today, but also for a very important report. One recognised by President Biden in sorts with his executive order of 9 July, in terms of the broader issues of competition, which I'm sure the Commission is extremely aware of. MTAA and its state and territory member associations have been involved in critical issues on the  
45 issue of service and repair information provision with the automotive industry for well over a decade, and I'm sure you've heard from some of my members, and you've also heard from some other kindred organisations as

well in that space, both supporting the need and also not supporting the (indistinct).

5 MTAA was a little bit different. We were heavily involved prior to the Commonwealth Consumer Advisory Committee investigations early in the last decade, around 2011 and 2012. Our stand at that point in time was that there was insufficient evidence presented - we knew there was a problem, but we couldn't quite lay our hand on exactly what the nature of the problem was then. And we worked very hard to exactly - with all of those business  
10 constituents - to try and find exactly what the nature of the problem was.

And, as we subsequently found out, it was about elements of information that were critical to repairs not being provided. So, a consumer could exercise their choice, go and get their car repaired at an independent repairer who  
15 were suitably qualified, and have access to the tools and equipment, would conduct the repair to a point and then not be able to complete it. And I'm sure you've heard many of those examples. At that time we thought it was beneficial to try a voluntary approach. So, on a very elongated pathway we were heavily involved in the voluntary arrangements that came about, and  
20 which subsequently failed. Now, the failure of those was due to a number of different factors, not the least of which there was no enforcement capability, there was no ability to try and highlight the problems, et cetera.

And so we kept on the pathway of (indistinct) number of inquiries, both ACL  
25 reviews, franchise and trade reviews, believe it or not, this was also raised in. And also, of course, the ACCC's New Car Market Study in 2017. Which led to two years of investigations by the government and its respective departments, which I think there is now a number of public servants that have an intimate knowledge of this, automotive and other issues. We welcome the  
30 draft report, and we consider the recommendations in it as being very constructive. We have concerns about a couple of them in terms of unintended consequences about how they might be applied, as more opposed to (indistinct) recommendations or the findings themselves.

35 Modern motor vehicles are now highly complex. They're integrated and increasingly interconnected. And that's going to accelerate over the next few years. We're going to see quite dynamic and forever changing aspects to the automotive industry, mobility and the connectivity of those essential devices. They should not be put in the same category - and this is an important point -  
40 as a toaster, or a refrigerator, or a computer in its own right. And I'm not being trite there. The interdependencies between the systems and operations of an automobile are going to become far more complex with automotive driving systems, with the ability for the cars of the future to basically navigate, for example, one end of the Australian Capital Territory to the  
45 other, without a driver actually touching the (indistinct) of the vehicle.

There is going to be a massive amount of interest and diversification in terms of what's in the cockpit of those vehicles. In terms of the data that those vehicles, it's mobile computing platforms, are going to be producing, about who is going to own that data, and more importantly who is going to be able to access it, in terms of being able to rectify issues arising from it. Last month the MTAA and its members released Automotive Directions which touch on a few of these issues. And it's a comprehensive industry scheme that took us eight months of data analysis mining and information gathering, not only from available data sources, but also from a thousand of those businesses I previously mentioned.

We note, as I said earlier, the 9 July executive order and a specific reference to right to repair and the rationale behind that. Particularly, the unfair competitive restrictions on third party or self-repair items that were raised in that executive order. As I said earlier, we have competing members. We have automotive dealers who have service departments; we also have independent mechanical repairers. We've been instrumental in assisting the government formulate the Service and Repair Information Bill, and we are heavily involved - along with others - in terms of how that bill we applied shortly, and I'm happy to take questions that the Commission might have.

COMMISSIONER LINDWALL: Thank you for that. That's great. In terms of - if you were to compare one industry, which is agricultural machinery, to motor vehicles. Both are very complicated, and you can argue which is more complicated. Autonomous vehicles, if I'm not mistaken, level 4 or something and above, are excluded from the motor vehicle scheme, I think, if I'm not mistaken.

MR DUDLEY: At this stage.

COMMISSIONER LINDWALL: At this stage, yes. But as I was saying to Pete earlier, that in terms of a farmer on - living remotely - they're probably - they're fairly self-reliant individuals and probably want to do a lot of things themselves. But to the average motor vehicle consumer would they - I mean, maybe 20 or 30 years ago they'd do a lot of repairs themselves - but I would imagine more of them would take them to either an authorised repairer or a third party repairer, rather than trying to do it themselves. So, I guess my question is, is the issue about poorly qualified people repairing it less of an issue in motor vehicles because of that?

MR DUDLEY: Look, we would advocate - and we've been a strong supporter of the scheme rules which are currently being developed for the Service and Repair Information Bill - that repairs in general terms for a motor vehicle product should be performed by people who are adequately qualified to do so. They should also be not only qualified by way of trade qualification et cetera, which has its necessary competencies tested, but also in terms of emerging technologies, et cetera. However - this is a classic example of

where not all issues are going to necessarily fit the bill. For example, we have great consolidation going on at the moment of motor vehicle dealerships.

5 So, in communities that used to, perhaps, have a dealership - and this applies to farm machinery and industrial machinery as well - so most communities that may have only been 150, 500 people, may have once upon a time had a dealership. Now, they've been absorbed into the regional location - in some respects, those regional locations are now completely disappearing as well.  
10 And, in some cases, that's being replaced by a mobile technician. In other cases - that mobile technician may be 400 kilometres away. The Takata recall was an interesting exercise where arrangements had to be made - - -

15 COMMISSIONER LINDWALL: That's the airbag - - -

MR DUDLEY: - - - to enable those technicians to go out to urgent cases of vehicles that were located in tropical areas where the risk of those airbags deployed was far more pronounced. And arrangements had to be made by manufacturers to get technicians to the site of the vehicle, as opposed to  
20 waiting for it to turn up at a dealership somewhere. The same applies in agricultural perspectives. Agriculture and farm machinery dealers are often at the forefront of a whole stack of things. We'd argue they were at the forefront of the need for change in franchising arrangements, and we're working very hard now to get them included in the recent changes to  
25 franchising for motor vehicle dealers.

Because it is, in fact, the treatment of farm machinery dealers on the issue of warranty repairs, on the issue of being able to access service and repair information, that was, if you like, the litmus - or the catalyst - for the larger  
30 problem. Equally, the ability of farmers who often have a mechanical background to be able to do their own repairs, it should be a case where that's assessed at the time. And there needs to be a level of comfort from the manufacturer, but also acceptance that there are going to be people who are quite qualified and quite able to do those repairs themselves.

35 COMMISSIONER LINDWALL: Now, earlier we heard from James Voortman from the Australian Automotive Dealer Association, and he was saying that a lot of the franchisees in Australia are squeezed between the customer and the manufacturer. Would you agree with that? And then he  
40 said that there was some rules being developed, and it's been delayed by two years because of COVID, to make - to give more rights to the franchisee. Are you aware of that?

45 MR DUDLEY: Yes, we've been heavily involved in that. We also share dealers as part of our membership base, or my members do anyway. So we've been actively involved in the franchising changes as well. Yes, they are squeezed. So, for example, when a problem occurs with a motor vehicle,

and I'll give you a case study - it's probably the best way. There's been many examples where a problem has developed with a specific model of motor vehicle. It's known to all of the dealers. It becomes known to all of the consumers of that particular model as well unfortunately.

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A dealer is instructed - and let's assume that that problem of - and I am relying on this particular brand and this particular model - it was a known fault. The consumers or the purchasers of that product were asked to take it to their nearest dealer to get the problem rectified. What's unknown to the consumer is the litany of problems that occurred afterwards, when they got their vehicle back and it was repaired and fixed, between the dealer and the manufacturer. The manufacturer, wishing to save money on this - and it wasn't a full-blown recall; it was a voluntary type recall - wanted to argue the point on how much the dealer was compensated for the amount of time, effort, et cetera that was involved in the repair, and in some of those situations that went on for months.

So the dealer's actually out of pocket for those - for that time while they're disputing whether it took four-and-a-half hours to remove a gearbox or three-and-a-half, you know, to the extent where one particular dealer has said "Well, a grandmaster technician assembled all of the tools on the - that were required for that transmission overhaul and proved beyond any doubt that the least amount of time they could do it in was four-and-a-half hours.

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25 COMMISSIONER LINDWALL: Sure.

MR DUDLEY: So they were only being compensated for three. There is a litany of those sorts of issues, so that's why we're saying be very careful about super complaints because of the unintended consequences that may occur from a group of consumers not realising that either the problem may be able to be rectified or that the problem can be rectified and it all comes down to whether it was through an authorised repairer or whether it was through a third party repairer, or whether it was through a designated manufacturer endorsed repairer, and there can be differences to how all three of those work.

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COMMISSIONER LINDWALL: Yes, okay. Yes. I understand that. So presumably if you did have a super complaints scheme it would have to be - the consumer group would have to be speaking to the dealers, who would inform that a lot of this is the manufacturer pushing things onto the dealer, and then the ACCC, if - it would hopefully do a proper investigation so that it doesn't look like it's all the dealer's fault when it might be the manufacturer's problem.

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45 COMMISSIONER ABRAMSON: To be fair, Richard, it's likely in those circumstances, if we look at some of the things we've seen overseas, it's probably likely to be a manufacturer issue and you'd be well aware and I wouldn't put them - go further on it, but there have been some car companies

5 where there have been consistent problems, and that was - they were manufacturer issues, not the dealers', who were in the invidious position of trying to work with the consumers at the same time. The other thing I'd say is that there will be - if it proceeds, there would be safeguards around it as well so, you know, that's something also to be considered.

10 MR DUDLEY: Thank you for that, Julie. That's understood. I think our concerns are centred on the fact that, particularly if you get to durability, who's to say that somebody who used a four-wheel-drive, and this is a case study again, has driven it round - it's a 10-year-old vehicle. Now it's done 15 60,000 kilometres and it was subsequently found out that it actually towed a caravan that was three times the manufacturer's recommended weight, and a claim was made through that state, so a particular consumer affairs body, that the dealer should have known that and should have fixed it, and fixed the problems that arised (sic) out of the usage of that vehicle 10 years down the track.

20 COMMISSIONER ABRAMSON: No, no, I understand. One of the things - and I'm not saying that the Productivity Commission is going in this direction; I'm just interested what you know about the motor vehicle 25 ombudsman scheme in the UK, because when we look at complaint data, and bear in mind we're looking at right to repair, but when we look at complaint data it is heavily weighted in motor vehicles and it's - you'd understand why that would be, is because of the amount of investment for most people; apart from their home that might be their biggest purchase. Do you have any experience in that scheme or any views about that scheme?

30 MR DUDLEY: Yes, we are very familiar with it. In fact, we had a conversation last week on what's happening in the market only last week with our kindred organisation over there. We have mentioned an automotive 35 ombudsman before. We've suggested that that might be a position where some of these activities could be coordinated through outside of the regulator, but in an area that's recognised. I know that there are limitations to, for example, the Commonwealth Ombudsman's role in that respect, and you can't have ombudsman after ombudsman after ombudsman, but it may be pertinent with the range of consumer affairs issues, the range of small business issues, that one of the solutions to that might be to create a coordination point within 40 the ombudsman's office that would be able to channel some of these issues, and that's both from a consumer perspective but also from a business to business perspective that would give weight to the franchising, the right to repair, and offer support to, for example, a new scheme adviser for the service and repair bill.

45 It'll have a responsibility for the service - sorry, for the complaints line, but it would be interesting, and we think beneficial, that they have a go to person, along with a lot of others. Now, that's an enormous amount of work potentially, but we don't think it would be because these issues will all end

up being systemic and systematic issues as opposed to the minutiae. We're interested in seeing how the ACT scheme goes because that might deal with that cohort of level of complaint up to a financial level, but the systemic and systematic issues could be dealt with by a coordination pathway through  
5 (indistinct).

COMMISSIONER ABRAMSON: Did you think, Richard - thank you for that. One of the things that's been put to us is one of the difficulties might be that motor vehicle legislation tends to be state-based, but you would see it, I  
10 assume, as sort of a harmony type situation where some of the key things would be - have to be agreed to by states?

MR DUDLEY: Absolutely. I mean, one of the issues we have constantly banged on about is there is a lack of harmonisation and a lack of  
15 coordination, and with no disrespect to Minister Rattenbury, he did mention that whilst there would be a coordination on labelling; for example there might be some subtle - there might - or it might have been one of the other areas of reform - there would - there might be some subtle difference that  
20 might occur for the ACT because of the ACT jurisdiction. That's what worries an industry association like us, is because when you translate that to a small business they have an enormous problem trying to comply with what the range of issues are.

So we're all for one for harmonising and we're all for one for making sure that those issues are as consistent as possible. So if you were to look at  
25 labelling, it should be national labelling as opposed to state jurisdictional labelling.

COMMISSIONER LINDWALL: Yes.  
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MR DUDLEY: If you're looking at a durability then it's not just on the product. It should also be uniform across the federation as well.

COMMISSIONER ABRAMSON: Richard, one final things, and thank you for your time today, and I'm happy for you to take it on notice, given the  
35 time, is the environmental, the e-waste space. You have commented on that before, but I was having a look at your website and you do cover a range of things like tyres and, you know, wholesalers of parts and things, so - in the wrecking industry I gather. So we'd be very interested in having some more  
40 commentary from you on that, and also looking at some of the things that we'd suggested around reuse being incentivised in some of the schemes. So we'd welcome that.

MR DUDLEY: We will touch on that in our submission in 48 hours' time, if  
45 I get it finished.

COMMISSIONER LINDWALL: Okay, that's all right.

MR DUDLEY: But look - - -

5 COMMISSIONER ABRAMSON: Well, talk to us, Richard. If the 48 hours, given that you're with us today is an issue, please call us.

MR DUDLEY: No, I shall do. Look, our concentration has been on trying to get government to - and the Federal Government in this respect. We're not anti product stewardship but what we are after is take it - look, one cap  
10 doesn't fit all necessarily.

COMMISSIONER ABRAMSON: Sure.

MR DUDLEY: Particularly when you've got a product like a motor vehicle  
15 that has so many inputs from so many different OEMs, and now that those products are exclusively imported, like many others, you know, it's impracticable and improbable that they'll actually go on a ship and go back to where they came from. So - but that in itself gives an opportunity to our dismantlers and recyclers. We've spent well over \$150,000 analysing the end  
20 of life vehicle market. We know that there are opportunities there. We know that there are difficulties in terms of linking an accredited dismantling network around Australia with end users of those products that will come out the other end, and this e-waste issue is critical to us because a lot of that - and we've got statistics which we'll share with the Commission about how much  
25 of that's still going into landfill, and we know that there are other means, other ways that that can be dealt with. But our difficulty is you need an end of life vehicle policy framework. You need the enforcement and the accreditation of disposal centres. You need to actually address it like other countries have to be able to address that, and that doesn't neatly fit in with a  
30 specific product stewardship program at the moment, but we think it can be adapted to do so.

COMMISSIONER LINDWALL: So - - -

35 COMMISSIONER ABRAMSON: Thank you, Richard.

COMMISSIONER LINDWALL: Sorry, Julie. So at the moment how would you describe the end of life waste disposal for motor vehicles? It goes through a whole lot of processes and lot does get reused and recycled, but - -  
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MR DUDLEY: We've established there's a commonality of approach to the decommissioning of a vehicle and the dismantling of the vehicle, including extraction of fluids and gases, et cetera. There are no markets in terms of the  
45 steel and other metals, some of them highly valuable, the metals that come out of catalytic converters, et cetera.

COMMISSIONER LINDWALL: That's platinum isn't it?

5 MR DUDLEY: But we also have a situation at the moment where - there's platinum, there's titanium. We also have a situation where there's stockpiles emerging all over the country with plastic bumper bars because the ability to  
10 actually use all of those bumper bars are not as prominent as they were, because some of them went offshore. We work with Tyre Stewardship Australia and our retailers in that space, so obviously working with - in regard to TSA and the ability to get those tyres reused. The trouble is, though, there's still too much going to landfill and there's still too much in terms of what happens to product - by-products when markets disappear or fail.

15 COMMISSIONER LINDWALL: Yes.

MR DUDLEY: For example, steel at the moment, for baled steel, it has a cyclical effect. We can tell you that when these - the scrap steel price goes through the bottom of the ledger those vehicles don't get scrapped. They  
20 tend to stockpile them and they can become an eyesore outside our members' premises, et cetera. So, for the lack of a framework, for the lack of - and we're one of the few OECD countries that doesn't have one - these opportunities can be taken up and they can be addressed.

25 COMMISSIONER LINDWALL: Okay, that's a good point, and as Julie said, that would be great to put it in your submission. Anything about the - you said that you've had 60 - 53 professions and 13 industries.

MR DUDLEY: Yes.

30 COMMISSIONER LINDWALL: Could you just comment briefly about the labour of - skills availability, skills shortages, and what's industry doing to rectify the extent that you have shortages?

35 MR DUDLEY: On the one hand we've got - we're short 31,000 skilled automotive professionals as we speak. That figure will increase to 38,000 next - 2022/23. That's historical highs for skills shortages which have impacted the sector and the industries in it for the last decade. That's borne about of a number of reasons. Skilled migration is a significant issue for us in that space. So too has been the perception of the automotive trades. A lot  
40 of mums and dads still think of automotive trades as being a dirty profession, in the sense of grease and petroleum products and all that sort of stuff, and I'm not sure about the last time many of you have gone to the actual workshop site of an automotive business, but they are pretty pristine.

45 COMMISSIONER LINDWALL: No, I have. They're pretty clean, yes.

MR DUDLEY: They are highly computerised now and they are changing rapidly.

5 COMMISSIONER ABRAMSON: I have to say, Richard, before COVID they looked after me very well. I got coffee and a little something to eat, but these days it's purely, you know, in and out.

10 MR DUDLEY: That's right, and in fact it's not even in and out in some jurisdictions as we speak, so, it's click and collect believe it or not, even for the delivery of motor vehicles at the moment.

COMMISSIONER ABRAMSON: Well they've wrapped everything in gladwrap so I don't know how that goes on the environmental side of things.

15 MR DUDLEY: Because in the workshops themselves, according to their own individual COVID plans, they'll be wearing gloves and that sort of thing, so it's an added barrier that they're putting on.

20 COMMISSIONER LINDWALL: Exactly. It's a COVID things. Yes, exactly.

25 MR DUDLEY: But the issue - the government's assistance measures on apprenticeships is working. We've had a near 40 per cent increase in terms of apprenticeship take-up since the subsidy was launched, so that's good, but the problem is we've got a diminishing labour pool generally. We've got mining and resources on the uptake again and whenever they go nuts they - - -

COMMISSIONER LINDWALL: So competing with you, exactly.

30 COMMISSIONER ABRAMSON: And it competes with civil construction as well.

MR DUDLEY: That's right.

35 COMMISSIONER ABRAMSON: It's the same skills base.

COMMISSIONER LINDWALL: And agricultural machinery (indistinct).

40 MR DUDLEY: Yes. But for the first time this is now manifesting on major infrastructure projects. So we had a crisis meeting last week where some of our business members are telling us that those major infrastructure projects, such as the tunnel projects in Melbourne, et cetera, the trucks that roll the first out of the tunnels, they're not being repaired, and they're not being repaired at the moment because of parts supply issues, and more critically  
45 now is because of the lack of skills that we're encompassing. So that's a consideration as well in terms of the opportunities that might exist in terms of

service and repair, and the opportunities are getting stronger pipelines of people into them.

5 COMMISSIONER LINDWALL: Well, thank you very much, Richard, yes.

COMMISSIONER ABRAMSON: Thank you, Richard.

MR DUDLEY: Thank you, Julie.

10 COMMISSIONER LINDWALL: I don't know what the movie was, but I remember - distinctly remember a movie where a person was trapped in the car and they picked them up with those big electric magnets and then crushed the whole car, person included.

15 COMMISSIONER ABRAMSON: It sounds like a James Bond movie, Paul.

COMMISSIONER LINDWALL: No, it was earlier than that. That was how they used to recycle things, crush the whole car - crush it and throw it into landfill.

20 MR DUDLEY: The repair issue is going to become very critical because - and look, the last point I'll make, it's quite possibly - and you allude to it in the draft report. What's disappointing, as somebody who has been around Canberra for a long time and across many industries, including media -  
25 what's disappointing at the moment is the forward looking nature in terms of policy development, and MTAA is of the view that there needs to be a strategic plan for automotive going forward so that issues such as this, such as right to repair, so that we're not playing catch up.

30 We know now that the interface of connectivity and mobility is going to be enormous. We know that the manufacturers of automotive products, because of the reduction of service requirements, because of the less number of moving parts, because of the importance of what the cockpit's going to provide to the consumer and how much the consumer may or may not want  
35 those products in the cockpit, that in itself requires planning now, because to try and play catch up on some of those issues is going to be enormously difficult, particularly as these industries continue to consolidate.

40 COMMISSIONER LINDWALL: Yes, that's true. All right, well again, thank you, Richard. Now, could I - I think we've got - where are we? We've got Ian McAlister. Is Ian around online at the moment?

COMMISSIONER ABRAMSON: He is but he - yes.

45 MR McALISTER: There you are.

COMMISSIONER LINDWALL: Hello, Ian.

MR McALISTER: Can you hear me okay?

COMMISSIONER LINDWALL: Yes.

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COMMISSIONER ABRAMSON: How are you?

MR McALISTER: Good.

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COMMISSIONER LINDWALL: So, Ian, do you want to introduce yourself? I understand you wanted to make a brief statement; is that right?

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MR McALISTER: Yes, just a brief statement. As you know I've met you at the summit, the Repair Summit, and we've made submissions earlier. My name is Ian McAlister. I'm the CEO of CESA, the Consumer Electronics Suppliers Association, and we represent the global suppliers of consumer electronics, all brand names that you know so well. We also have in our membership the major retailers of consumer electronics as well. So our members, in essence they are - first of all we're very familiar - our members are very familiar with the Ecodesign Directive in Europe. They have to meet those directives in Europe, so when we talk about the elements of that directive I'm sure it would not be an issue for our members, because they're familiar with it.

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They're also familiar with the developments in France on the durability labelling arrangements. I think they still are in sort of an embryonic sort of state at the moment, and I might come back to that in a moment, the durability labelling. There's just a couple of points on the report, the draft, report. CESA very strongly endorses the findings in the report, that a considerable amount of additional analysis is required on - you know, a product by product analysis in the various sectors. We'd be very keen to see that consumer electronics is differentiated from, you know, agricultural machinery or therapeutic goods or whatever.

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Even within our own industry it varies greatly from installers of air conditioning equipment and gas equipment and gas heating. Elements of that sector are greatly different to mobile phones or, you know, kitchen appliances and so on, so we'd like to see a lot more analysis go into that. CESA does not believe that there's a major issue with competition in the repair sector. All of our members have long-established authorised repair divisions or authorised repair networks. The majority of consumer electronics repair is undertaken through these networks in this country. In fact, our members have voiced concerns that they have trouble recruiting skilled people in that repair sector.

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We'd like to see future proposals that may arise out of the Commission's report. We'd like to see that they're national proposals, they're going to be

5 applied nationally, particularly in labelling issues. That's something our members are very keen on. We don't want to have different labels for different jurisdictions; there's a huge cost involved there. We should - we think they should focus on markets where there's evidence of, you know, the lack of durability, the lack of repair facilities, insufficient repair coverage. That's the areas we think we would like to see the Commission focus on.

10 Like the European Ecodesign Directive, our sister organisations is in Europe, and we've recently had webinars on this between the US, Europe and Australia. We'd like to see any proposals focus on professional repairers; that is repairers that have effective training, they understand the standards and regulations that apply, particularly cyber security, electrical safety, those sorts of regulatory arrangements that apply for products. We'd like to see the repairers have liability insurance and take responsibility for the repairs if they undertake them.

20 Just a couple of points in e-waste. Thoroughly endorse the views of John Gertsakis and Rose Read that perhaps proposals coming out of the PC should particular take cognisance of existing government policies and regulations in these areas. The - we were - we have some reservations with your comments regarding the extension of the NTCRS scheme. We think perhaps that wouldn't be the appropriate place because - mainly because the NTCRS scheme is only a very limited scheme in terms of it covers computers and televisions when there's a whole host of other e-waste out there in the whitegoods sectors, solar panels and so on, that is not covered by the NTCRS scheme.

30 We, along with many others, have been arguing for extension of the NTCRS scheme to include other streams of e-waste for many years. It is on the government's priority list for future product stewardship schemes; however, you know, to this - to date nothing has happened there, but we would like to see proposals coming out of the PC that take account of the review recommendations in the Product Stewardship Act and other product stewardship schemes in evidence around the country. These schemes have been very successful, particularly the NTCRS scheme - it's been very successful, largely bankrolled by our members. Yes, that's about all I want to say really as a statement. The draft report really covered a lot of ground and, you know, we congratulate the Commission for the extent of the work that they've done to date and we'd be happy to continue the dialogue.

40 COMMISSIONER ABRAMSON: Thank you, Ian.

45 COMMISSIONER LINDWALL: Thank you, Ian. I think we'll be very happy to continue the dialogue too, so thank you. Much appreciated for your thoughts there. Now, does anyone else who's online wish to make a comment? You're welcome to.

COMMISSIONER ABRAMSON: Karen Ellis has her hand up, Paul.

COMMISSIONER LINDWALL: Karen, would you like to just introduce yourself and say what you wish to?

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MR ELLIS: Hi, Paul and Julie. It's Danny Ellis.

COMMISSIONER LINDWALL: Danny. Hello, Danny.

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COMMISSIONER ABRAMSON: Hello, Danny.

MR ELLIS: I'd just like to hope the Commission keeps the consumer in mind. From what I've been seeing over the last three days, industry is trying to divide itself into all separate units, whereas I think the Commission's goal is to look after the consumer so we get a result for the consumer that better puts them and the repair - the right to repair all the same, but industry just seems to look to have its own little sections all over the place, where I think we need to kind of concentrate on us and the right to repair, and that's just my little bit for today.

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COMMISSIONER LINDWALL: Okay, thank you, Danny.

COMMISSIONER ABRAMSON: Thank you, Danny.

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COMMISSIONER LINDWALL: Anyone else wants to say something?

MR JONES: Yes, I just wanted - can you hear me all right?

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COMMISSIONER LINDWALL: Yes. Please identify yourself, yes.

MR JONES: Sorry, yes. Andrew Jones.

COMMISSIONER LINDWALL: Hello, Andrew.

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MR JONES: Yes. Sorry, I haven't got a camera at the moment.

COMMISSIONER LINDWALL: I'm sure it can be switched on. I'm not controlling it but I'm - I think - - -

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MR JONES: No, I have even got a camera at all, like, on the computer.

COMMISSIONER LINDWALL: Okay. No, it's all right. Go ahead, Andrew, Yes.

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MR JONES: Yes. I just wanted to agree with, yes, the previous point and just say that, yes, I'm looking at it from perspective of I like to repair my own things and things like serialisation and access to tools, even if tools can be

5 provided for a cost as a personal - at home I repair things because I can't afford to replace them, so if I have to pay a large amount to get tools to be able to serialise components for, say, a phone, that would make that very difficult, you know, and yes, basically just, yes, there - I think there are a lot of people who don't repair their stuff because they don't think they can, is the bigger issue.

10 COMMISSIONER ABRAMSON: Could I just ask you while we've got you - it's Julie - do you use repair cafes or any of those other places where they do have some of these specialised tools?

MR JONES: No. I have primarily lived regionally so I haven't been near those sort of things.

15 COMMISSIONER ABRAMSON: Yes, thank you.

MR JONES: Yes.

20 COMMISSIONER LINDWALL: Okay. Thank you, Andrew. Anything else you wanted to say?

MR JONES: No, I think that's it, thank you.

25 COMMISSIONER LINDWALL: Okay. Anyone else wants to have a say? No? In which case I'll adjourn the proceedings and this is the conclusion of the hearings for the Right to Repair Inquiry, and Julie and I would like to thank all participants to the inquiry to date and look forward to your further comments and submissions, and thank you to the transcript people too, and that's it for today and for the hearings.

30 COMMISSIONER ABRAMSON: And thank you to the team as well. Thanks, Paul.

35 COMMISSIONER LINDWALL: Thanks to the team. That goes without saying.

COMMISSIONER ABRAMSON: Thank you. Thanks everyone.

40 COMMISSIONER LINDWALL: Bye.

**MATTER ADJOURNED**

**[4.48 pm]**