



Level 6, 179 Queen Street
Melbourne, VIC 3000

info@consumeraction.org.au
consumeraction.org.au
T 03 9670 5088
F 03 9629 6898

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By email: repair@pc.gov.au
Ana Markulev
Right to Repair

Productivity Commission
4 National Circuit
Barton ACT 2600

Dear Ms Markulev

Right to repair inquiry

1. Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to provide feedback to the Productivity Commission Inquiry into a right to repair.
2. The ability for consumers to access affordable repairs for their goods will be an increasingly critical part of Australia's ability to reduce waste. When goods are broken due to 'wear and tear' or damage, affordable, easily accessible and convenient access to repairs may be the difference between an item being dumped in landfill versus being given a new life. Australia could go much further in policies that increase competition for refills, parts, repairs and removing barriers to competitive repair, such as dissuading purchasers from being locked into add-on extended warranties.
3. Furthermore, access to consumer rights under the Australian Consumer Law (**ACL**)¹ should be improved. While the right to repair exists for product faults already through the consumer guarantees, we hear from our clients that the process of enforcing their rights through state administrative tribunals is confusing, prohibitively expensive and can result in extensive further financial and non-financial loss when they are without the good during a protracted dispute resolution process (for example, when they are without the family car). This tends to be felt most acutely by people experiencing financial disadvantage and vulnerability.
4. In addition to addressing the great need for more opportunity for competitive repair of products due to wear or tear or breakage, the Productivity Commission should also ensure its recommendations improve, rather than diminish, access to consumer rights for faulty products. Already, consumers are not entirely confident about their legal rights. Our caseworkers have heard callers explain to our legal advice line lawyers that they have been pressured into thinking they have no other remedy to a faulty good than an endless series of repairs or nothing at all.

¹ Competition and Consumer Act (Cth) 2010 Sch 2.

5. When a good is so faulty it requires numerous repairs which are unsuccessful, it is a 'lemon'.
6. This ongoing repair cycle and the impact of purchasing a lemon can be devastating, particularly if the purchaser is unable to access appropriate redress due to the cost (often \$1k+) to provide expensive reports to prove the fault; the cost and related financial loss (such as missed work) of long, drawn-out disputes; complex law or complaint fatigue. The devastation increases exponentially when the person is also experiencing vulnerability, such as financial disadvantage, and is reliant on the product for work, school, quality of life or transport, but they do not have a 'back-up' or temporary replacement at their disposal while waiting on repairs. As such, it is imperative that any recommendations from the Productivity Commission into a right to repair improve access to justice for people who purchase faulty products, including lemons, which are largely immune to repair, rather than decreasing access to justice through additional barriers.
7. As such, the Productivity Commission should recommend improvements to people's access to dispute resolution services, including when a person's right relates to a choice between a repair, refund or replacement. The responsibility for repair and ethical disposal can be shifted to the supplier or manufacturer of a faulty product, once a person receives the remedy to which they are entitled.
8. In short, in relation to faulty products, the burden of a right to repair should not fall on the shoulders of consumers, who have already outlaid the cost for the good. Instead, repairs could be incentivised or required of companies once they have complied with their requirements under the consumer guarantees—whether it is undertaking a repair, or providing a refund or a replacement to their customer. Furthermore, it seems likely that a consumer will choose a repair over a refund or a replacement, if access to a repair is speedy, convenient and not costly.
9. A summary of recommendations is available at **Appendix A**.

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

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What is this inquiry about?

Information request 1

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

10. Any definitions of a right to repair should be contained in the ACL—to comprehensively outline consumer rights in relation to goods and to avoid duplication or any inadvertent limitation of consumer rights already provided.
11. A specific presumption that servicing or repair for general 'wear and tear' or damage does not impair a person's entitlements to remedies under the consumer guarantees for unrelated faults would strengthen people's abilities and confidence in accessing their consumer rights.
12. The ACL already provides a right to repair for a 'major' or 'minor failure' of the consumer guarantees as to goods or services purchased in trade or in commerce.² This entitlement arises when a product or service is faulty: for example, it doesn't work properly, is unsafe or isn't fit for the purpose the purchaser requested. In the circumstance of a 'major failure' of a good, a person is entitled to a choice between repair, refund or replacement. However, in reality, this choice is limited by a person's ability and financial resourcing to be able to prove the major failure.
13. However, when a person is stuck in an endless cycle of repairs for a faulty product, the product is a 'lemon'—potentially immune to repairs of the fault(s). We recommend any definition of a 'right to repair' not unfairly infringe on a person's consumer rights to choose between a refund, replacement or repairs.
14. In Australia, people have been required to prove there have been a 'reasonable'³ number of failed repair attempts—which has led to the ongoing cycle without moving to an appropriate remedy for a lemon good. Recent reforms have confirmed two or more 'minor failures' when viewed together can be considered a 'major failure'.⁴ When considered in a practical sense, this should mean that two or more unsuccessful repairs of faulty goods is an avenue to a person being compensated with their choice of refund, replacement or repair.
15. In these cases, it may be appropriate for repairs, recycling or thoughtful disposal to be incentivised or required of suppliers or manufacturers once they have already fulfilled their requirements under the consumer guarantees.

RECOMMENDATION 1. Any aspects of a right to repair should be defined in the ACL to avoid duplication or inadvertent limitation of other consumer rights provided by the ACL.

RECOMMENDATION 2. A definition of a 'right to repair' should acknowledge that there are some goods that cannot be satisfactorily repaired, or may only be able to be done so by the supplier/manufacturer once the consumer has already been more appropriately remedied through a replacement or refund.

Information request 2

a) What types of products and repair markets should the Commission focus on?

16. Our data collected through Consumer Action's legal advice line in 2020 indicates that the top consumer guarantee breach issues for tangible goods brought to our lawyers relate to:
 - vehicles
 - electronics
 - furniture.

² Competition and Consumer Act 2010 (Cth) Schedule 2 Australian Consumer Law, ss 51 – 59.

³ Competition and Consumer Act 2010 (Cth) Schedule 2 Australian Consumer Law, s 259(2).

⁴ Competition and Consumer Act 2010 (Cth) Schedule 2 Australian Consumer Law, s 260(2), commencing 18 December 2020.

17. It is important to note that vehicle-related calls to our legal advice line often focus on lemon cars, for which a person is already stuck in a cycle of repair. Where the person cannot afford a temporary replacement car on their own during the seemingly endless repair cycle, the impact on their life and livelihood (and potentially, that of their family) should not be underestimated. We have spoken to clients in this situation who are unable to get to work, take children to school, or to escape family violence while they do not have use of their vehicle.
18. Phones and mobile devices are also a specific concern, as it can be unclear as to where to go when the device doesn't work. Is it an issue of repair of the phone itself? Or is it an issue of the linked service not working? The answer to these questions often funnels the purchaser into a specific dispute resolution scheme, with different access points, rights and potential outcomes (the Telecommunications Industry Ombudsman, the relevant state or territory administrative tribunal, and in some circumstances, the state consumer affairs regulator). Access to telecommunications has clearly become an essential service—but if the phone isn't working, questions of where the consumer goes next becomes muddled, resulting in difficult dispute resolution and complaint fatigue. When devices are bundled with service contracts, the end result can be extra charges, such as early termination fees for the service, when a person attempts to return a broken device for repair or to reject the device. This results in less options for the consumer and more difficulties in understanding what, exactly, needs repair and how to achieve this.

b) Are there common characteristics that these products share (such as embedded technology and software or a high/low degree of product durability), and which characteristics would allow policy issues to be considered more broadly?

19. Both vehicles and electronics, including mobile phones and devices, are generally expensive goods with many components. We frequently see callers through the National Debt Helpline and our legal advice line who have purchased these types of products through taking on debt—whether through car loans, credit cards offered with their purchase, consumer leases, buy-now-pay-later or lengthy 2-3-year phone contracts. When these products break or are faulty, a consumer who has paid for the product through debt may not have any financial means to bear the cost of a replacement, including while waiting for repairs. The financial impact can be extensive.
20. In purchasing vehicles, electronics and furniture, people are also commonly pressured to buy extended warranties, which manufacturers then attempt to use to limit their customers' access to repairs through unauthorised sources (discussed further in our response to information request 4).

c) If there are particular products that the Commission should focus on, what are the unique issues in those product repair markets that support such a focus?

21. The Commission should focus on products for which people are limited in their access to competitive repairs including for breakage and wear and tear—unfairly driving up profits for retailers and manufacturers. This could be through use of extended warranties limiting repair by other repair services, where spare parts are not made available, and where parts are specifically irreplaceable (such as many major mobile phone brand components, for example).

Information request 3

a) (1) Do the consumer guarantees under the ACL provide adequate access to repair remedies for defective goods? If not, what changes could be made to improve access to repair remedies?

Improve access to dispute resolution

22. The Productivity Commission should make recommendations to improve genuine access to the rights contained in the ACL. Consumer guarantees (including the right to a refund or replacement, as well as the right to repair) are critical protections and should not be limited. But, they are also complex and difficult to enforce. In Victoria, most goods disputes require application to the Victorian Civil and Administrative Tribunal (VCAT) (which requires a filing fee dependent on complaint and claim amount, e.g. \$217.70 for a consumer goods dispute between \$3001 - \$15,000) and proof of failure (which can cost \$1000+ for expert evidence or expert report in a car dispute), regardless of when the failure occurred.

23. While consumer guarantee rights exist, there are continued issues with retailers not acknowledging consumer guarantees and attempting to charge for repairs that should be covered under the ACL. We have seen in our casework attempts by car dealers, in particular, to ignore consumer guarantees while focusing only on any rights protected by an express or extended warranty (which are more easily limited). This leaves people in the position of needing to spare the time and expense of taking a non-cooperative supplier or manufacturer to the civil tribunal, which can be unrealistic for a person experiencing vulnerability.
24. Better access to dispute resolution services would lead to more people gaining access to remedies for faulty goods, whether a right to repair or a right to a replacement or refund. In relation to motor vehicles, which accounted for 9% of civil claims at VCAT in 2014-2015,⁵ consumers should have access to a no-cost speciality dispute resolution service, which includes access to a free expert report or technical assessment of any defect. The Victorian "Access to justice" review found in 2017 the Victorian Government should facilitate earlier and cheaper resolution of disputes about defective cars.⁶ In relation to low-value consumer goods claims, NSW Fair Trading provides an effective model of dispute resolution, in which the regulator itself can issue an enforceable direction for the supplier or manufacturer to comply with a remedy under the ACL if the defective good was purchased in the 6 months before the complaint to Fair Trading.⁷
25. In relation to phones and mobile devices specifically, and the issues described in paragraph 18 concerning whether an issue is a device fault or service issue, it would be helpful for the Productivity Commission to recommend the Telecommunications Industry Ombudsman have explicit jurisdiction to resolve issues of the devices themselves, regardless of whether they are purchased through a telecommunications service provider or other retailer. This would result in better outcomes for consumers and, potentially, a higher likelihood of repair because a consumer would not need to guess the cause of a non-working mobile (actual device or service) and, from there, 'take a punt' at which dispute resolution body to access.

RECOMMENDATION 3. The Productivity Commission should recommend better access to dispute resolution services for consumers to be able to access remedies under the ACL, including the right to repair. This could include recommending all state and territory regulators be empowered to give directions on low claim-value disputes. In relation to cars, the Commission should recommend governments fund speciality no-cost dispute resolution services that include technical assessment of the defects.

RECOMMENDATION 4. The Productivity Commission should recommend the jurisdiction of the Telecommunications Industry Ombudsman clearly include devices, and device retailers and manufacturers.

Defects discovered within the first 6 months

26. The right to repair (as well as other consumer guarantee rights) could also be more effective if the Productivity Commission recommended the ACL include a presumption that a defect discovered within the first 6 months after purchase of a good also existed at the time of purchase, similar to Singaporean law.⁸ We note that Consumer Affairs Ministers nationally have supported 'further work on a time-limited reversal of the onus of proof' to facilitate better access to consumer guarantee rights.⁹
27. The clear and simple two-step process would provide more protection for consumers while still improving access to repairs:
 - Has there been a failure to meet one of the consumer guarantees?
 - Was this failure within six months of purchase?

⁵ Victorian Government, "Access to Justice Review: Volume 1 Report and Recommendations" (August 2016), available at: <https://engage.vic.gov.au/accesstojustice> p 253.

⁶ Victorian Government, "Access to Justice Review: Volume 1 Report and Recommendations" (August 2016), available at: <https://engage.vic.gov.au/accesstojustice>.

⁷ <https://www.fairtrading.nsw.gov.au/about-fair-trading/our-services/consumer-guarantee-directions>.

⁸ Consumer Protection (Fair Trading) Act (Singapore), s 12B(3).

⁹ Consumer Affairs Forum, "Meeting of Ministers for Consumer Affairs Friday 30 August 2019, Queenstown, NZ" (Communique, 2019), available at: <https://consumerlaw.gov.au/consumer-affairs-forum/communiqués/meeting-11-0>

28. If so, the purchaser should be entitled their choice of repair, replacement or refund without requiring the complex legal provisions surrounding 'major failure' and the corresponding limitations in section 262, such as 'reasonable time'. This much simpler legal framework would empower people in their negotiations with traders, leading to a more active consumer base that keeps traders accountable and shifts reliance away from warranties towards the ACL. If the purchaser chose to accept a refund or replacement of the good, the supplier or manufacturer could be incentivised or compelled to collect the product for repair or recycling.
29. Furthermore, this would mean any repairs or modifications undertaken from an independent repairer within the first 6 months of a product's lifecycle should not affect the purchaser's rights under the consumer guarantees unless the supplier or manufacturer can prove otherwise. This would open the opportunities for repair of a product through competitors, thereby decreasing price for consumers.

RECOMMENDATION 5. The Productivity Commission should recommend inclusion in the ACL of a presumption that a defect discovered within 6 months purchase also existed at the time of purchase.

a) (2) Are there barriers to repairing products purchased using new forms of payment technologies, such as 'buy now pay later'?

30. Buy-now-pay-later, which is unregulated credit, is quickly becoming a preferred payment method for goods. This change brings with it many consumer protection issues, including consumers' ability to access a simple refund where goods do not meet consumer guarantees. For example, for a consumer who has purchased a product using Afterpay, the consumer must return the faulty good to the merchant, and the merchant must then instruct Afterpay to refund the consumer. The merchant is prohibited from refunding the consumer directly.¹⁰ While we have no direct evidence, this process may disrupt access to repairs as well as refunds.
31. As discussed in paragraphs 18 and 25, It is also relevant for the Productivity Commission to investigate barriers to repairs for a good that is a conduit to a service, such as a mobile phone. Repairs can become inaccessible depending on the phone plan and rules, particularly when a person is paying out the cost of the device itself bundled into their service contract. For example, when a person on a

Case Study – David's story

David is in his thirties, and called the National Debt Helpline (NDH) in late 2019 about multiple debts totalling more than \$60,000. David told us he worked in catering and sometimes drove for a ride-share service, but he was struggling with an injured leg, which he thought may reduce his approximate \$1600/fortnight salary. David said he was experiencing mental ill-health, with the overwhelm of his debts adding to this.

David told us that in 2018, he purchased an iPad at an electronics retailer, which also signed him up to a telco service. He was already in a contract with a different major telco provider. After he received the new sim card, the service was inconsistent; he couldn't get incoming calls or make outgoing calls - sometimes no signal.

David said he returned to the electronics retailer, and they changed sim cards a few times, still it was not working. After two or three weeks, David went to the telco's retail stalls. David said he was told the telco needed to investigate the sim card. David said he left them to investigate the sim card for two - three weeks; after that he continued to have issues. David informed the telco he wanted to cancel. David said he was advised he would then be required to pay cancellation fees.

David said he went to the Telecommunications Industry Ombudsman, who said they will contact the telco, and if he does not get a response he should call them back again. David said he went back to the telco, but still nothing happened, so he cancelled the contract to return to his old provider. David said he then received an invoice for approximately \$500, and, at the time of his call to NDH, a letter stating legal action would be taken against him.

¹⁰ See: Afterpay, "I am a merchant how do I process a refund?", accessed 11 February 2021 at: <https://help.afterpay.com/hc/en-au/articles/217427446-I-am-a-merchant-how-do-I-process-a-refund-#:~:text=Full%20Refunds,refund%20back%20to%20their%20card.>

bundled service and device contract, they may be slugged with a contract termination fee when they attempt to reject the device.

RECOMMENDATION 6. The Productivity Commission should recommend that ACL regulators investigate the new payment platforms (such as BNPL) to quickly and efficiently identify any barriers to accessing consumer guarantees including repairs.

RECOMMENDATION 7. The Productivity Commission should investigate the impact of returning unworking devices, thereby cancelling service contracts, on effective access to repairs in the telecommunications sector.

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

32. NSW Fair Trading data, published in a comprehensive complaints register and viewable by complaint type (including a breakdown for repairs as well as for parts), would likely be helpful to the Productivity Commission on this issue.¹¹

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

33. No, consumer guarantees, which protect consumers that purchase a faulty product, should not be 'balanced' (or in any way limited). This would be unfairly burdensome for consumers without holding suppliers and manufacturers of faulty products to account.

34. The purchaser of a faulty product should not be forced to take on the additional financial and non-financial losses that occur as part of the repair process, particularly if repairs are required multiple times.

35. The burden of having to engage in protracted negotiations or legal proceedings about a 'lemon product' has a significant impact on a person's financial and mental welfare. This cost becomes proportionately greater relative to the value of the 'lemon' good, and the number of people in a household dependent on the use of that good. For example, we have heard from our clients about the disruptive consequences when a family car turns out to be a lemon. Families rely on their car to drive children to school, attend work and run basic errands, meaning the impact of owning a useless lemon car is significant. In regional areas or those with poor transport, this becomes exponentially problematic. Our 2018 report, "[Lemon-aid](#)"¹² includes case studies reflecting this point on pages 11, 12 and 16.

36. Limiting access to fair recourse for defective products is not the most logical fit for an expanded 'right' to repair, especially when it may inevitably serve to actually limit a consumer's rights by 'running the clock' on the period of time during which it would be considered reasonable to reject the good ('the rejection period')¹³ or by breaking the nexus between the original delivery of the good and the damage.

37. A much fairer suggestion would be for manufacturers and suppliers of faulty products to be responsible for their thoughtful disposal, repair or recycling (once the purchaser has received their entitlement under the ACL).

RECOMMENDATION 8. Under no circumstances should consumer rights under the ACL be 'balanced' (i.e. limited) by broader societal costs. These costs should be the responsibility of the supplier or manufacturer of the faulty product.

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

- If not, would more information and education be a cost-effective measure to assist consumers understand and enforce guarantees? What would be the best way to deliver this information? What other measures would be more effective?

¹¹ Available at: <https://www.fairtrading.nsw.gov.au/help-centre/online-tools/complaints-register>.

¹² <https://consumeraction.org.au/lemon-aid/>

¹³ The rejection period is that from the time of the supply of the goods within which it would be 'reasonable to expect the relevant failure to comply with a guarantee' to become apparent. Competition and Consumer Act 2010 (Cth) Schedule 2 Australian Consumer Law, s 262.

38. No. Our experience highlights the fact that many consumers are still consistently pointed toward express or extended warranties as their main source of rights by suppliers and manufacturers, despite the fact that these do not displace rights protected by the ACL (and may merely reflect ACL rights). This is mirrored in the recent Australian Consumers Right to Repair Survey.¹⁴
39. While consumer education and information can help (for example the labelling about consumer rights that is applied to goods when purchased), customer information/disclosure statements do not take into account pressures or human behavioural biases in decision making and are no longer a 'default' approach to consumer protection.
40. A much larger opportunity exists in relation to increasing access to dispute resolution for consumer guarantees (which will also help people who may be already aware of the remedies available but cannot access them through our current systems), as described in our response to Information Request 3(a). The biggest problem in accessing remedies available under the ACL is the difficulty, length and expense in enforcing these rights through the administrative tribunal system. As mentioned, NSW Fair Trading has made improvements to access through the power to issue a 'consumer guarantee direction' for complaints lodged after 28 December 2018 for goods up to \$3000.¹⁵ This is an opportunity for an expedited and fair resolution, which does not disadvantage people experiencing vulnerability who do not understand or who cannot afford the tribunal process. There are significant opportunities for improvement in relation to assisting consumers to enforce guarantees in relation to cars, particularly the adoption of no-cost specialty dispute resolution services with technical expertise.

Case Study – Scarlett's story

Scarlett lives in a rural township and solely relies on the Disability Support Pension. Scarlett relies on a scooter for mobility.

In 2015, Scarlett purchased a new 4WD vehicle for about \$60,000. She had disclosed to the salesperson she needed a vehicle to be modified with a scooter hoist. This modification was covered by one-off NDIS funding.

Just 64,000 km later and less than 10 months out of the three-year manufacturer's warranty period, the car broke down. It had been regularly serviced, and had already had a few repairs while it was still in warranty.

Scarlett had the vehicle towed and enquired about repairs but was asked to pay thousands for repairs that weren't guaranteed to fix the issue. She couldn't afford this so was effectively housebound without being able to transport her mobility scooter.

With our assistance, Scarlett applied to the Victorian Civil and Administrative Tribunal (VCAT) for a 'major failure' of her consumer guarantees. Consumer Action covered the approximate \$3,000 cost for evidence from an expert mechanic (and towing to the assessment).

Scarlett's priority was having a working vehicle so she could be mobile again.

We were able to negotiate a settlement for Scarlett around the time of the VCAT hearing. Without community legal support, Scarlett may have been stuck at home with a broken-down expensive car that was four years old.

Information request 4

d) Are there specific examples or other evidence of practices by OEMs or their authorised repairers that create barriers to competition in repair markets?

- Do other factors also create barriers to competition in repair markets, such as short-sighted consumer behaviours, switching costs, poor information availability or consumer lock-in?

Bundling with a service

¹⁴ Leanne Wiseman, Kanchana Kariyawasam and Pamela Saleme, "Australian Consumers' Right to Repair Survey Dec 2020: Quantitative Analysis Report" (February 2020).

¹⁵ <https://www.fairtrading.nsw.gov.au/news-and-updates/news/new-powers-for-nsw-fair-trading>.

41. The Issues Paper states that ‘tying’ or ‘bundling’ of services with goods provide benefits to consumers and can drive greater competition between authorised and independent repairer.¹⁶ However, tying or bundling of services is often used as a technique to increase sales and customer loyalty. For example, in phone markets, bundled services usually lead to increased device purchases, but likely have little increase in relation to competitive repair of products (especially when the service provider has exclusion clauses that unauthorised repair work will void the product warranty).

Extended warranties

42. In the example of retailers and car dealers, there is pressure to lock consumers in from the time of purchase by pushing an add-on extended warranty. Consumers are made to feel that they should purchase extended warranties, as it is better to be “safe than sorry”, before they “miss out”. This is a deceptive sales pitch, given consumers are already protected by the consumer guarantees—a fact which people are not always made aware of when purchasing the good.¹⁷ However, consumers are often led to believe an extended warranty is their only real protection if things go wrong.
43. Furthermore, extended warranties usually come with a raft of terms and conditions, including, in the case of cars, that any services or repairs be undertaken through the dealer’s own service team. Threatened with the possibility of losing the protection of these warranties also initiates sunken cost fallacies, so that even when a consumer thinks or knows they are not getting a good deal on repairs or maintenance, they feel obliged to continue with the original seller for repairs as they have already spent money on an extended warranty. Extended warranties for used cars also often include major exclusions that are glossed over or

Case Study – Lucinda’s story

Lucinda is a single parent and a victim survivor of family violence. She works in a role that requires her to travel to different locations.

Lucinda spoke to our solicitors about a used car she purchased in 2020 from a dealership that advertised on social media. She paid more than \$10,000 for the car through a loan. The dealer informed Lucinda that the car came with a statutory warranty that expired on the earlier of 1-month or 1,000 km after purchase under the applicable state laws. A document provided by the dealership to Lucinda about its breakdown, warranty and repair procedure did not include the prescribed text about the Australian Consumer Law.

After around a month, Lucinda discovered an issue with the engine and attempted to contact the dealership, then drove the car to a mechanic. The mechanic found the engine was faulty and quoted approximately \$4,000 for repairs, which was unaffordable for Lucinda so have not been completed. At the time, the car had been driven not much more than 2,500 km since the time of purchase.

The dealership staff told Lucinda there was nothing they could do because the car was now out of warranty, despite acknowledging a problem with the car. Lucinda said she was in tears talking to the dealership staff who told her “not my problem” because she didn’t have an extended warranty.

Lucinda said she is repaying the car loan. But she isn’t able to pick up as many work shifts as she had been offered because she can only drive very short distances. The car starts to vibrate every time she drives home. She has also had to have the car towed to repair another issue, for which she paid about \$300.

Lucinda said she is experiencing severe depression, exacerbated by her faulty car problems and her inability to get to work. She also told us this car is important for her safety.

She said she wants to keep the car and just wants the dealership to repair it.

We assisted Lucinda to write a letter of demand, but the dealership responded by asking her to pay out-of-pocket for further repair work, and later said they couldn’t assist her. We are continuing to provide legal assistance to Lucinda.

¹⁶ Issues Paper pg.

¹⁷ 5 For more information, see Consumer Action Law Centre, Submission to Consumer Affairs Australia New Zealand, Australian Consumer Law Review, 30 May 2016, pages 28-9: <https://consumeraction.org.au/wp-content/uploads/2016/05/Consumer-Action-ACL-Review-Submission-FINAL.pdf>.

not mentioned, such as excluding any repairs over a particular dollar figure (some as low as \$2,000), rendering them close to useless.

Access to information

44. The Government has recently consulted on the Motor vehicle service and repair information sharing scheme.¹⁸ This scheme should be a positive step in increasing competitive repair options for people (particularly if issues caused by extended warranties are also improved through a deferred sales model). However, previous efforts to implement these sorts of schemes on a voluntary industry basis have failed.¹⁹ Therefore, any policy intention to require manufacturers to share information with third party repairers must be backed by legislation and regularly reviewed by an independent reviewer or by a body with both industry and consumer representation. It appears the intention for this scheme is for that role to be fulfilled by an industry-led body, which may impede its effectiveness.
45. In addition, consideration should be given to extending this scheme or similar to other sectors with high complaints around consumer guarantees and repairs, such as telecommunications devices and home electronics.

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

- What are the costs and benefits of any such proposal to the community as a whole? How does it balance the rights of manufacturers and suppliers, with those of consumers and repairers?
46. In order to help reduce the negative impact on competition in repairs of extended and dealer-issued warranties discussed in the previous point, the Productivity Commission should recommend this type of 'junk' product be treated the same as other add-on insurance, which, from 5 October 2021, will be subject to a deferred sales model.²⁰ Retailers and car dealers should be prohibited from signing purchasers up to these junk products for at least 4 days after delivery of the product—thereby removing the pressure to effectively sign away rights, including access to competitive repairs. This can be solved by expanding the operation of the deferred sales model for add-on insurance to be commencing in the *ASIC Act 2001* (Cth) to treat these extended warranties like other add-on insurance products.
47. This would provide benefits to individual consumers and the community at large, focussing more attention on the consumer guarantees and removing a barrier to competitive repair. The only reason extended warranties sold by retailers have any current value to consumers is because the very same retailers (and their manufacturing suppliers) make it so difficult for consumers to get the remedies they are entitled to under the consumer law, and courts and tribunals are often too hard to navigate for small consumer claims.²¹ If there are limits on the sale of these products, combined with improved access to dispute resolution about consumer goods, there will be better access to consumer guarantees without artificially limiting repair and service choices.

RECOMMENDATION 9. The Productivity Commission should recommend all extended and dealer-issued warranties be explicitly included in the definition of 'add-on insurance product' in legislation, so they cannot be pressure sold at the time of purchase of the good, thereby limiting the consumer's right to repair.

¹⁸ See: <https://treasury.gov.au/consultation/c2020-128289>.

¹⁹ Australian Competition & Consumer Commission, "ACCC reiterates support for mandatory sharing of car repair information" (media release) 4 May 2018, available at: <https://www.accc.gov.au/media-release/accc-reiterates-support-for-mandatory-sharing-of-car-repair-information>.

²⁰ *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* (cth), Schedule 3 to amend the *ASIC Act 2001* (Cth) commencing from 5 October 2021.

²¹ See, e.g. Cameron Ralph Navigator, Review of Tenants' and Consumers' Experience of Victorian Civil and Administrative Tribunal, July 2016:

<https://consumeraction.org.au/review-tenants-consumers-experience-victorian-civil-administrative-tribunal/>.

Information request 5

To what extent do current IP laws already facilitate repairs by consumers or independent third parties (e.g. the spare parts defence under the Design Act)?

48. While this is out of scope for Consumer Action, we note the relevance of the recently decided High Court case *Calidad Pty Ltd & Ors v Seiko Epson Corporation & Anor.*²²

Information request 6

c) How does planned obsolescence affect repairers, consumers and the broader community in Australia?

49. Planned obsolescence reduces the number of older, and therefore, generally, lower cost goods in the market. Planned obsolescence can have a disproportionate negative impact on people experiencing financial disadvantage, who cannot afford to upgrade and should not need to when the product works or should work (in the case of damaging software updates) properly. We've seen during 2020 the essentiality of phones, mobile devices, and cars. When vulnerable consumers are effectively cut out of a market due to planned obsolescence and an inability to afford an upgrade, they can either try to live without an essential good or they can turn to loans for these essential items, which may cause a debt spiral and much further financial loss.

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

50. Retailers and car dealers have skewed public perceptions on product durability and reparability through their extensive use of extended warranties, which usually cover a product for an additional 1, 2, 3, 5 or (less frequently) 10 years. However, the expected durability and reparability of a good is more complex, based on a number of factors.
51. Improving access to remedies under the consumer guarantees would help to change the narrative on what consumers should and can expect from the goods they purchase—away from the bias of a manufacturer's time limits to what would be seen as reasonable under the law.

Information request 8

52. In the interest of not repeating our submission here, we note responses to the questions under Information request 8 are available in our responses to the preceding information requests and our summary of recommendations.

Please contact Policy Officer **Brigette Rose** at **Consumer Action Law Centre** on 03 9670 5088 or at brigette@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,

CONSUMER ACTION LAW CENTRE



Gerard Brody | CEO

²² [2020] HCA 41, available at: https://www.hcourt.gov.au/cases/case_s329-2019.

APPENDIX A - SUMMARY OF RECOMMENDATION

RECOMMENDATION 1. Any aspects of a right to repair should be defined in the ACL to avoid duplication or inadvertent limitation of other consumer rights provided by the ACL.

RECOMMENDATION 2. A definition of a 'right to repair' should acknowledge that there are some goods that cannot be satisfactorily repaired, or may only be able to be done so by the supplier/manufacturer once the consumer has already been more appropriately remedied through a replacement or refund.

RECOMMENDATION 3. The Productivity Commission should recommend better access to dispute resolution services for consumers to be able to access remedies under the ACL, including the right to repair. This could include recommending all state and territory regulators be empowered to give directions on low claim-value disputes. In relation to cars, the Commission should recommend governments fund speciality no-cost dispute resolution services that include technical assessment of the defects.

RECOMMENDATION 4. The Productivity Commission should recommend the jurisdiction of the Telecommunications Industry Ombudsman clearly include devices, and device retailers and manufacturers.

RECOMMENDATION 5. The Productivity Commission should recommend inclusion in the ACL of a presumption that a defect discovered within 6 months purchase also existed at the time of purchase.

RECOMMENDATION 6. The Productivity Commission should recommend that ACL regulators investigate the new payment platforms (such as BNPL) to quickly and efficiently identify any barriers to accessing consumer guarantees including repairs.

RECOMMENDATION 7. The Productivity Commission should investigate the impact of returning unworking devices, thereby cancelling service contracts, on effective access to repairs in the telecommunications sector.

RECOMMENDATION 8. Under no circumstances should consumer rights under the ACL be 'balanced' (i.e. limited) by broader societal costs. These costs should be the responsibility of the supplier or manufacturer of the faulty product.

RECOMMENDATION 9. The Productivity Commission should recommend all extended and dealer-issued warranties be explicitly included in the definition of 'add-on insurance product' in legislation, so they cannot be pressure sold at the time of purchase of the good, thereby limiting the consumer's right to repair.