

Thank you for the opportunity to provide feedback to your “Opportunities in the Circular Economy” Discussion Paper 2024.

I am an ARC Future Fellow and Professor of Law Griffith University and Chair of the Australian Repair Network. The focus of my current research, through my ARC Future Fellowship project, Unlocking Digital Innovation: IP and the Right to Repair (2022-2026), is upon the legal and regulatory responses to the International Right to Repair movement, with particular interest of its potential to impact upon the consumer electronic and appliances, automotive, agricultural and medical device and assistive technology repair markets. This project, with its focus on removing barriers to repair in a range of industries, has significant consequences for escalating Australia’s move to a circular economy through ensuring a more efficient and sustainable use of Australia's resources.

My research aligns well with the aims of the [agreed communiqué](#) from the November 2022 Environment Ministers’ meeting which agreed on the need to transition to a circular economy by 2030 by highlighting the need for Australia to pay increased attention to product **reparability** and **durability**. Put simply, repair enables 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. Thus, there can be no true circular economy in Australia, without policy and regulatory reform to support and elevate repair and reuse in our communities around Australia.

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.

Australians are heavy consumers of household appliances. The national household appliance market is projected to reach [A\\$13 billion](#) in 2024 – a figure that grows each year.

On average, Australian homes have [five large appliances](#) and up to ten smaller ones such as personal devices, coffee machines, air fryers and irons – not to mention numerous other electronic gadgets not included in this count, such as those operated by batteries.

The need to move 'beyond recycling'

For over 30 years, all levels of Australian Government have supported, elevated and invested heavily in recycling policy, infrastructure and regulatory reform. This has been very successful. State and local governments celebrate recycling champions and support for a Recycling Week across Australia. There are still education campaigns being funded to help educate Australians about the importance of recycling. This demonstrates the long-term vision and investment that is needed to move 'higher up' the waste hierarchy to ensure repair and reuse is as accessible as recycling. We cannot simply see the creation of markets for recycled products as a long-term solution to our waste crisis.

Relying on recycling alone is not enough for Australia to move to a circular economy by 2030. This is particularly the case given Australia is one of the highest contributors to E-waste in the world. **Repair** provides a much more positive waste prevention measure compared to simply recycling materials from end-of-life 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.**

This report underscores the importance of ensuring that **product repair is one of the key measures required to address the growing e-waste problem**. We cannot recycle our way out of our waste crisis.

There is currently a lack of attention being paid to the need to address the growing E-waste problem in Australia. Unlike the EU, where product design and support for longevity of those products has long been regulated through Eco-Design regulations, there is no move to regulate the quality, durability and repairability of products produced in or entering in the Australian market. For Australia to move to a circular economy, there needs to be more policy and regulatory attention on how the practical problem we all face of how we can **“keep our products and materials in use for longer”** when repair is neither accessible nor affordable in Australia.

The need for policy and regulatory reform to support Repair in Australia

The most recent insights from the deliberations of the Circular Economy Ministerial Advisory (CEMAG) Group report indicate that their Final Report will recommend a prioritisation of CE frameworks; a regulatory framework for CE; to grow CE markets; to harmonise CE standards and EPR across state and federal Governments; the importance of transition brokers in place-based approaches; empowering consumers eg labelling and capacity building.

It is disappointing to see that there is no mention of the numerous recommendations that have been made by the Productivity Commission in its 2021 [Right to Repair Inquiry](#), where a number of barriers to repair (major obstacles to ‘keeping products in use’) were identified.

This national report in 2021, placed Australia in a unique position being the only country in the world to conduct a full and national public inquiry into barriers to repair. The recommendations for much needed-reform to our intellectual property laws (particularly copyright and its scheme of technological protection measures), consumer, contract and

competition law which would not only reduce barriers to repair but would facilitate open and fair competition in a wide range of markets, particularly in consumer appliances and electronics, automotive, agricultural and medical device and assistive technology repair markets must be revisited as these reforms will assist Australian consumers, businesses and industries ‘keep their products, machines and devices in use for longer’ contributing to our move to a circular economy.

The importance of repair across all products globally has seen a phenomenally rapid rise in attention in recent times, with a range of initiatives, actions and changes in practice occurring. These changes have taken place at the enthusiast and community level, within the larger economy as a whole, and at the policy level, with the Right to Repair being implemented in a growing number of countries.

Since the PC recommendations in 2021, Australia has fallen behind the US, Canada, UK and EU with respect to repair policy and regulation. Each of these jurisdictions have passed laws to require manufacturers of products, machines and devices not only design the products better (more sustainably) but also to facilitate open and fair competition in the repair and service aftermarket by requiring manufacturers to provide the spare parts, tools and information that are needed to keep machines, devices and equipment in use for longer. I am happy to provide further details of the various international regulatory responses to the inability to repair.

Across the world, there is an urgent call for greater investment in repair infrastructure development and more promotion of repair and reuse. For example, the Welsh Government has adopted a “Beyond Recycling” Policy and a “Repair and Reuse Policy” which has firm commitments to Repair and Reuse at scale.

Legislating for repair is not just a consumer issue, the inability to repair is something that our agricultural industry, commercial businesses, hospitals, mining and military industries also experience.

Policy and Regulatory Support for Repair is needed to remove the already recognised repair barriers in Australia: whether it be through funding support for community repair activities (over 112 Repair Cafés operate around Australia), funding support for repair incentives (eg repair bonuses) or a repair label (for consumers) repair infrastructure. Policy and Regulatory Support for Repair will improve not only the economic position of Australian consumers, businesses and industries (through encouraging open and fair competition in our repair and service aftermarkets) but also will bring social and community benefits and awareness raising of waste reduction/minimisation activities that is needed in a circular economy as well as the obvious environmental benefits of keeping products in use and out of landfill.

It is important to note that thousands of Australians, frustrated with their inability to keep their appliances, machines devices and equipment in use, have found the only places that are helping to keep their appliances going is the volunteer-run Repair Cafés in our local communities around Australia.

Australia has over 100 “[Repair Cafes](#). These are community-run events aimed at giving a new life to broken items that would otherwise be thrown away. Volunteer repairers help to fix broken items. But these volunteer-run repair cafes cannot repair the thousands of broken appliances in our homes. These community placed-based repair café provide an opportunity to many individual to participate in the circular economy. These are volunteer run with little or no funding but are recognised by many as one of the few opportunities for members of local communities to participate in a create a truly local circular inclusive activity. A circular economy in Australia should recognise welcome and support circular community activities such as repair cafés, that are socially inclusive and helping to address digital and skill divides in our communities and not just focus on circularity in large scale commercial precincts.

Removing Barriers to Repair by supporting an Australian ‘Right to Repair’

Hurdles and barriers to a circular economy

Information Request 3 states : The main reasons businesses and consumers have not adopted circular economy practices to day including (but not limited to): costs, attitudes (including risk), regulatory constraints; lack of information or resources; lack of co-ordination.

To support a more circular economy, Australian government must begin by recognising that the more other countries regulate the way in which products, machines and devices are designed and made, Australia is at risk of becoming a dumping ground for unsupported and unrepairable machines devices and appliances. No amount of consumer education will overcome a poorly designed, cheaply made and unsupported appliances. There has been a dramatic rise in Australia of cheaply made imported appliances for which there is no service or repair support provided by the global manufacturers. This in compounded by the lack of spare parts, repair information or resources by these manufacturers.

Providing better point of sale information on repairability and durability and recycling

I support the CEMAG Working Groups’ observations on p 23 of their Draft Report that *“Producers generally bear no cost for post-sale performance, repair costs or end-of-life costs. Products are increasingly designed for short lifespans and are more complex in design and functionality. This creates barriers to repair and “Information on a product’s environmental characteristics is poor for both consumers and business”*

To remove such barriers to repair and to ensure brands provide better information to consumers at the point of sale, the recommendations of the Productivity Commission’s [Right to Repair Inquiry](#) 2021 for strengthening of consumer rights and Extended Producer Responsibility (EPR) through more transparency around product warranties and [ACL rights](#) as well as the introduction of a product (repairability and durability) labelling scheme. This would ensure consumers and businesses have good access to information on durability and repairability (as well as recycling) at the point of purchase. It is important, however, to recognise that very few household appliances and devices are manufactured in Australia so any proposed regulation

around product repairability and durability should be consistent with the international regulatory responses.

Most manufacturers, brands and retailers provide only a [one- or two-year warranty](#). Often consumers are encouraged to pay extra for an [extended warranty](#). This is despite the fact that our Australian [consumer law](#) requires the manufacturer or importer to provide spare parts and repair facilities for a reasonable time after purchase – longer than the manufacturer’s warranty.

Once the warranty has expired, Australian consumers with broken appliances can really only take the matter up with the Australian Competition and Consumer Commission as a breach of their [consumer rights](#). Even then, as [consumer advocates](#) have repeatedly highlighted, there are no penalties for manufacturers that refuse to comply with our consumer rights by failing to offer repair over replacement. This must change. Manufacturers must be held responsible for failure to comply with our Australian Consumer Law.

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

The 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 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.

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.

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.

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.

Facilitating repair through regulatory reform that builds a repair economy in Australia will not only support the move to a truly circular economy but will also have the economic and social benefit that will be seen in the growth of repair businesses as well as bolster true circular economy skills and knowledge (such as repair skills and training) which is important part of Australia's [Building a capable, skilled and sufficiently large workforce](#).

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

Thank you again for your consideration,

Yours sincerely,

Professor Leanne Wiseman
Australian Research Council (ARC) Future Fellow
Griffith Law School
Griffith University
QLD 4111
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Australian Repair Network
www.australianrepairnetwork.org