

Submission to the Productivity Commission Inquiry

# Opportunities in the circular economy

7 November 2024



**CPRC**

The Consumer Policy Research Centre (CPRC) is an independent, not-for-profit, consumer think tank. CPRC aims to create fairer, safer and inclusive markets by undertaking research and working with leading regulators, policymakers, businesses, academics and community advocates.

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**Acknowledgements**

CPRC would like to thank CHOICE for the provision of quantitative product reliability / lifespan data.

**Statement of Recognition**

CPRC acknowledges the Traditional Custodians of the lands and waters throughout Australia. We pay our respect to Elders, past, present and emerging, acknowledging their continuing relationship to land and the ongoing living cultures of Aboriginal and Torres Strait Islander Peoples across Australia.

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# Introduction

A genuine circular economy requires that consumers maintain, repair and reuse products for as long as feasibly possible, before resorting to recycling or other disposal options. This submission focuses on how Australia can practically help more people to save money and environmental resources by buying and keeping durable and repairable products.

For a circular economy to work for consumers, laws and regulations need to:

- make it easier for people to find good quality products,
- make more products durable, repairable and environmentally sustainable, and
- make it easier for people to complain when something goes wrong and to enforce their rights.

This submission brings together evidence showing the challenges that consumers have in finding good quality products and then repairing those products if something goes wrong.

CPRC's research has found that it's far too difficult for people to identify whether products will last for a long time or can be easily repaired at the point of sale. In part, this is due to poor quality information – or greenwashing – that offers little practical value in the purchase journey. In a recent mystery shop, CPRC found vague green claims and marketing present on 39% of large home appliance displays. These included vague terms including 'eco-friendly', 'sustainable', 'good for the planet', and 'efficient'. We also found that 32% of sales assistants deferred to this marketing material, also using the same vague green claims. In follow up focus groups, we found that four out of five people would rely on these vague green claims when purchasing a large appliance.

Consumers need good quality information at the point of sale to identify products based on factors that really matter – like durability and repairability. A rating system has already been developed in France that could be rolled out in Australia to help people find better products and to encourage companies to compete on meaningful environmental factors. Sixty-six percent of focus group participants in recent CPRC research supported an independent, standardised rating system on durability and repairability, to provide clarity and help them make more informed and sustainable choices.

Beyond the purchase process, we need to make sure more products in Australian homes last longer. The data available shows that products are breaking frequently. 2023 product data provided to CPRC by CHOICE identified that of 1,345 Australians with a new or second-hand fridge, 23% had experienced a problem in the past 12 months. Close to half (48%) had experienced a problem since purchase (typically in the first three years after purchase), 42% of which were considered major or warranted a recall.

This submission puts forward a range of ideas to make our products last, delivering better value to consumers and better outcomes for the environment. It also outlines how Australia can make consumer law work better in practice. When products break, consumers are left to navigate confusing and sometimes expensive complaints resolution processes. A truly circular economy need to make it easier for people to fix things when they break and use products for longer.

# Recommendations

We've based our 9 recommendations within three overarching principles (shown below).

## 1. Information provision that helps consumers buy durable and repairable products

### The quality of information about “sustainable” product features is very poor

Recommendation 1. Stop poor quality information at the point of sale (greenwashing)

- Ban vague green claims
- Establish standards for terms like ‘efficient’ to prevent misleading claims
- Require that environmental trustmarks are reviewed and approved by a regulator

### It is difficult for consumers to identify if products are built to last

Recommendation 2. Introduce standardised ratings for durability and repairability

## 2. Encouraging more well-designed, durable and repairable products

### Too many products break quickly and regularly

Recommendation 3. ACL regulators should be encouraged and supported to publish complaints data

Recommendation 4. Promote product stewardship as a key tool for circular economy transition

- Broaden the objectives of the *Product Stewardship Act 2011*
- Create an Australian Government accreditation for voluntary industry-led product stewardship schemes
- Explore the merits of establishing a central clearinghouse

### Introduce new legal requirements to make products last longer

Recommendation 5. The Productivity Commission should investigate an ACL consumer guarantee for goods and services relating to environmental performance.

Recommendation 6. Amend the ACL to include a new consumer guarantee for manufacturers to provide reasonable software updates for a reasonable time period after purchase.

### **3. Improving complaints handling and remedies, making it easier for consumers to get products fixed**

#### **Consumers find it difficult and costly to get products repaired**

Recommendation 7. Incentivise Australians to choose repair over replacement

#### **Extended warranties can be very misleading**

Recommendation 8. Extended warranties that offer no additional value to consumers beyond rights already granted under the Australian Consumer Law should be explicitly banned under an unfair trading practices prohibition.

#### **Consumers have a right to seek remedies if their consumer guarantees are not met**

Recommendation 9. Make it easier for consumers to resolve complaints about faulty products and penalise companies that fail to offer fair repairs, specifically:

- Improve consumers' access to dispute resolution by enhancing ADR options for ACL complaints in each jurisdiction.
- Enhance regulator powers to enforce consumer guarantees and seek pecuniary penalties for businesses that repeatedly or egregiously fail to comply with the consumer guarantees requirements.

# Information provision to help consumers buy durable and repairable products

The first step to creating a circular economy is encouraging the purchase of genuinely sustainable products, specifically products that are well-designed to last longer and to be more easily repaired.

CPRC research demonstrates that the quality of information currently available at the point of sale for major appliances is very poor and isn't helping people to identify quality products. Consumers need protections that will remove poor quality information (greenwashing) and introduce useful information about durability and reparability at the point of sale.

## The quality of information about “sustainable” product features is very poor

### Green information is everywhere but often it is vague and unhelpful

In recent years, industries have gleaned the importance consumers are placing on the environment, and marketers and businesses are trying to tap into this growing desire of many Australians to actively make environmentally conscious choices. Australians are bombarded with claims about environmental and sustainable features of products and services, including claims of low emissions, eco-friendly, and energy-efficiency.

CPRC, in partnership with ADM+S, analysed over 20,000 impressions of more than 8,000 Facebook ads and found up to 40 commercial sectors are making environmental claims via their social media ads. The same terms – clean, green, sustainable, bio, recycled, pure, eco – are used across different sectors potentially meaning different levels of sustainability but implying the same message – a more environmentally-friendly choice. An environmental claim in an ad can range from being about the product to the product packaging and in some cases neither; the claim may be about the shipping box it arrives in. Ultimately, individual businesses are setting the expectation of what an environmental term means – it is not a shared understanding.<sup>1</sup>

To further investigate the consumer information available at the point of purchase, including the prevalence of green information and claims, CPRC undertook a mystery shop of 120 large home appliances in 2024 (part of a grant from Energy Consumers Australia).<sup>2</sup> We found that vague green claims and marketing are present on 39% of home appliance displays.

These include vague terms including ‘eco-friendly’, ‘sustainable’, ‘good for the planet’, and ‘efficient’ (among others). Overall, 32% of sales assistants defer to this marketing material, also using vague claims of ‘efficient’, ‘green’, and ‘eco-friendly’. See Figure 1.

<sup>1</sup> CPRC and ADM+S, *Seeing Green*, November 2023, <https://cprc.org.au/seeing-green/>.

<sup>2</sup> Announcement: <https://cprc.org.au/consumer-decision-in-energy-efficient-appliance-purchases/>

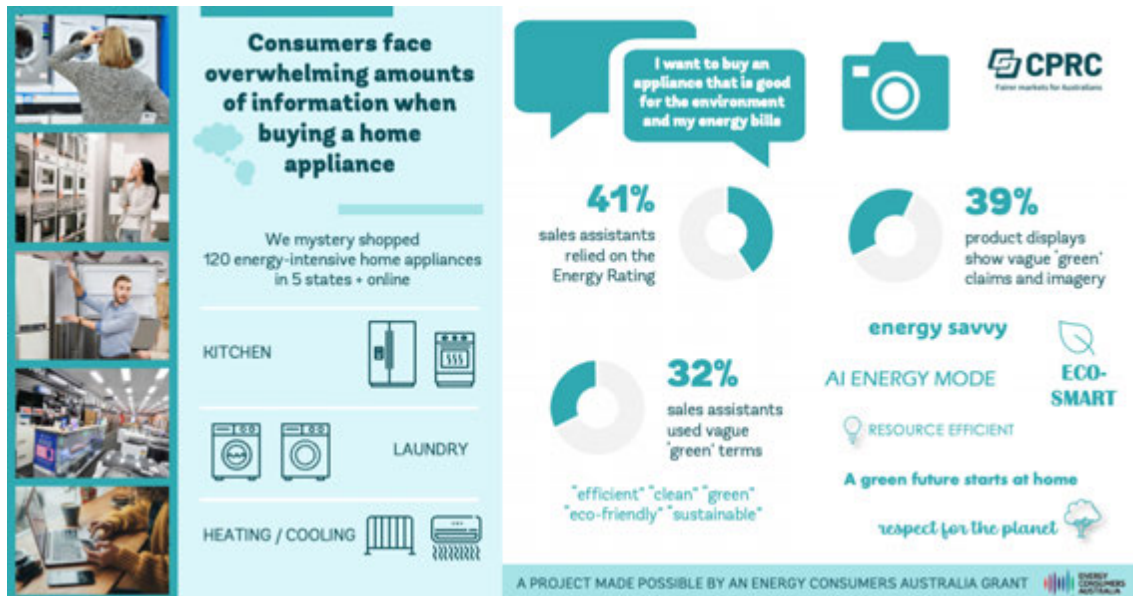


Figure 1. Topline findings from mystery shop audit of large appliance purchasing

Even though consumers cannot compare the merits of a product's sustainability features without having the necessary information at hand to make such an assessment, our recent qualitative research discussing decision-making criteria when purchasing a major household appliance found that 80% of participants rated green claims as an important factor to their decision.<sup>3</sup>

The nature of many green claims means that consumers cannot verify them. People are left hoping that businesses are doing the right thing and following through on their sustainable promises, leaving them open to being misled.<sup>4</sup>

Consumers need regulators and governments to act to stop unhelpful green claims, especially as products and services claiming better environmental outcomes are often more expensive than those that are not.<sup>5</sup>

With increased propensity of businesses transitioning to advertising with green claims, it's clear that adequate guardrails are needed to ensure that consumer choice towards environmental options is meaningful and informed.<sup>6</sup>

This needs to be achieved using multiple different approaches. First, we recommend that Australia follow in the footsteps of the European Union (EU), which has taken decisive action to stop businesses using unclear and vague environmental terms. The EU has strengthened their unfair trading prohibition specifically to stop businesses from using vague claims without evidence like that products are 'sustainable', 'eco' or 'green'. The Federal Government in Australia recently committed to introducing a ban on unfair trading and could extend this to stop greenwashing.<sup>7</sup>

In addition to this step, Australia needs to define and restrict the use of terms that are commonly made at the point of sale but can mean very different things across products. 'Efficient' was a term CPRC identified as in use in a range of marketing claims at the

<sup>3</sup> CPRC research under a 2024 Energy Consumers Australia Grant. See our attached Briefing Note.

<sup>4</sup> CPRC, *Submission to the Senate Inquiry into Greenwashing*, June 2023, [CPRC-Submission-Senate-inquiry-into-Greenwashing-June-2023.pdf](https://www.cprc.org.au/sites/default/files/2023-06/CPRC-Submission-Senate-inquiry-into-Greenwashing-June-2023.pdf).

<sup>5</sup> Gary Mortimer, 'Climate explained: are consumers willing to pay more for climate-friendly products?', September 2020, *The Conversation*, <https://theconversation.com/climate-explained-are-consumers-willing-to-pay-more-for-climate-friendly-products-146757>.

<sup>6</sup> CPRC and ADM+S, *Seeing Green*, November 2023, <https://cprc.org.au/seeing-green/>.

<sup>7</sup> Media release from the Prime Minister of Australia, 16 October 2024: <https://www.pm.gov.au/media/albanese-government-stop-rip-offs-unfair-trading-practices>



point of sale for major appliances. Other claims that can cause confusion for consumers are 'recyclable' and 'compostable'.

Finally, many companies are using environmental trustmarks or certification schemes to demonstrate their 'sustainable' credentials. CPRC's research found that 69% of people said they were likely to trust a green claim that had a trustmark with it. CPRC also found that there is a mistaken perception among consumers that someone is checking green claims, as 45% of Australians think either government, industry associations or Ad Standards check green claims before they are used.<sup>8</sup>

However, there are many different certification schemes with varying levels of quality with no official body checking quality of schemes. The ACCC found 7 different textile certification schemes and 7 different carbon neutral or offsetting schemes in a recent sweep of green claims. They also found businesses using images that appeared to be trustmarks but were not tied to a certification, adding further confusion for shoppers.<sup>9</sup>

Environmental trustmarks or certification schemes should be subject to a mandatory authorisation or approval by a regulator (such as the ACCC) which has demonstrated expertise in considering consumer and public benefit outcomes. There needs to be a requirement that there is only one scheme allowed for each sector or product type. The regulator should make an assessment as to whether the trustmark or certification scheme has:

- A unique contribution when compared with existing certifications or trustmarks.
- Robust governance standards, including consumer interest representation at the oversight entity level
- Independence from the industry it seeks to oversee
- Scheme requirements that are developed by experts to ensure scientific rigour
- Transparency and adequacy of certification standards and oversight arrangements, including appropriate complaint processes and the ability to suspend or remove certification should there be persistent noncompliance.
- Utilised effective public consultation during development and planned regular review of schemes.

### **Recommendation 1. Stop poor quality information at the point of sale (greenwashing)**

- Ban vague green claims about products and services under an Unfair Trading Practices prohibition (recently announced by the Federal Government).
- Establish standards for terms like 'efficient' to prevent misleading claims and ensure that environmentally conscious consumers can make genuinely sustainable choices.
- Require that environmental trustmarks are reviewed and approved by a regulator like the ACCC to meet minimum standards for quality and governance.

<sup>8</sup> CPRC and ADM+S, *Seeing Green*, November 2023, <https://cprc.org.au/seeing-green/>.

<sup>9</sup> ACCC (2023). *Greenwashing by businesses in Australia*. Accessed: <https://www.accc.gov.au/system/files/Greenwashing%20by%20businesses%20in%20Australia.pdf>

## It is difficult for consumers to identify if products are built to last

Many consumers want to purchase sustainable products, yet factors like spare parts availability, durability, and repairability are often not disclosed to consumers at the point of sale, leaving them in the dark about the product's lifespan and maintenance.

In CPRC's recent focus groups discussing decision-making criteria when purchasing a major household appliance, we found that people were very interested in receiving information about the durability and repairability of products but didn't get this crucial information.

**“I don't have a good measure to be honest. I am just a bit naïve, I think. You can read reviews, you can look at star ratings, whatever. At the end of the day there is just a bit of faith. Maybe faith is not the right word. You just put a bit of trust in it and hope you pick the right one.”**

– Male homeowner, 35-44 years, commenting on durability of appliance purchases

Instead, people were relying on indicators like word of mouth and brand familiarity, but feel these sources offer limited insights.

Sixty-six percent of participants supported an independent, standardised rating system on durability and repairability, similar to the energy star ratings.<sup>10</sup>

Governments in some countries, like France, have begun addressing information gaps by mandating repairability labels and developing a durability rating to inform consumers.<sup>11,12</sup>

The French model assesses products on five factors:

1. Documentation (e.g. are repair manuals available),
2. Disassembly, tools and fasteners (e.g. if the product can be opened to self-repair, if proprietary tools are needed, and if product components can be separated or are glued together),
3. Availability of spare parts,
4. Price of spare parts, and
5. Product-specific aspects (e.g. software update availability for smart TVs and phones).

This model has been initially applied to five product types: smartphones, laptops, televisions, washing machines and lawnmowers. The score for each product has to be displayed near the product for in-store sales and online, with scores showing a numerical rating as well as being colour-coded to aid consumers in identifying better products.

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<sup>10</sup> See our attached Briefing Note

<sup>11</sup> Ifixit Europe (2021). The French repair index: challenges and opportunities. Accessed: <https://repair.eu/news/the-french-repair-index-challenges-and-opportunities/>

<sup>12</sup> Everything you need to know about the durability index, 2024. Accessed: <https://longtimelabel.com/en/news/everything-you-need-to-know-about-the-durability-index/#:~:text=Durability%20index%3A%20benefits%20for%20consumers.and%20our%20use%20of%20resources>.



Figure 2. The French Repairability Index scoring system<sup>13</sup>

Similar to the French Durability Rating, a government-backed rating system would help consumers make informed decisions based on product longevity and repairability, reducing unnecessary waste and promoting environmental responsibility.

The Federal Government should require manufacturers and retailers to consistently and clearly disclose information about repairability and durability for products in Australia. This model could build off the French system, learning from their rating system.

**Recommendation 2. Introduce standardised ratings for durability and repairability**

<sup>13</sup> Repairability index, 2023. Accessed: <https://www.oneplanetnetwork.org/knowledge-centre/policies/repairability-index>

# Encouraging more well-designed, durable and repairable products

This section outlines other steps that governments can take to encourage more well-designed, durable and repairable products including better data publication, improved product stewardship programs and new legal obligations to stop the sale of environmentally harmful products.

## Too many products break quickly and regularly

Consumers often feel frustrated when a product breaks or malfunctions earlier than expected. The available data indicates that high numbers of products are breaking relatively soon after purchase.

2023 product data collected by CHOICE identified that of 1,345 Australians with a new or second-hand fridge, 23% had experienced a problem in the past 12 months. Close to half (48%) had experienced a problem since purchase, 42% of which were considered major and/or warranted a recall.

The majority of problems with new fridges occurred within the first three years after purchase; with these consumers experiencing the most brand dissatisfaction.<sup>14</sup>

CPRC research focussing on new and used cars in Victoria has also found high rates of faults.<sup>15</sup> Based on a survey of 1,000 Victorians who purchased a car in the last five years, CPRC found that:

- Faulty cars are common: 17% of people experienced a major fault with a car and 16% experienced multiple minor faults.
- Most faults happen relatively soon after sale. 59% of major or minor faults occurred within the first year of ownership.

There is unfortunately little publicly available data from state Fair Trading regulators about the common consumer problems that present in complaints or reports. Only Queensland and New South Wales publish data with a good level of detail about complaints made to the regulators.<sup>16</sup> Looking closely at the NSW Fair Trading data, which publishes information about the top five consumer complaint issues each month, the common problems raised with the regulator relate to durability and repairability of products. In September 2024, the top three complaint issues were quality of goods, supply of goods or services and repairs or maintenance issues.<sup>17</sup>

We encourage the Productivity Commission to seek further data from the ACCC and other state fair trading regulators to bring together a more complete picture about the scale and nature of product failure issues across Australia.

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<sup>14</sup> 2023 product reliability / lifestyle data for fridges. Data was provided in 2024 to CPRC by CHOICE. The survey sampled a range of internal CHOICE members, as well as utilising a sample top-up of the general population.

<sup>15</sup> CPRC (2023). Detours and Roadblocks: The consumer experience of faulty cars in Victoria. Available at: <https://cprc.org.au/detours-and-roadblocks/>

<sup>16</sup> CPRC (2024). Am I the Only One? How regulators can use complaints data to help consumers, businesses and themselves. Available at: <https://cprc.org.au/report/am-i-the-only-one>

<sup>17</sup> NSW Government, Fair Trading Complaints Register. Accessed: <https://www.nsw.gov.au/departments-and-agencies/fair-trading/complaints-and-enquiries/complaints-register>

### **Recommendation 3. ACL regulators should be encouraged and supported to publish complaints data**

All consumer law regulators should publish regular data about the complaints they receive from consumers to help identify common problems with faulty products and businesses or sectors that are failing to offer fair repairs.

## **Enhanced governance, accountability and transparency of product stewardship schemes**

The *Product Stewardship Act 2011* was enacted to reduce waste and prevent harmful materials from entering landfills by promoting recycling and the recovery of valuable materials. It establishes a framework for voluntary, co-regulatory, and mandatory product stewardship schemes. However, in 2020 the Act was subject to a Review, initiated due to increasing concerns over waste management and the need for sustainable product lifecycle practices.<sup>18</sup>

Several concerns over the effectiveness and operation of current product stewardship schemes spurred the Review, including the limited scope of the Act (applying to end-of-life only), industry behaviour including “free-riding”, inconsistent compliance and enforcement, data inconsistencies and a lack of transparency of reporting across schemes, and poor public awareness and engagement.<sup>19</sup>

### **Consideration of the entire product lifecycle**

Considering the entire lifecycle of products, from design through disposal is increasingly important for manufacturers aiming to reduce environmental impact, enhance sustainability, and meet evolving consumer expectations. Designing products for longer life, reusability, or recyclability reduces the demand for raw materials, helping conserve finite resources like metals, minerals, and fossil fuels.

Currently, the Act predominantly focuses on the end-of-life of products, whereas it should be amended to consider the whole lifecycle. Manufacturers that embrace whole of lifecycle thinking will not only help protect the environment but may also gain economic, regulatory, and reputational advantages that position them strongly in a sustainability-focussed market.

### **Lack of transparency and reporting for some product stewardship schemes**

We are concerned that some schemes have little public information about their activities, even when there are public subsidies to run them.

By way of example, paint waste stewardship scheme Paintback seeks to recycle old paint into reusable paint.<sup>20</sup> There is very little transparency as to how much money is raised from consumers for this scheme and how this money has been spent. For context, Paintback applies a 15 cent plus GST tax on the sale of every litre of architectural and design paint sold in Australia, which was approved by the ACCC.<sup>21</sup> There is no publicly available reporting about how the outcome of this tax on consumers is delivering. Paintback has even been granted exemptions to laws requiring that they publicly report on finances.<sup>22</sup> In future, it would be ideal if the ACCC could place requirements on

<sup>18</sup> DCCEEW (2020). *Review of the Product Stewardship Act 2011*. Accessed:

<https://www.dcceew.gov.au/environment/protection/waste/publications/product-stewardship-act-review-report>

<sup>19</sup> Free-riding is when some companies benefit from schemes without contributing financially or operationally.

<sup>20</sup> Paintback. Accessed: <https://www.paintback.com.au/>

<sup>21</sup> Frew, W. (2023). Painting by numbers: is product stewardship scheme Paintback delivering on its promises? Accessed: <https://thefifthestate.com.au/home-and-lifestyle/consumers/painting-by-numbers-is-product-stewardship-scheme-paintback-delivering-on-its-promises/>

<sup>22</sup> Blakkarly, J. (2024). The secret house paint tax you're paying for. CHOICE. Accessed:

<https://www.choice.com.au/home-improvement/building-and-renovating/painting/articles/paintback-investigation>

schemes or trustmarks it approves to ensure that they deliver on the intent of their activities.

### **Improved transparency of design, production and product efficiency**

Ultimately, manufacturers should be required to adhere to certain standards and be transparent about their tracking against these standards. We believe that reasonable standards should include the following core principles:

1. Design for durability and repairability, ensuring that essential components are accessible and replaceable.
2. Resource efficiency, including minimising the use of raw materials, prioritising recycled content, and reducing energy and water consumption throughout the product lifecycle.
3. Clear and standardised labelling of products.
4. Ensuring repair instructions are available to consumers or third-party repairers.
5. End-of-life responsibility of manufacturers to take proactive steps to ensure products can be recycled, reused, or safely disposed of at the end of their lifecycle, e.g. take-back schemes or partnerships with certified recycling facilities.
6. Good governance, with transparent reporting on the finance, activities and outcomes of any scheme.

A way to track industry adherence to standards could be via an accreditation scheme for which they would receive formal recognition from the government. This would promote transparency and accountability against stated environmental and recycling goals.

### **Improvements to governance and compliance of schemes**

One way to improve overall governance of schemes could be via a central clearinghouse, for which there are many examples in use in Europe, Asia and North America to deliver product stewardship.

A clearinghouse could serve as a centralised governance body responsible for managing, coordinating, and overseeing various stewardship programs across sectors. A clearinghouse could identify non-compliance issues and ensure they're referred to an appropriate regulator for action.

By setting uniform standards, reporting formats, and compliance requirements, a clearinghouse could reduce administrative burdens on individual schemes, making operations more consistent and efficient. It could also manage a database to track data on materials recycled, compliance status, and participation rates across all stewardship programs.

As identified in the Review, the merits of establishing a centralised clearinghouse for product stewardship schemes under the relevant portfolio agency should be explored.<sup>23</sup>

Manufacturers should be required to design, produce, and manage products in a way that promotes environmental sustainability and minimises waste.

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<sup>23</sup> DCCEEW (2020). *Review of the Product Stewardship Act 2011*. Accessed: <https://www.dcceew.gov.au/environment/protection/waste/publications/product-stewardship-act-review-report>

#### **Recommendation 4. Promote product stewardship as a key tool for circular economy transition**

- Broaden the objectives of the *Product Stewardship Act 2011* to include design improvements for durability, repairability and recyclability.
- Create an Australian Government accreditation for voluntary industry-led product stewardship schemes, regulated against standards and criteria.
- Explore the merits of establishing a central clearinghouse to streamline administration, compliance and enforcement.

## **New legal requirements to make products last longer**

### **New legal obligations to sell goods that meet minimum environmental standards**

Very few goods in Australia have to meet minimum environmental standards. Under the Greenhouse and Energy Minimum Standards Act 2012, certain products in Australia must comply with Minimum Energy Performance Standards (MEPS).<sup>24</sup> Products displaying an energy rating (as regulated by the Australian Energy Regulator) must meet the stated energy efficiency level as part of their description and performance claims.<sup>25</sup>

Products that are not captured by these limited regimes have no broad energy or environmental performance requirements.

The ACL includes an important set of consumer guarantees, including the guarantee that goods are of an acceptable quality. Goods are of acceptable quality if they are

- fit for all the purposes for which goods of that kind are commonly supplied
- acceptable in appearance and finish
- free from defects
- safe, and
- durable.

When considering whether a product is of acceptable quality, a reasonable consumer fully acquainted with the state and condition of the goods (including any hidden defects of the goods), would regard as acceptable, having regard to:

- the nature of the goods
- the price of the goods (if relevant)
- any statements made about the goods on any packaging and label on the goods
- any representation made about the goods by the supplier or manufacturer of the goods, and
- any other relevant circumstances relating to the supply of goods.

This definition of acceptable quality does not specifically require a level of environmental performance for products. While products are required to be durable, consumers can struggle to understand what this will mean for their specific situation. The guarantee does not specifically require the product to meet any design standard that achieves an optimal lifetime for the product, nor are there specific requirements about the

<sup>24</sup> Products can be seen here: <https://www.energyrating.gov.au/industry-information/products>

<sup>25</sup> <https://www.energyrating.gov.au/consumer-information/understand-energy-rating-label>

repairability, upgradeability and recyclability of products, let alone whether the product is sourced from sustainable materials or supply chains.

The Productivity Commission should use this inquiry to investigate whether the ACL could be enhanced and meet ‘sustainability by design’ preferences by extending the definition of acceptable quality so that it includes a standard of environmental performance. This would help to protect consumers from being misled by businesses that make false or misleading claims about their environmental performance. It would also encourage businesses to improve their environmental performance, as they would be liable for any loss caused by their product not meeting the performance standard.

The investigation should consider the cost implications for consumers. While over time, we would hope that sustainable choices would become the cheaper options when all externalities are considered, we acknowledge that the manufacturing and production processes for ‘green’ products generally mean that they are likely to cost more than traditional products. Nevertheless, given promotion of sustainable consumption is a key consumer right recognised by the UN Guidelines on Consumer Protection, we consider that investigation of a consumer guarantee as to environmental performance is warranted.

**Recommendation 5. The Productivity Commission should investigate an ACL consumer guarantee for goods and services relating to environmental performance.**

### **New legal obligation to sell goods with a software update guarantee**

As technology continues to advance, many products now rely on software for which regular updates are crucial for maintaining functionality, security, and performance. Without such updates, devices like security cameras or smart fridges can be vulnerable to cyber threats, potentially compromising personal data.

The ACL currently lacks explicit provisions for software updates on products with embedded software, raising two main concerns. The first concern is ambiguity on if faulty software is covered under consumer guarantees, and the second concern is that manufacturers aren’t legally obligated to provide software updates as they are with spare parts.

The ACL needs to be amended to require manufacturers to provide essential software updates for a reasonable duration, specifically for maintaining functionality and security. This would align with broader government efforts to enhance cybersecurity standards, potentially including product labelling to inform consumers about the duration of security updates at the point of sale.

**Recommendation 6. Amend the ACL to include a new consumer guarantee for manufacturers to provide reasonable software updates for a reasonable time period after purchase.**



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# Improving complaints handling and remedies: making it easier for consumers to get products fixed

Product design issues that inhibit repairability contribute to increased waste, with many consumers reporting difficulties in finding repair options or being forced to replace products. This section outlines ideas to increase consumer uptake of repair by making repairs easier to access and by making complaints processes easier and fairer.

## Consumers find it difficult and costly to get products repaired

CPRC research in 2024 found there is widespread scepticism about repairability, with many consumers perceiving appliances from reputable brands as more repairable, while cheaper brands are often assumed to be less so. The cost and complexity of repairs deter some consumers from considering repairs altogether, especially those in regional areas, where repair options are limited.<sup>26</sup>

In our 2023 research into faulty cars we found that:

- The financial cost of seeking a remedy was high. 63% of people with a new car estimated that they spent more than \$1,000 addressing the fault and 36% spent more than \$10,000.
- Faulty cars had a significant impact on people with 55% of people with a faulty car experiencing problems with work, in their personal life or with family due to the fault.
- Dealers frequently told customers that they had repaired a problem only for that issue to happen again or a new problem occur with the car. This cycle of inadequate repairs exhausted and frustrated consumers.

The Productivity Commission should consider reforms that will make repairs more accessible. We believe consumers should have the right to repair their lawfully purchased products directly, or by selecting a repair service of their choice, as opposed to returning to the manufacturer or manufacturer-approved providers for the repair.

### Consumers are limited in selecting a repair as a remedy

Under the ACL when a product fails to meet consumer guarantees, consumers are entitled to a remedy, but the choice of what type is limited to a repair if it is a minor problem or a refund or replacement for a major problem. This can incentivise companies to replace some goods rather than consider repair options, even if the consumer would prefer a repair.

The ACL does not empower consumers to prioritise or choose a repair over other options. There is also a risk that repairs are offered in ways that delay a fair fix overall, as with the examples of car dealers above where delays and incomplete repairs exacerbate problems.

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<sup>26</sup> See our attached Briefing Note

Under a new right to repair directive active in Europe, consumers are incentivised to choose repair instead of replacement via a number of means:<sup>27</sup>

- Manufacturers are required to provide timely and cost-effective repair services and inform consumers about their rights to repair.
- Goods repaired under the warranty will benefit from an additional one-year extension of the legal guarantee.
- After the legal guarantee has expired, the manufacturer is still required to repair common household products, and
- Consumers may also borrow a device whilst theirs is being repaired or, if it cannot be fixed, opt for a refurbished unit as an alternative.

We support amendments to the ACL to allow consumers to select a repair remedy over other remedies.

### **Recommendation 7. Incentivise Australians to choose repair over replacement**

Similar to the European directive, Australian consumers should be incentivised to choose repair instead of replacement through stronger repair rights. This needs to include measures to make repairs timely and effective and to allow consumers to borrow a common device during the repair period. These rights should be explicitly articulated in the Australian Consumer Law.

## **Extended warranties can be very misleading**

The core of the consumer guarantees is that products must be of acceptable quality, including “reasonable durability”, meaning a product should last long enough to serve its intended function. While this flexibility is helpful, it leads to uncertainty about what “reasonable durability” means, especially for high-cost items that fail after several years or secondhand purchases. Companies can easily mislead customers in the purchase process when they sell an extended warranty that offers little or no additional protections that someone already has access to under the ACL. As a result, consumers can often incur unnecessary costs by purchasing extended warranties, believing this will ensure easier claim acceptance and a smoother process than relying on their consumer guarantee rights.

Our research found that extended warranties are viewed variably, with some people perceiving them as essential for peace of mind, while others feeling wary and uncertain. Our mystery shop found that 57% of shoppers were encouraged by the sales assistant to purchase an extended warranty, demonstrating how common it is for this product to be added at the point of purchase.

We are aware of some extended warranties on the market that offer genuine additional benefits. For example, lounge protection warranties that offer fabric replacement for spills. However, many extended warranty products offer little more than a guarantee that retailers will act on consumer law rights. These low-value and confusing products should be banned.

### **Recommendation 8. Extended warranties that offer no additional value to consumers beyond rights already granted under the Australian Consumer Law should be explicitly banned under an unfair trading practices prohibition.**

<sup>27</sup> Council of the European Union, Press release (30 April 2024). *Circular economy: Council gives final approval to right-to-repair directive*. Accessed: <https://www.consilium.europa.eu/en/press/press-releases/2024/05/30/circular-economy-council-gives-final-approval-to-right-to-repair-directive/>

## Fair and accessible dispute resolution

Under the ACL, consumers have a right to seek remedies if their consumer guarantees are not met. They can initially approach the supplier or manufacturer and, if unresolved, escalate to regulators or pursue court or tribunal proceedings. However, accessing these remedies can be challenging.

Barriers to using dispute resolution include high costs (such as filing fees and expert report expenses), complexity, and lengthy processes in court or tribunal systems, deterring consumers from pursuing redress.

The financial and non-financial burdens often outweigh the value of the product in dispute, making legal action impractical for many. Our research into complaints in the telecommunications industry echoes this, having found that close to half of consumers with a problem in the past 12 months did not complain as they faced barriers such as overwhelm, a lack of knowledge and high costs in time and effort.<sup>28</sup>

As an alternative to tribunal or court actions, consumers may seek assistance from their State and Territory ACL regulator to help them come to a solution using alternative dispute resolution (ADR) processes.

To improve consumers' access to fair dispute resolution, state and territory governments should identify and enhance ADR options in each jurisdiction to better resolve complaints about the consumer guarantees.

## Consumer guarantee enforcement issues

In addition to enhancing the powers of state regulators to resolve individual disputes relating to consumer guarantees, there have also been calls to strengthen the enforcement powers of the ACCC for systemic complaints relating to these guarantees.

Currently, the ACCC or state and territory fair trading regulators are unable to seek penalties or court orders that would provide a specific or broader deterrent effect to industry to improve product performance against consumer guarantees. However, at the time of submission, the government has just commenced a consultation process regarding reforms to penalties if businesses breach the ACL under the consumer guarantees.

### **Recommendation 9. Make it easier for consumers to resolve complaints about faulty products and penalise companies that fail to offer fair repairs**

- Improve consumers' access to dispute resolution by enhancing ADR options for ACL complaints in each jurisdiction.
- Enhance regulator powers to enforce consumer guarantees and seek pecuniary penalties for businesses that repeatedly or egregiously fail to comply with the consumer guarantees requirements.

<sup>28</sup> CPRC (2024). *Barriers to effective dispute resolution in the telecommunications industry*. Available at: <https://cprc.org.au/report/barriers-telco-dispute-resolution>



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