

Law Futures Centre

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The Treasury
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Thank you for the opportunity to contribute to the Review of the National Competition Policy Unit.

As part of my current research and in my role as the Chair of the [Australian Repair Network](#), I have been working closely with a range of Australian and international industry stakeholders who are experiencing increased costs and expenses that can be attributed to anti-competitive barriers in the repair and service aftermarkets of a broad range of devices, products, machines and equipment, which are contributing to many of them unnecessarily and prematurely entering the Australia's fast growing waste stream.

I have attached an earlier note of some discussions I had with the Competition Task Force earlier in May 2024. This note outlines some of the key challenges arising from anti-competitive practices in Australia's repair and service aftermarkets. I would like to highlight that since that meeting, a number of new industries have approached the Australian Repair Network over similar concerns of anti-competitive practices in Australia's repair and service aftermarket. I have summarised these concerns and the relevant industries briefly here to exemplify the breadth of industries experiencing anti-competitive practices by original equipment manufacturers, when it comes to service, repair and maintenance of the goods, machines and equipment purchased by Australian consumers, businesses and industries.

1. Medical Equipment Manufacturer – restricts access to repair of a range of equipment. We currently repair obsolescent version of this same equipment but are restricted from any kind of arrangement to share information which otherwise renders some repairs as financially too difficult.
2. Train locomotives power systems manufacturer – restricts access and insists even with obsolescent equipment that equipment needs to be returned to manufacturer. Customers complain of very high costs and long delays in OS returns. OEM requests ignored.
3. Defence satellite communications OEM is restricted by Defence export control restrictions and cannot provide data without creating a Control Export license that can take many many months.
4. Deep sea survey equipment manufacturers claim specialist requirements and restrict access to data.

5. Defence avionics communication equipment manufacturer claims unit obsolescence and restricts access to legacy data for repair.
6. Defence Marine Above Water Systems OEM are not able to provide technical data for repair.

As has been highlighted, a fair and open repair aftermarket not only combats planned obsolescence and reduces cost, it gives consumers, business and industries greater choice and access to the parts, tools, and information necessary for the repair of everyday products, equipment, and devices.

When access to parts, tools, information, and software is restricted, it is not only consumers that suffer. Independent repair and service technicians and businesses, suppliers of parts, tools, and follow-on innovators are kept from doing business. Skills are also diminished and lost because of such restrictions.

The digitalisation that has occurred across our industries has brought many benefits and conveniences and opportunities to boost competition but as has been well documented, there have been many unforeseen hidden challenges, concern and barriers for Australian consumers, businesses and industries.

The increasing use of embedded software in the smart devices, machines we use in our homes, businesses and industries has seen the rise of global corporations who own and control the digital platforms and the aggregated data that flows from these devices in industries such as consumer electronics and appliances, automotive, agricultural, medical devices and assistive technologies. The excessive control by these global corporations over the smart products through the use of embedded software, protected by digital locks (enforced through IP rights) needs to be re-balanced through clever regulation consisting of competition, consumer and IP reform. The digitalisation of our products, machines and equipment and their repair and service aftermarkets are exacerbating not only the economic waste of the need for appliance, machine and equipment replacement, contributing to the current cost-of-living crisis but also the environmental waste thus inhibiting Australia's move to net zero.

I have attempted to address the key principles and issues raised in the Revitalising National Competition Policy Consultation paper, however, I would welcome the opportunity to provide further details, should that be required.

Clear Purpose

It is important that the CPA include a clear overarching purpose for the revitalised Principles that recognises the overarching objective of promoting the long-term interests of consumers as a means to improve wellbeing.

Promoting Competition through Pro-competitive Procurement

In terms of promoting sustainable consumption that will assist in the transition to net zero, all levels of government, local state and federal, need to adopt a more pro-competitive approach in their procurement processes. All governments exercise a huge amount of power through their procurement policies and processes given the significant role they play purchasers of machinery, devices and equipment.

Given the barriers to accessing affordable repair and service (which in turn prolongs the life) of the broad range of products that have been recognised by the Productivity Commission, governments with their huge purchasing power wield significant influence with manufacturers who currently restrict or inhibit support for their machines, products and equipment. In many government departments' procurement policies and processes, there appears to be little evidence of the need to ensure that the products and equipment that are purchased are durable, repairable and supported with appropriate software and service support. Often departments who look after procurement of equipment, machines and devices do not engage with the ICT or service or maintenance departments thus responsibility to ensuring longevity of equipment, devices and machines falls through the cracks of government departments. Understanding the service, repair and maintenance contracts that accompany government acquired smart devices, machines and equipment is integral to addressing competition barriers and maintaining longevity of the government acquired equipment machinery and devices which in turn is a significant contributor to a more sustainable future and the move to net zero.

Curiously, while there appears to be a push to mandate changes to government procurement policies and processes to ensure (or mandate) increased purchasing of recycled materials and products to help create markets for recycled materials, there does not seem to be similar policy attention being paid to ensuring the longevity and durability of government acquired devices, machines and equipment.

Consumer Empowerment

I agree that the benefits for consumers and the community should be a central objective of competition policy. As the Consultation Paper states, 'to activate the demand-side, consumers need to have quality choices and be able to effectively exercise that choice. For example, consumers can put pressure on businesses to compete by switching or threatening to switch providers. Laws and government policies and programs designed to ensure consumers are informed, engaged, and protected from exploitative conduct are also essential to empower consumers.'

Good competition policy should place the onus on manufacturers or service providers to ensure that consumer are appropriately informed at the point of purchase of services or goods of the full terms of use or engagement with manufacturers or service providers. Good examples are provided in France and the EU of where product labelling is being used to indicate the repairability (and in future durability) of a range of products that, in turn, not only serves to educate consumers and businesses but also have served to incentivise manufacturers and service providers to disclose more information about their products.

Global manufacturers and service providers, as vendors, are in the strongest position to know exactly what the materials and terms of use are for their products and services and accordingly should be required to provide full disclosure at the point of sale, particularly now given the attention to the environmental sustainability dimensions of products and services, of any terms of use or materials used that would restrict or inhibit the product or service life span. Many examples of eco-design principles and standards that have imposed upon manufacturers in EU member States have shown the importance of this approach. Consumer and businesses who acquire products and services are at a considerable disadvantage when it comes to purchase of

modern devices, equipment machines and tech servicers, so good regulation that addresses this asymmetry is needed in Australia.

Market Design and Stewardship

I agree that a new principle could guide governments' approach to market design and stewardship to facilitate competitive/contestable outcomes that are in the interests of consumers and the community.

Facilitating Competition through Data Sharing

I agree that there needs to be improvement in the way that government data is shared. Government data is increasingly important to businesses and consumers and researchers and currently there are unnecessary restrictions on access to this data that impedes competition. Removing barriers to the access and use of government data is urgently needed. While many governments subscribe to Open Access or Open Data policies, in reality, their data is neither accessible nor able to be interrogated easily by consumers, businesses or researchers.

The recent report completed by the Consumer Policy Research Centre, ["Am I the only one ? How regulators can use complaints data to help consumers and themselves"](#) highlights the problem with accessing data from the different Federal and State government departments. If this data was more accessible, consumers, business and the regulators themselves would benefit.

There is no doubt that it is not only governments who should be sharing their data. I agree that competition could also be enhanced by private businesses and entities sharing their data. While the Consultation Paper states that 'there are many relevant factors to be balanced when considering this idea, for instance, potential impacts on investment, for example, in research and development and intellectual property', it is important to be reminded that intellectual property is a regime that not only protects IP but that it also has embedded within each of its IP regimes, a series of exceptions, limitations and defences that permit use and access to protected work for a number of purposes. The Productivity Commission, in its Right to Repair Inquiry recommended changes to IP laws, particularly copyright and its TPM, to allow for circumvention to enable interoperability and repairs and servicing.

It is important to note that the recent Mandatory Data Sharing Scheme for automotive repair in Australia, the Motor Vehicle Information Sharing Scheme, is an example of the mandating of data sharing by global car manufacturers has supported open and fair competition in the Australian automotive aftermarket. Creating and enforcing data standards and requiring interoperability to support competition and integration in aftermarkets is something that is desperately needed.

The Productivity Commission, in its Right to Repair Inquiry, identified the need for the Mandatory Data Sharing Scheme for automotive repair in Australia to be extended for agricultural machinery, given that the same barriers for repair and servicing are being experienced in the agricultural machinery aftermarket. It has been clear from recent negotiations between the Tractor and Machinery Association of Australia and the National Farmers Federation that the aftermarket for agricultural machinery repair will not correct itself and that regulatory intervention is needed, as it was needed in the automotive sector after the failure year after year of the voluntary code.

Reform theme 2: Harnessing the Benefits of competition in the new zero transformation

Competition reform has a key role to play in advancing Australia's net zero transition.

The Productivity Commission, in its Right to Repair Inquiry, found that there are significant and unnecessary barriers to third party repair for a broad range of products, devices and machines in Australia. Several key recommendations were made to the Federal Government at the time, for policy and regulatory reforms that would encourage greater competition in a broad range of important markets, such as agricultural machinery, phones, tablets, computers, medical devices and assistive technologies. The same anti-competitive practices are also present in power systems markets that service train locomotives power systems, defence satellite communications, deep sea survey equipment and defence avionics as was highlighted above.

To make the most of the digitalisation that has occurred across our industries, businesses and homes, clever competition regulation is needed to ensure not only the sustainable growth in our economy but also that the social, moral, ethical and environmental dimensions are taken into account in Australia's move to net zero.

I am more than happy to provide further details and examples of international regulatory and policy responses that have begun to address these recognised barriers.

Thank you for the opportunity to contribute.

Please do not hesitate to contact me, should you wish to discuss these issues any further.

Thank you again for your time,

Yours sincerely,



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Dear Marcus, Michael and Joanna,

Thank you for your time last Friday to discuss the challenges that are being experienced in Australia's repair and service aftermarkets.

As requested, I have compiled a few notes based on our discussions for your consideration. As I mentioned I have been working closely with a range of Australia industry stakeholders who are experiencing anti-competitive barriers to repair which are contributing to unrepairable products, devices and machined unnecessarily entering the waste stream.

In compiling this note, I have consulted with my Repair colleagues who bring their differing perspectives to these issues: Lesley Yates, Director of Government Relations and Advocacy, Australian Automotive Aftermarket Association (AAAA) ; John Gertsakis, Adjunct Professor, Institute for Sustainable Futures, UTS; Director of the Product Stewardship Centre of Excellence; Director of E-Waste Watch Institute and member of the Ministerial Advisory Group on the Circular Economy and Matthew Steen, Director, Reviews and Testing, Choice.

Challenges arising from anti-competitive practices in Australia's repair and service aftermarket.

1. The economic waste challenges arising from anti-competitive practices in Australia's repair and service aftermarket.

With the increasing adoption of digital technologies, software enhanced products, machines, devices and equipment in all of our homes, businesses and industries, manufacturers and producers have the power and ability to exercise full control over the service and repair aftermarket. With the increasing reliance on IP over the embedded software in digitally enhanced products, machines devices and equipment, the challenges of keeping the repair and service aftermarket open and fair is becoming impossible. The rise in tech-enabled products means that much of the information required to diagnose a fault is digital, embedded into the product itself and held behind 'digital locks', requiring passwords or special tools to bypass. Manufacturers rely upon their strong position in repair markets to restrict competition and constrain consumers from extending the life of their products in a cost-effective manner.

There are growing concerns in Australia that repairs of digitally enhanced products are becoming progressively more difficult (sometimes impossible), resulting in costly and wasteful outcomes for consumers, businesses, industries and the broader community.

This inability to repair and service our modern technologies has consequences for Australia's competition policy as well as the environmental agenda of the Government to move towards a circular economy and Net Zero by 2030.

A fair and open repair aftermarket not only combats planned obsolescence and reduces cost, it give consumers, business and industries greater choice and access to the parts, tools, and information necessary for the repair of everyday products, equipment, and devices.

When access to parts, tools, information, and software is restricted, it is not only consumers that suffer. Independent repair and service technicians and businesses, suppliers of parts, tools, and follow-on innovators are kept from doing business. Skills are also diminished and lost because of such restrictions.

Examples of the market and power imbalance in the relationship between the original equipment manufacturers (OEMs) and those who spend significant sums of money to purchase and own those devices goods machines and equipment are widespread. The number of industries and markets where serious competition issues have been evidenced and highlighted include motor vehicles, agricultural machinery, medical devices, assistive technologies, consumer electronics and appliances, heavy cleaning equipment, mining and defence. As robotics, AI, automation and IOT systems become common place in more and more industries that rely upon [ICT systems](#) and solutions such as educational institutions and airlines, challenges are being experienced around the willingness of manufacturers to provide software updates, repair and maintenance. While repair restrictions result in consumer “lock in”, they also create market “lock out” for manufacturer-adjacent and independent businesses. This can undermine fair competition and, in some cases, concentrate power held by a small group of original manufacturers.

Manufacturers exert excessive control over their aftermarkets as was reinforced by the High Court decision in [Calidad](#), that, put simply, once a product is placed on the market the IP rights holder (eg Canon) cannot control the aftermarket as their patent rights over the product i.e. printer cartridge are exhausted after the sale. This decision clearly states the limits of right of IP rights holders when it comes to repair and service aftermarkets.

The arguments that global manufacturers all around the world use to oppose the opening of repair and service markets, of concerns around their IP, safety and the security and privacy of the data, have not been held to be convincing either in the EU, given their recent [Right to Repair Directive](#) and the numerous pieces of [Right to Repair legislation](#) in the United States. The global manufacturers in those jurisdictions have run the same opposition as they have here in Australia and it has been shown that giving independent repairers greater access to spare parts, repair supplies and information, increases competition for repair services, without compromising IP, privacy, public safety or discouraging innovation.

Australia’s first Right to Repair law, the [Motor Vehicle Information Sharing Scheme](#) is a world leading example of an innovative regulatory approach to addressing serious competition issues in the Australian automotive aftermarket. This ACCC backed scheme mandates the global automotive manufacturers to share repair and service information and data with independent repairers which has begun to address the decade long competition issues in the Australian automotive aftermarket. The importance of this scheme is, unlike MOUs (which is being pushed with the agricultural machinery aftermarket by the [TMA](#)) is enforceable by the ACCC with financial penalties. This scheme has been recommended to be extended to agricultural machinery by both the ACCC and the Productivity Commission in 2021 after detailed investigations into the agricultural machinery aftermarket. This is clearly a market that will not self-correct.

Productivity Commission (PC) Right to Repair Inquiry 2021

The [PC's Right to Repair Inquiry](#) 2021 found “a number of significant and unnecessary barriers to repair” and that there were “several opportunities to give independent repairers greater access to repair supplies, and increase competition for repair services, without compromising public safety or discouraging innovation.”

The key PC recommendations addressed:

- improving competition in aftermarkets such as medical device and assistive technology repair, agricultural machinery, phones, tablets and computers;
- the necessity to amend IP Law, in particular copyright law, to facilitate access to repair and service information and repair data that is hidden behind digital locks (such as TPMs, which in Australia, the exceptions to which are drafted extremely narrowly);
- strengthening of consumer rights and improved Extended Producer Responsibility (EPR) through the introduction of a product labelling (repairability and durability) scheme.

Recommendations relate to product labelling for reparability and durability are also consistent with the European Commission's Ecodesign Sustainable Products Regulation.

Choice highlighted issues around needing to strengthen consumers' rights (given the premature obsolescence being experienced in large and small household appliances e.g. on average, a TV lasts just over 4.5 years before having a major problem. Choice also emphasises that consumers still have [product life expectancies](#) way beyond manufacturer warranty periods.

Choice confirms that retailers are focusing on these manufacturer warranties (and [extended warranties](#)) rather than [ACL rights](#) at the sales counters. This is concerning as manufacturers actively misled consumers about third party parts and servicing impacting their warranties as the ACCC showed when suing and ultimately fining [Apple \\$9m for iPhone and iPad misrepresentation](#) about warranty and 3rd party repair. It is not currently illegal for manufacturers to tell consumers that going to a 3rd party for a repair or using 3rd party parts will void their warranty. This practice must be stopped.

In many aftermarkets, it is challenging to demonstrate the scale and size of the challenges being experienced in terms of accessing reasonably costed spare parts, tools and repair and service information. Consequently, there is a lack of data about the scale of the barriers and challenges being experienced. This is further reinforced by the fact that manufacturers do not appear to collect data on the level of defects or failures of products, nor do they keep data about repairs undertaken. Where data can be collected and share about the scale of the problem in repair aftermarkets, this would enable regulators to understand the size and scale of the problem. Data collection and transparency on root causes for product failure would address the opaque practices of product obsolescence and repair barriers, providing an increased level of transparency. The availability of product defect and repair data would support referrals by consumer groups such as Choice to the ACCC under the recently introduced ACCC's [Designated complaints legislation](#), whose aim is to ‘reinforce the importance of key issues impacting consumers and small business to the ACCC's work, as well as the role of advocate organisations in detecting and highlighting emerging issues’ such as repair. (Wiseman L., Kariyawasam K., The Proposed “Designated” Complaint Function under the ACL – More Strength to a Consumer's Bow (2023) 32:1 *Australian Journal of Competition and Consumer Law* 1-14)

Critically, the ubiquitous repair barriers are in plain sight. These practices that encourage waste and are manifestly anticompetitive are not illegal. Commercial activities are cleverly and strategically designed to “lock” the consumer into one product ecosystem resulting in unnecessary waste, reduced innovation and routinely driving up the cost of product ownership. Anti-competitive but not illegal.

In terms of leveraging State Fair Trading Offices or the equivalent, there are opportunities there to become involved in the several R’s that are quoted in the Waste Stream (Refuse, Repair, Reuse etc). It could be suggested that an Ombudsman could play a role to provide consumers, businesses and industries with an avenue of complaint about breaches of ACL consumer guarantees in relation to product quality and durability.

A better solution may be a Repair Ombudsman at a Federal level, though not necessarily exclusively focused on Repair, but around the several Rs. This would avoid the challenges of Ombudsmen at State level producing inconsistent data. Ideally there were to be a Federal Ombudsman considered that could then work with satellite state representatives which acts as the data collators (to a data type of Federal requirement) and implementation (compliance level for waste stream management).

There are examples where this works well. This could encourage State funding down to Local Council level with KPIs required for repair to upkeep requirements set by Federal pillars, with data collation and repair investment as a primary focus.

Alternatively, a Federal Ombudsman could work with ACCC and/or the Department of Climate Change, Energy, the Environment and Water (DCCEEW) to get the [repair labelling](#) established which would encourage consumers to buy better but also incentivise manufacturers to design better. Such labelling would be a logical and straightforward expansion of the long-running energy star rating and water efficiency labelling schemes currently applied to appliances and tapware. Repair labelling/requirements could be a procurement necessity clause in new contracts for Defence or Hospitals as well. Especially if those purchases are in the billions or hundreds of millions.

2. The Environmental Challenges arising from the anti-competitive practices in Australia’s repair and service aftermarket.

There is growing concern in Australia and overseas that the lifespans of everyday products are becoming unnecessarily short (‘premature obsolescence’) with detrimental impacts on consumers and businesses and the environment, including the proliferation of solid and hazardous waste, especially in relation to electrical and electronic goods eg. ICT equipment, consumer electronics, toys, power tools, solar panels and batteries.

It is inevitable that products, machines and equipment break, this is increasingly the case as modern machines become increasingly complex and high-tech.

Repair is inevitable. Machine and equipment break but often are not sufficiently broken nor is it cost effective to dispose of the equipment. This is particularly the case in industries such as defence, mining, agricultural machinery, medical device (e.g. MRIs) and assistive technologies which are represent a high investment in the initial outlay to purchase the equipment.

When consumers or businesses buy equipment or a product, it is expected that those products will be able to be maintained through the ability to repair. The problem is many modern products are designed so that they cannot be repaired or fixed. Vital spare parts, tools and information is inaccessible, batteries are embedded, or owners of these machines and devices are contracted to go back to the manufacturer, who instead of repairing will just replace the item (but only if it within the manufacturers’ warranty eg

1 or 2 years) The end result: millions of expensive products, from cars to phones to appliances, end up in the waste stream or are dangerously stockpiled in warehouses. At the most extreme, manufacturers use their IP, and their end use licence agreements (EULAs) to actively prevent you from repairing their products.

Unrepairable devices, products and machines are significant and growing source of avoidable electronic waste – the fastest growing waste stream in the world. The scale and size of the e-waste crisis is highlighted in the recent United Nations’ [Global E-Waste Monitor Report 2024](#). Global e-waste is growing 5 times faster than recycling and Australia’s consumption and use of digitally enhanced goods is in line with this growth.

Sobering statistics from this [Global E-Waste Monitor](#) report underscore the importance of ensuring that product repair is one of the key measures required to address the growing e-waste problem:

- One-third of global electronic waste comes from small equipment and only 12% is recycled.
- Rare earth elements are critical for future green technologies but less than 1% of our supplies come from recycling.
- Manufacturing is growing five times faster than recycling.

Across the world, there is an urgent call for greater investment in infrastructure development and more promotion of repair and reuse. It is very clear that Australia cannot recycle our way out of our waste crisis. Most importantly repair provides a much more positive waste prevention measure compared to simply recycling materials from end-of-life products.

The [PC’s Right to Repair Inquiry](#) 2021 recommendation for a strengthening of strengthening of consumer rights and Extended Producer Responsibility (EPR) through more transparency around warranties and [ACL rights](#) as well as the introduction of a product labelling (repairability and durability) scheme needs urgent attention.

Facilitating repair through regulatory reform that builds a repair economy in Australia will not only support repair businesses but will bolster repair skills and training which is important part of Australia’s [Building a capable, skilled and sufficiently large workforce](#).

It is important to note that the [agreed communiqué](#) from the November 2023 Environment Ministers’ meeting agreed on the need to transition to a circular economy by 2030, which necessarily requires increased attention to product reparability and durability. Put simply, this would enable us to ‘keep materials in use for longer.

Extending the life of products through repair contributes to the reduction of carbon emissions compared to the ongoing extraction and processing of critical minerals and rare earths to manufacture new replacement products.

As a specific example, the [MobileMuster program](#) administered by the Australian Mobile Telecommunications Association highlights the carbon reduction benefits of repair to extend product life:

“It is estimated that around 80% of the carbon emissions linked to mobile phones are generated in the manufacturing stage. Creating a phone requires materials that need to be mined and processed which is a carbon intensive process.

Repairing a phone can extend its life and reduce the environmental impact of the device. It plays an integral role in the circular economy by keeping products and materials in use for longer. Extending the life of your phone means fewer resources are extracted from the earth, less energy is required to manufacture a new product and the saving of carbon emissions.”

Please do not hesitate to contact me, should you wish to discuss these issues any further.
Thank you again for your time,

Yours sincerely,



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