



Australian Government
Productivity Commission

PRODUCTIVITY COMMISSION

RIGHT TO REPAIR - PUBLIC HEARING

MR P LINDWALL, Commissioner
MS J ABRAMSON, Commissioner

TRANSCRIPT OF PROCEEDINGS

MONDAY 19 JULY 2021

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COMMISSIONER LINDWALL: I've got a little bit of text to read out there. So good morning, welcome to the public hearings for the Productivity Commission inquiry into a right to repair. My name is Paul Lindwall I'm the presiding commissioner for the inquiry and my fellow commissioner is Julie
5 Abramson. Today's hearing was scheduled for Sydney so I'd like to welcome any members of the Gadigal and Eora who may be attending today and pay our respects. Being a virtual hearing, my old golden retriever Elodie is also participating so if you hear snoring you'll know where that's coming from.

10 The inquiry started with a reference from the Australian government on 28 October last year, we released an issues paper on 7 December, and have talked to a wide range of organisations and individuals with interest in the reference. We released a draft report on 11 June and have been receiving
15 post-draft submissions and welcome further submissions, preferably by 23 July. We are grateful to all the organisations and individuals that have taken the time to meet with us, prepare submissions and appear at these hearings. I would also like to thank Ana Markulev who was a team leader who delivered the draft report and then her first baby.

20 The purpose of these hearings is to provide an opportunity for interested parties to provide comments and feedback on the draft report, which will assist us in preparing our final report to be provided to the government by 29
25 October. Following these hearings in Sydney virtually, hearings will also be held in Melbourne virtually, and in Canberra in person and virtually. We will then be working toward completing the final report, as I said, which the government has up to 25 sitting days before it has to release the report under our Act. Participants and those who have registered their interest in the inquiry will be advised when the final report is released by the government.

30 We like to conduct all hearings in a reasonably informal manner, but I remind participants that a full transcript is being taken, one hopes. For this reason, comments from the floor cannot be allowed but at the end of the day's
35 proceedings I will provide an opportunity for anyone who wishes to do so to make a brief presentation. Participants are not required to take an oath but are required under the Productivity Commission Act to be truthful in their remarks. They're also to comment on the issues raised in other submissions, and the transcript will be made available to participants and on our website following the hearings. For any media representatives attending today some
40 general rules apply.

There is no broadcast of the proceedings allowed and taping is only permitted with prior permission. Participants are invited to make brief opening
45 comments, which will allow us the opportunity to discuss matters in greater detail. I would also like to ask all online observers and participants who are not speaking to please ensure that your microphones are on mute and turn off your camera so as to ensure minimal disruptions. So, with that, I'd now like

to invite Erin Turner and Dean Price from Choice and if you'd like to provide an opening statement and then we'll proceed with questions, so welcome.

5 MS TURNER: Thank you both for having us and thank you for the opportunity to appear here today. So, we strongly support the recommendations in the draft report, and I wanted to particularly call those out that are about providing consumer regulators with greater powers to resolve complaints, and the introduction of a super complaints power to help raise major issues spotted by consumer advocacy organisation. As you know, myself and my colleague Dean Price represent the consumer advocacy group Choice, we're a not for profit independent organisation that has been established for 60 years. We represent the interest of consumers broadly, and have strong connections to consumers through our membership, 195,000 members of Choice and over 200,000 people who work with us to explore issues and make positive change for consumers.

20 Now as I flagged Choice largely agrees with the draft recommendations, but for my opening statement I wanted to focus on areas where we see room for the commission to go further. So, I'm going to focus on two matter. First, issues with manufacturer warranties - particularly issues that lead to consumers never seeking to have an issue with a product addressed. And the second I want to focus in on is the information consumers need at the point of purchase. So, I'll start with warranty periods, and specifically look at how failures to inform consumers of their rights under the ACL are discouraging people from seeking repair or any remedy when a product breaks.

30 So, the draft report focuses on how some warranties discourage the use of independent repairs, and we agree, but we also see larger issues. We're seeing that warranties generally can discourage large groups of consumers from getting a remedy under the consumer law. So, we commissioned new research to better understand why people do or don't get a product repaired. In April and May we have surveyed 6571 Choice members and supporters, and generally I'd say these people have greater literacy about consumer rights than the broader population. We asked them specifically about any issues they faced with four products they owned; washing machines, TVs, microwaves, and lawnmowers, and what was really interesting is that most people who had a problem with these products never sought to get a remedy.

40 Only 24 per cent of people who had an issue with their washing machine tried to get a refund, repair or replacement, 15 per cent of people with a TV tried to get a remedy, 19 per cent of people with a broken microwave and 18 per cent of people with a broken lawn mower. And when we asked people, 'Well why didn't you try to get a remedy?' The most common answer was because the product was past its warranty period, 31 per cent of people told us that. And when we look at the comments what really worried me was that often these products could be just outside the warranty period, a few weeks, months or years, and with a product like a washing machine - say something

that might be five years old - something that we still see as well within that consumer guarantees period for a large piece of equipment that you want in your home.

5 So, what worried me is that this researching is telling us that warranty periods
in and of themselves could have a dampening effect on consumers seeking
remedy, and it happened in two different ways. First was a large group of
people assumed that a product failure occurring out of a warranty just could
10 not be addressed, and these are people who are quite literate with consumer
rights, they're Choice members. So, a good chunk of that group just assumed
that once the warranty period was over, they couldn't get anything. We also
had a lot of instances where manufactures or retailers strongly suggested or
told consumers that nothing could be done outside the warranty period, and
we see this all the time, timing a big factor for consumers.

15 People are relying on warranty information as a guide for how long products
should last and when they can get something fixed. And as you know this
isn't correct, the consumer law provides much greater protections, and there's
significant cost to consumers from the situations. People are repairing or
20 replacing at their own cost, we know that a lot of people are still paying for
extended warranties that add very little, or indeed nothing in addition to
consumer law guarantees, and some people are replacing products when they
don't need or want to. So, one idea we wanted to put forward to you today is
to expand draft recommendation 4.2.

25 We're interested in adding additional warranty text, or texts to that warranty
disclosure, that specifically lets people that goods should last for a reasonable
period, and that this can be - and often is - longer than the warranty period.
We'd love this language to be tested so to make sure it's as clear and easy to
30 understand for a large group of consumers. And we think there's also room
for more enforcement here. Manufacturers should be obliged to proactively
inform consumers of their rights under the Australian Consumer Law when
people contact them about product issues. There should be penalties for
businesses that fail to do so.

35 Right now, often it's just omitted; they talk about the warranty and they fail to
proactively let people know that the consumer guarantees sit on top of that.
If we added all of these interventions together, we know that more people
will get their products fixed more easily. Now I've talked at length about
40 warranty, but I do want to move before I finish to point of sale information,
particularly the usefulness of labels. So, for labelling I know that the report
looked at it primarily in relation to planned obsolesces. For us at Choice we
see as something that is useful to address a long-standing information
asymmetry between consumers and businesses.

45 People really want to know how long a product should be expected to last. I
was disappointed to read in the draft report a quote that said, 'Public

information on product durability or repairability is often readily available'. Our experience is that actually this isn't the case, there's some information available for consumers, but it's not comprehensive, it's not available on a lot of products where people really want the information - and I'll call out
5 whitegoods here - and it's definitely not available when people actually need to use it which is at the point of purchase. Now at Choice we do test products but we're primarily testing performance; how well does the product work when you first take it out of the box?

10 We collect survey data to help us assess durability, but that's not perfect, and we know that there's a lot of current gaps in information. For example there's no public and easily available consistent information about key parts and their availability, you know; how long are they going to be available for
15 people, how long will it take and how do you source them, are they available in Australia, what's the cost of these parts, are repair manuals available for third parties or consumers? And there's currently, as far as we're aware, no consistent testing done on how long products will actually run for. We're aware of procedures that exist for this, but we're not currently able to do this in our labs in Australia.

20 People really want this information. We conducted a nationally representative survey into consumers - what they want to know when they're buying products, 88 per cent of people support a labelling scheme that informs you at the point of sale about how long a product should last. They
25 really want it. 87 per cent of people would find it useful to know how long spare parts would be available for, and 86 per cent of people want to know how long software updates will be available for. So, we know from experience, particularly with the water and energy labelling scheme, that if you want manufacturers to improve the quality of products start by rating and
30 ranking them.

Consumers would really benefit from a scheme that ranked and rated products on durability and repairability. It would be even better if that
35 ranking was translated to a publicly available piece of information; a label, that let them see the information when comparing products. Over time we would expect manufacturers to compete where they saw that durability and repairability were factors that were influencing consumer product decisions. So, in our upcoming submission we will provide detailed views on how a labelling system for durability and repairability could start in Australia and
40 how it could operate over time. We think it can be done, and that consumers would really benefit from it.

So, I've touched on those two points, warranties and labelling, these are areas
45 where we encourage the Commission to go beyond the recommendations in the draft report, and in particular just to think about what information people need when they're buying products and when they fail. With that, I'll thank you and hand over to you.

COMMISSIONER LINDWALL: Thanks very much Erin that was very good, thank you. Could I just start on your second point which is about labelling. I mean behavioural research does show that it does have - people
5 can be overwhelmed with lots of information, so can you - I know you visit it in your submission - articulate how you see a labelling scheme? Maybe you can even reflect on whether the scheme used in France is something that's interesting, obviously it has durability and repairability and they're different issues, and maybe you could talk about which is more important in Choice's
10 view.

MS TURNER: That's multiple questions and I'll tackle them as best I can, but let me see if I've missed anything, because this is really, I think an interesting area. You're right, information overload at the point of sale is
15 common, we would all experience it everyday at supermarkets. The way I usually explain it to people is stand in front of the toothpaste section and try to figure out what you want. There are ways to do it well though, and I think there's a wealth of research that tells us what information and how to present it in a way that's effective for consumers. It needs to be simple and
20 comparable. So, it needs to be something - I guess there's probably two steps if you think about creating a labelling system.

One is that you need to find a way to rank and rate products. So, what factors go in, what weightings do they get and where do these products sit; what's at
25 the top and what's at the bottom. And you could put it more or less emphasis on durability or repairability as part of that, in fact you could technically have two different ratings systems: one for durability and one for repairability. I think our starting point is a preference for a blended system because they're interrelated issues. Now if you think about the best way to present that it's
30 typically with a score or an easy system, the star rating I think is actually one that is a perfect example of effectiveness the water and energy labelling scheme.

And there's two benefits, one is that a consumer can walk down an aisle or
35 even do an online comparison and just go five stars, three stars, two stars and know immediately where the product they're looking at sits in relation to others, so the information is really simplified. A lot of complex work has to go into the back end of that, but you just reduce it right down so that at a glance someone can put products side by side. But the other benefit for this
40 is actually a longer-term way of engaging with manufacturers and having a conversation about the quality of goods.

Now this won't always be important for all manufacturers and all products on
45 the market, not everyone is focussed on durability for all of their purchases or is able to prioritise that, but you will start to see manufactures respond to a rating system and adjust their products accordingly. The best example where we've seen it is in the water and energy labelling scheme. Years ago,

dishwashers weren't particularly water efficient, right now it is more efficient to put your dishwasher on than to hand wash your dishes. And I think we can strongly point to the water and energy labelling scheme as a big driver behind that. Once you start ranking and rating products and prioritising water use companies started to figure out how to do it better.

So, if we want to see better quality products on the market ranking and rating on durability and repairability will drive improvements for consumers of the type. Now I think you asked me to reflect on the French system, my broad take is I don't know yet, it's so early days. It does look like it's a more complex system than say something like a water and energy labelling scheme which is just one score, if you will, as opposed to multiple scores. And I think because it's the first system in the world there is dispute about what factors go into it, how much industry is self-assessing versus how much is independent information that goes into that ranking and weighting.

So, there's different ways to do it, I think if you were thinking about building an Australian scheme you wouldn't necessarily start by copying the French scheme, you'd use it for inspiration. And we've actually been giving some thought to how would you rank and rate products, there's ways you could start doing it. We could start doing using existing data sets, for example. So, Choice does have some information, product specifications, consumer survey data, data about points of failure and there's some international testing on durability like drop tests for mobiles or spray tests. You could also potentially bring in data internationally where products do have that international reach; and iPhone is an iPhone, you could do it for product categories, we could start doing that.

But, there's also information that would be really valuable, that stuff I flagged in my opening statement around are key parts available in Australia, how long are they going to be available for? If manufacturers provided that information, if we were able to get it in some way, you could actually rank and rate products more holistically. Now I'm not sure if I've answered all parts of your questions there.

COMMISSIONER LINDWALL: I will explore a bit more on that Erin. Firstly, so I take it from your views that you don't need an international system because that would take a long time, presumably, and - and that's a yes just for the transcript. So if Australia went down with its own scheme as you see it with durability and repairability, which agency? Would it be the ACCC? Would you see a mandatory scheme or - and if so, which types of products should it apply to? Would we have a pilot for it or how do you - I mean, how was the energy and water initiative set up initially? Was that something which (indistinct).

MS TURNER: Actually, yes, and Choice was really heavily involved in that. So what I think is interesting about the water energy labelling scheme: it was

a genuine partnership between parties like Choice, manufacturers who were providing information, and governments who helped set up a system. Now, there's lots of ways to start this. Technically, Choice could just start doing this. We could start ranking and rating products on durability and
5 repairability. Obviously I'm not saying that that's the best idea. We don't want to go off into a corner. We actually think a genuine partnership would be the most effective way forward to find something that really works and is fit for purpose for Australian consumers. And there's lots of different inputs. Technically you could have product testing.

10

There's some really interesting work that's coming out of the EU where they've developed testing procedures for longevity tests. Not something we're currently able to do in our labs. We'd primarily test for performance out of the box, what happens, does it work; does it not work. We aren't able
15 to run products for long periods of time just to see - not just does it work, but how long does it work until it fails. There are testing procedures and there's ways to do it. So you could incorporate some of that and I think it would be interesting to think about applying that to products where people really want to know longevity, and I'd say that's the big products in your home: white
20 goods. For other products it's about availability of parts or software becomes more important.

I'd say that's technical goods: smartphones, laptops. We could actually start building a ranking and rating scheme using a lot of base information that
25 Choice has. So as I mentioned, we've got the reliability survey from Choice members that goes back well over 10 years, and with that we know what products are more likely to fail and what parts within those products are most likely to fail. For example, with your fridge it's most likely to be the seal or the fridge shelves themselves. Based on that you could then ask, well,
30 manufacturers, how long do you keep those two essential parts. You could start building a ranking and rating scheme. There's likely a pilot process to start to develop this, though. We think it could be done with a range of agencies. You could have the ACCC look after it. You could have a federal department focused on environment and energy look after it. There is a role
35 for working with manufacturers (indistinct) as well just to understand the different information that they have.

COMMISSIONER LINDWALL: I think, there's someone not on (indistinct) mute. Yes, that's better. Erin - sorry.

40

MS TURNER: That's okay.

COMMISSIONER LINDWALL: I got what you were just saying. Now, the - so you do see it as a (indistinct) scheme. We might have a pilot, but
45 ultimately it would have to be a requirement for whatever products you would have (indistinct) comparable obviously. But it ultimately would be the

manufacturer who would put the label on according to that standard; is that right?

5 MS TURNER: That's right. And look, obviously we'd love you to recommend a mandatory scheme starting as soon as possible, but if you did want to explore a roll-out process, the way I'd see it staged is there's a development and piloting process, and that's where you figure out what products is it going to be most valuable on; we've got a good idea, but you could sharpen that thinking a little bit more. What aspects go into a ranking and rating system and what weightings do they get and how does it appear. 10 So that's a pilot program. Then you could have a period where this information is out in the public but not necessarily on goods, and it's a ranking and rating system but not a labelling scheme yet. Potentially then a review and intervention, and then a mandatory labelling scheme.

15 So there is a gentle rollout phase taking however long based on however many resources you throw at this. It's quite an achievable feat, and I think the benefits of an Australian scheme is that it is going to take into account some very Australian aspects to repair. Distance is the big one. When we 20 ask people about any frustrations they have, actually we're starting to see, in particular, some people are noting that there aren't spare parts available for some products, and this seems to have become more acute in a pandemic world, but also just the time and distance it takes to get something fixed. Be great to be able to incorporate that into an Australian system because it's 25 something that if you went international, it just wouldn't be considered.

COMMISSIONER LINDWALL: I will ask one more question, then (indistinct) to Julie, and I've got more, but I just thought I had better give Julie a bit of a chance. So my question would be around how do you see the 30 interaction of durability in a labelling scheme versus consumer guarantee versus the warranty. I mean, say, the warranty could be two year; the guarantee could be - I don't know four years; and the durability could be 10 years hypothetically. Would they be always ascending like that or - and then, I suppose - I always ask multi-part questions. How would that interact? So if 35 I'm a manufacturer required to put on a durability estimate on my machine, my product, would that affect what I would - because I know that would interact with guarantee, would I tend to put a lower number because I would like to not expect people - or people to expect there's a long guarantee?

40 MS TURNER: Definitely, you also might see providers going further and competing on that, going for a higher number. Now, in terms of warranty, consumer guarantee, durability, I think what our research is showing is that warranty complicates it and often is adding very little in addition to a consumer guarantee. These two systems sit side by side and they confuse 45 consumers. In my perfect world - and I don't think we're going to get to my perfect world - it would be ideal to get rid of the concept of a warranty and just have consumer guarantees. It would be clearer; it would be simpler. If a

company wanted to go above and beyond very specifically from the consumer guarantees, that would be useful, but what we see in most markets now is a warranty is obviously much lower than consumer guarantees. It will last for a year or two years.

5

And consumer guarantees could last for five, seven and be much more expansive, not specific to parts or elements of a product. This is where consumers get really confused because if when they're buying a product they're told, for example, the drum of a washing machine has a warranty for five years, the other parts has a warranty for three, that's the number that they're anchoring when they're - when something goes wrong, they go oh no, it's three years; it's over; it's done with. And it's really hard then to have that conversation about consumer guarantees. So, I guess, you know, ideal world: ignore the warranty; go for consumer guarantees and a durability point. In terms of manufacturers providing that information and where you want to peg it, I do think something around a consumer guarantee is actually the most useful information for people to have.

Essentially, if you think about it, it's the information people want to be able to respond to when something goes wrong. If you, say, have a sticker on the front of a washing machine and it says, you know, this gets four stars for durability and repairability and we expect it to last for 7.5 years before - you know, we will repair and assist you for that period of time. That's the number that they want to be able to look at once the water starts leaking out on the floor. They need to be able to anchor it to that. A durability number, I think, is important, but perhaps could be put into an overall ranking or rating system.

COMMISSIONER LINDWALL: Julie.

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COMMISSIONER ABRAMSON: Thank you, Erin, for your presentation. I have a couple of questions about the labelling scheme; and then, Paul, I have a range on the enforcement, but we might come back to that and just deal with the labelling scheme now. Erin, how would we make a labelling and durability scheme meaningful? And the backdrop, which will be no surprise to you given what I normally ask you about, is that whenever there's legal obligations, what usually happens is that people become super cautious because they can be done by the ACCC for misleading and deceptive. So how would we get to a situation where the information is meaningful rather than a manufacturer saying something like, you know, your product may last between X and Y and it's a range of - I don't know - two to three years or something. So how would we manage that issue?

MS TURNER: I think it's a really good point. So I think there's a range of things you'd need to think about to make it meaningful. The first one is to put it in the hands of consumers at the point they need it, which is point of sale. So we really do like the recommendation that the ACCC develop

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5 guidance about consumer guarantees and how long products should last; it's just we see that as the baseline. People really need this information to make decisions and kind of counter that information of symmetry, you know, in store. And in terms of how you do it, I guess I wouldn't leave it up to manufacturers. I would structure something very similar to the way we structure the water and energy labelling scheme.

10 It's not up to manufacturers to put the number on their system; it's actually a really clear - you know, they can figure out what the number. Is it four or is it five. But the scheme itself has been set up by an independent agency. It's been built on testing. There's wide agreement about what factors go in and consistency about that. And there's also testing to hold companies accountable for it. Choice often conducts a lot of this testing and we do find that sometimes companies have fibbed a bit on their energy testing or haven't quite got it right on their water testing, which is really important. So if you're going to make it meaningful, it needs to be transparent, standardised, and there needs to be an element of accountability. I don't think industry alone can do this. I actually think it needs to be done with industry, consumer groups, and government in partnership.

20 COMMISSIONER ABRAMSON: Erin, thank you. Could you do – and this is just an idea; it's not a view of the Commission, but just an idea – as you know, we look very closely at product stewardship schemes. So, could you have a similar system, which perhaps had some backing in terms of what is required, but the industry could develop a code? And I'm just using the words in a general sense.

30 So if we have something for, in particular, whitegoods, rather than having a situation where the ACCC is out there, working on each individual product – as I said, this is just an idea, and I'm just floating it for the purposes of our discussion.

35 MS TURNER: I actually think there's real benefit to thinking about it like that, code development. I guess I wouldn't leave industry to do it alone. That's my (indistinct) experience of code development across the board, from financial services to fridges: don't leave industry alone. I think there needs to be a balance of interests in a code development process, and ideally one that's overseen by a regulator.

40 COMMISSIONER ABRAMSON: Yes.

45 MS TURNER: Industry needs input, though. They know these products in a way that even groups like Choice, who test these every day, we don't necessarily know what they know. There has to be a meeting of minds. And I think, thinking about by categories is also quite important. The way you would rank and rate a dishwasher is really different to the way you rank and rate a laptop.

5 And you might – I think if you’re thinking about building and developing this, you would definitely want to start with some categories that are more urgent and more important to people, and perhaps build over time. I wouldn’t with a toaster.

10 COMMISSIONER ABRAMSON: Erin, you might help us with what product you think, at Choice, which I have a fair idea, because you kind of listed them, as to where you would start with such a scheme.

15 MS TURNER: Definitely. I think there’s kind of a few different scrutinies. Laptops and smartphones is where people have a lot of anxiety, and there’s a lot of international information. There’s a bit more standardisation of products. An Apple is an Apple is an Apple; from Australia, New Zealand, America.

20 So you can build a bit more of an – you can build a scheme for Australia, but that draws on international data. It’s different for something like whitegoods, but that’s actually – these are products that people really want to last, and where durability and repairability play a very different role. You do have a software element, but it’s not as strong.

25 So, yes, I would start with those categories. And then there’s some that I think I would consider for early inclusion, even though they may be less obvious; lawn mowers. In talking with our experts at Choice, what we’re seeing is that, particularly for electric lawn mowers, there doesn’t seem to be a lot of ability to repair, with lithium batteries. They seem to be proprietary. You can’t take them in and out.

30 So it might be a category where you would want to start developing that a little bit more, to encourage better practices over time. So they’re kind of the broad areas where – if we were – if it was up to Choice alone, that’s where we would start.

35 COMMISSIONER ABRAMSON: Thank you, Erin. I just have one final question on this, Paul, and then we might turn to some other questions. iFixit does actually have a rating for ease of disassembly and repair. Erin, are you familiar with that, and do you have any comments on that?

40 MS TURNER: We are familiar. We think it’s excellent. And if we were looking at, say, building a ranking and rating system for a smartphone, should iFixit wish to provide that information – and they are really focused on public good – I don’t want to speak for them, but I do think (indistinct) excellent.

45 COMMISSIONER ABRAMSON: They are appearing later today, which is why I’m just asking you now.

MS TURNER: Well, definitely ask them. I think it should be one really important input to ranking and rating this product.

5 COMMISSIONER ABRAMSON: Thank you. Thanks, Erin. Paul back to you.

COMMISSIONER LINDWALL: Yes, all right. We might go back to (indistinct), but if we can now talk about guarantees. And I know that in
10 your ideal world, you would have guarantees only, and not warranties. I guess my point would be that a lot of people would like the warranty, because it's pretty clear. It's a defined period. The manufacturer or retailer will take it in that period fairly clearly. And it's a bit of a hassle, going to the consumer guarantees.

15 So, can we talk a bit about enforcement of consumer guarantees? Now, we have spoken about super complaints. Well, that is good for systemic issues, that – a lot of things. But if I'm the individual consumer, and I want to exercise my guarantee, currently (indistinct) go to the retailer, and they might
20 say, 'Well, stuff off. That does happen.' But – and then I might take them to court. Well, that's pretty expensive, so I'm not likely to do that.

So perhaps you could (indistinct) an alternate dispute resolution schemes. And we did mention it in the draft, the New South Wales and South
25 Australian schemes, but is there a good way of doing that that you can think of?

MS TURNER: Yes. And actually, I thought the thinking in the draft report was really exciting, and we did agree with where the Commission was
30 heading. Kind of a bit more nuance to that; in terms of the South Australian example, in terms of compulsory conciliation, I think that's better than the current state.

35 It's definitely an improvement on just having to go to a tribunal and leaving consumers to kind of go it alone, particularly for lower value goods. But we do have a bit of nervousness around compulsory conciliation. It doesn't quite address the imbalance of information (indistinct) between businesses and consumers.

40 Businesses know more – a lot more – about this. They have legal advisors. And a consumer typically – maybe they know about the consumer law. If they've reached that stage, they probably know a little bit. But they definitely – the difference in firepower is quite extreme. So, compulsory conciliation can still to lead to outcomes where, even if a consumer is happy,
45 is it what the law sets as a standard?

I (indistinct) differences, but I guess I'm nervous that conciliation alone isn't quite right. We think the enforceable directions power in New South Wales is a really clear and strong solution. But like you also flagged in your draft report, we're not sure if it's being used. Anecdotally, we've not heard from
5 any consumers who have engaged with the enforceable direction power in New South Wales.

Typically, that's not a pathway I've actually heard of anyone using before. I would really like more information from Fair Trading New South Wales
10 about, if it's used, how often, and why. Purely from an academic lens, I think tying it directly to the Commissioner might restrict the ability and the instances of when it's used.

It would possibly be better to give it a much broader power for the
15 Commission as a whole to use, rather than restricting it to an individual. But overall, enforceable direction is excellent, and every state and territory should have them.

20 COMMISSIONER LINDWALL: What about the ACCC? What role should the ACCC in enforcing this, if any?

MS TURNER: I mean, I'm always going to say more, but obviously more
25 within resources and limitations. I do think it's the strength of our current system, that people can get direct assistance at the state and territory level, and that the ACCC takes an umbrella view. I'm not sure if it has necessarily a much stronger need for it to play in direct individual conciliation or addressing those problems.

30 But there is a big information gap. Something that we think New South Wales Fair Trading has done incredibly well, and would like to see rolled out to every state and federally, is just letting us know how many complaints are received, on what issue, from what businesses. And that in itself has a strong influence. Businesses that want to do better will see, panic and act.

35 And it also helps other organisations – whether that's regulators or groups like Choice – prioritise their work, as they're starting to (indistinct) better data about the problems that are coming through. I do think there's a role for the ACCC to take a greater position, and to do more work in releasing public
40 information about the nature of the complaints they and other consumer regulators receive, and be really specific; 'I want the New South Wales Fair Trading Register, complaints register all over Australia.'

45 I think that could help us in a range of different ways, and around right to repair as well. You'll start to see those companies that consistently deny people remedies for consumer guarantees really feature strongly, and that starts to really bring some good quality pressure.

COMMISSIONER LINDWALL: So it's sort of like a name-and-shame list, then.

MS TURNER: That's it, a name-and-shame list.

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COMMISSIONER LINDWALL: And is there evidence that that works well, do you know?

MS TURNER: We've seen it practically work really in New South Wales, and in different ways. So we've certainly heard directly from business groups about anxiety about appearing on the list. And sometimes that might be expressed as, 'It's unfair that we're on the list.' But then you do see efforts made around education for staff, and those businesses drift off that list.

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In other cases, you do see more recalcitrant businesses appear consistently. The one I feel very comfortable naming is Bio Go Go. It appears again and again. But that creates a different solution, then. So, New South Wales Fair Trading just announced that they're – it's getting an investigation based on the number of these complaints.

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So you either see this regulatory action path – consumer groups are able to use that information, just like we're able to use it to target our efforts, to know that, if more people are experiencing this problem, and we've got this really good data set, we can do more, in terms of investigation. And then sometimes, businesses just fix it themselves. The shame element works.

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COMMISSIONER ABRAMSON: Of course, Erin, we looked at this, or I looked at this in 2017, when we did that enforcement overview. One of the issues with the list is really around franchises.

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MS TURNER: Yes.

COMMISSIONER ABRAMSON: So, if you're a franchise business, everybody's brand reputation can be tarnished by just one franchisee causing the issues. So, whilst, I think, in that report we were very interested in the name-and-shame list, it's not without some difficulties in how you actually do it, so that it's fair to other players.

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MS TURNER: I don't disagree, and I think the way through that is to find a way to express the information simply, and then with the next level down detail.

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COMMISSIONER ABRAMSON: Yes.

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MS TURNER: Harvey Norman, for example, a large franchise - - -

COMMISSIONER ABRAMSON: Yes.

MS TURNER: It's useful to have next level down to know that, are the problems specifically to certain areas and stores.

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COMMISSIONER ABRAMSON: Could I just ask a question, if that's all right, Paul, about the warranties. You made a very interesting comment – all of your comments are interesting, Erin, but you made a very interesting comment earlier about the manufacturers being obliged to give more information about the warranty, particularly saying that the consumer guarantees could be longer than the warranty.

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And one of the things I think that you were actually talking about there is the curious way – well, it's not curious, but the way our law our works is, it doesn't really ping people for the sins of omission. So if you make a statement, then it can be targeted as a misrepresentation. So I'm just interested in hearing – I mean, I think I understand the reasoning behind this, Erin, so I'm just interested in hearing a little bit more about how you think that would work; whether you're saying the law should be amended in some way.

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MS TURNER: In short, yes. So the first thing I think we could practically do is amend those regulations. And you put forward some really clever amendments to the idea that warranty disclosure that's mandated in the regulations – I think you could add additional information there. Something that's currently missing in that text is any reference to length of time for consumer guarantees. It just says that there are rights under the consumer law.

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And I think what's often missing there is that sense that the warranty number and the consumer law guarantee number: it's often very, very different. So an indication there I think would be helpful. So that, I think, is one very simple amendment. I do think that there's room to amend the law, to make businesses more responsible for what you say is the sin of omission, and it happens so often.

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COMMISSIONER ABRAMSON: Yes.

MS TURNER: And sometimes it's not even a sin of omission. Sometimes we hear from consumers that it's just an outright lie; that you are only able to get this, and you're only able to rely on the warranty. So I'd say there's a spectrum of behaviour, and it's really consistent, and it's a fairly widespread problem.

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Now, I do think, if you're thinking about shaping this, I wouldn't say that one issue is enough to initiate a business penalty. Because I do think there's – if you're thinking about the spectrum of behaviour, on one end, there's

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probably a new staff member, it's their first day, and they've given (indistinct) information. It happens. I don't think it should, but I think it's a relatively low-level issue.

5 On the other end of the spectrum, it's stuff we see where businesses consistently just deny that people rights under the consumer law. They do it consistently, they do it in writing, and they do it to almost everyone who makes a complaint, and sometimes products that are failing again and again. The car market is the obvious one. But I do think that there are other
10 businesses; I'd say particularly tech. We see it a lot with laptops. Businesses are really – they're doing this every day. It's part of their strategy.

15 COMMISSIONER ABRAMSON: Erin, I might be wrong here, but aren't the attorneys looking at something around the penalties that at the moment? Wasn't there something that CANS is looking at?

MS TURNER: I'm still getting my head around it myself, because I think there's been some changes with the COAG arrangement. So I'm not sure what the agenda is. I am aware that there's legislation around adding
20 penalties for unfair contract terms.

COMMISSIONER ABRAMSON: Yes, so that's what your – yes.

25 MS TURNER: Which is great, and we would love. But I do think there's something broader here. It's something very specifically – I think it should be a positive – if I could draft it, just today, the way I would draft it is require a positive obligation on manufacturers. When someone says, 'I've got an issue with my product,' you have to proactively say, 'You've got rights under the Australian Consumer Law,' so kind of intervene in that omission point.
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And where you see a repeated failure to do so, that's when there should be fines and penalties attached. I think it's something that the ACCC should have the ability to issue fines immediately, and then there should also be the ability for legal interventions.
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COMMISSIONER ABRAMSON: Erin, just one final thing – thank you for that – on the mandatory warranty checks. Do you know, is there some history here, why it doesn't refer to the consumer guarantees? Because in lots of areas of the law, it has developed now where you've got to tell people certain things.
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MS TURNER: Actually, I went through the regulations, and I was reading through it, and I was surprised that it didn't. Now, my history in the consumer (indistinct) doesn't quite go back far enough to those regulations. I'm not aware of the reason why.
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COMMISSIONER ABRAMSON: We might harass Mr Kirkland, give him a project in lockdown.

5 MS TURNER: I'm happy to make this an Alan Kirkland activity and task. I'm sure he would take it on. But, yes, I'm not sure why; for me, it just feels like it was an oversight at the time of drafting, and it's an obvious inclusion, to put that information in.

10 COMMISSIONER ABRAMSON: Yes. Thank you, Erin. Back to you, Paul.

15 COMMISSIONER LINDWALL: Well, Erin, on that point, if manufacturers were required under – to put in the text of the guarantee, 'Under this consumer guarantee' – it was X years or something, would that obviate what we're talking about in our report, about the ACCC providing guidance on guarantee periods?

20 MS TURNER: I actually think the ACCC work is a starting point. I would say it's the first thing that needs to happen in order for the manufacturers to get more specific. It should be used as a baseline. I think it's actually – it's really important work, and it's work that only the ACCC, which is able to work closely with manufacturers with a consumer interest and with consumer advocates – they're the right organisation, and I think it's the right task. It's then just thinking about, what else do you build on top of that to give people
25 the information they need when a product breaks?

30 COMMISSIONER LINDWALL: Now, I'm going to change tack a little bit here, Erin, and ask you right out: what do you mean by a right to repair? So in terms of what we've now been asked to look at – right to repair – what is the right to repair?

35 MS TURNER: I don't know. My long answer is – actually, right to repair is a shorthand, and it's used to describe a series of connected, complex problems that consumers, and people who want to repair products more broadly, face. I would say it's often around a series of issues where large players are using market dominance, market power to stop people from getting cheaper options or engaging with products in the way that they want.

40 But it's not one thing. It's actually – I really enjoy this debate, and I've enjoyed engaging with it, because it's everything from intellectual property issues to labels on the front of washing machines. So it's very broad. And I actually think the draft report has done a really good job of reflecting the breadth and complexity of the debate.

45 COMMISSIONER LINDWALL: Now, in terms of – you mentioned batteries, and I've had the frustration myself, where you get a bit of a consumer lock-in, obviously, from different brands, because we've invested

in the lithium-ion battery. And that was also a similar one to argue, with chargers for mobile phones. So, for example, (indistinct) move forward to a USB-C type of port, rather than the individual ones, that are quite different.

5 That has happened a lot by just the market evolving, rather than (indistinct) pushing it. So, would any of the things that we've been talking about encourage, say, batteries to become more standardised, or is there something that needs to be pushed in that direction? I would suspect that more and more things will be driven by batteries, obviously, and (indistinct) the
10 forecasts of the electronic, or e-waste, (indistinct).

MS TURNER: If you wanted to hit this issue quickly and aggressively, you could have product design obligations that require interoperability and thought around stewardship and longevity. That would deal with this
15 problem, which I think is still emerging, and in different categories, fast and aggressively. As a consumer advocate, I would say that's the ideal. But I also recognise that there's costs and benefits that you're weighing up.

And kind of – on the other end of the spectrum, information here is going to
20 start to move markets. It's where we – a labelling system does a lot of things really effectively. It's one of the reasons we like it. It's going to deal with a lot of problems that people are facing, just through that soft influence of ranking and rating. So, for example, if you have a category like lawn mowers, and they have batteries that can't be replaced, or that aren't
25 interoperable – so you know it's using a proprietary battery – you could penalise them for that. And some manufacturers are going to respond to that.

It depends on the market; it depends on how much consumers are placing
30 into that in their product decisions. So bringing all that information forward, ranking and rating, it's going to start influencing this market. So there's ways to address it in softer ways, and there's a way to deal with it today; go hard. It depends on overall cost and benefits, and where you sit.

COMMISSIONER LINDWALL: Could I go back to the guarantee point,
35 about, if durability of a product – hypothetical product – is 12 years, say, what do you think a typical guarantee period should be? Now, forget the warranty; it's the guarantee. Should it be – and we're talking about guarantees from different directions, so I want to explore it a bit. One is about the provision of spare parts, or for updates.

40 One is about free servicing; replacing things and repairing things at the manufacturer's cost, rather than the consumer's cost. So, where do you draw the line there? Because I'm not entirely convinced that if a product is likely to last 12 years, and it goes awry in eleven and a half years, that the
45 manufacturer should pay for the entire cost of the repair.

MS TURNER: No, I agree. And I actually think this is where the work the ACCC could do could be quite useful, because it is really untangling product by product how long is a manufacturer responsible for this versus just how long can it run. And we've got examples where - actually one of our Choice members who joined in the first year of Choice who's been a member since, I think, around 1960, still has a washing machine going, and there's a big difference for how long that washing machine's manufacturer should be responsible. Like, the manufacturer should be engaging with that versus just, like, how long can it keep going. I think it's complex; it's product specific, and even within that product category it's price and brand specific. So there's layers to it and I think it needs some deep thought, and the ACCC is the right body to do it.

COMMISSIONER LINDWALL: Yes. Well, that's right. And I think we will have to reflect on that. Now, it's interesting what you say how things last because I was reading the other day that in the United Kingdom - of course, they have a television licence and it's £55 a year for the black and white televisions and £135 for colour televisions. Now, apparently there's still about 15,000 people with black and white televisions which seems rather amazing to me, but that's by the by. Could I go back to super complaints.

MS TURNER: Yes.

COMMISSIONER LINDWALL: Now, we haven't yet had testimony from the ACCC and presumably it will put a submission in in due course and say what it thinks about super complaints. But how do you think the ACCC is likely to react to our proposal for super complaints and when you've spoken to the ACCC, did you get any pushback or do they like the idea?

MS TURNER: Look, I think they recognise it as part of a suite of powers that help make the consumer movement and the consumer outcomes stronger, and I'd hope they'd say that. Obviously we support this and we've supported it for a long time. We see it as one of those protections that just can catch those long-running tricky sticky problems, and that really takes advantage of the grassroots nature of parts of the consumer movement. Now, we have a really strong relationship with the ACCC. I'd say that they regularly pick up issues that we raise as problems. They're really responsive to the consumer movement as a whole, but what super complaints adds is a formality and a weight, particularly where issues have kind of been trucking along, but they need a bit of force to deal with something really sticky.

An example for us actually came up on Friday, so we issued a release because we've been doing portacot testing. We found that these portacots - a number of them failed key safety standards, some mandatory standards, some voluntary standards, but the end result is that a number of these products have strangulation, suffocation or other risks that could seriously harm an infant. Obviously it's that level of order of problem that you want to be dealt with

quickly. Now, we keep seeing these issues pop up in the portacot market, and the ACCC takes action as best they can one to one, but if I was thinking what's one thing I would use a super complaints power for tomorrow, it's probably something around safety standards around categories like this. So we see persistent problems year after year.

And interestingly, there is - I promise there's a right to repair connection. It's not just about the safety standards. There's often this tricky question around safer portacots. A number of manufacturers haven't initiated a recall, so these people are still using the product. The manufacturer denies there's a problem. Our testing says there's serious suffocation risk; stop using this. But in terms of being able to get a refund or repair or replacement is probably less likely in this scenario, people will struggle in going back to the manufacturer. So there's this interaction between consumer guarantees and product safety that isn't always clear.

COMMISSIONER ABRAMSON: Of course. With the product safety, Erin - the product safety - we did try to actually - if I may put in a (indistinct) for the PC, we did actually try to resolve that by putting powers with the ACCC to deal with it, but at the moment, as I understand it, the stakes are still heavily involved and are the ones that issue the banning orders. So I'm just quite interested in getting this link with the right to repair which you started to talk about because, of course, in my mind I think about product safety a bit differently because I think, well, it's different parts of the law; it's even more complex because it involves the states and territories. So the link to right to repair is pretty interesting when you're talking about the super complaint because I don't think - and I'm just speaking quite directly here. We hadn't thought about the super complaint in the world of product safety; we had thought about it in the context of the consumer guarantees, but you're inviting us to look a bit more broadly from what you're saying.

MS TURNER: Yes. And actually, I'd say typically when we think about the kind of issues that we'd want to raise, they are going to be the really complex ones.

COMMISSIONER ABRAMSON: Yes.

MS TURNER: And that kind of behaviour - usually it touches on several aspects of consumer harm: it will be misleading and deceptive or relate to consumer guarantees, also potentially around product safety. And it kind of goes to what a super complaint is for. It's for those issues that are incredibly harmful and incredibly complex. So only limiting them to consumer guarantees, I would welcome that; there would be great improvement. But actually the issues we see - they often span a series of harms.

COMMISSIONER ABRAMSON: Yes.

MS TURNER: So you'd want it to be as broad as possible capturing, I'd say, every aspect of the consumer law in order to bring forward things that are complex and really do need that partnership between consumer advocates and regulators to solve.

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COMMISSIONER ABRAMSON: Erin, what's your experience been with the UK regulator because the financial services regulator over there - a number of their regulators have this power and they've had it for a considerable period of time?

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MS TURNER: So we often work quite closely with our counterpart in the United Kingdom and they don't actually use this power very often. I think that's a really good sign.

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COMMISSIONER ABRAMSON: Yes.

MS TURNER: They use it respectfully and as needed, but when they do use it they really value it. They find it's a way to particularly jump on issues that are emerging and that need to be dealt with quickly, and that it helps them to deal with it properly. I do think - what I really like about the UK regime - it probably goes to our views overall with super complaints - it's multiregulator because quite often the problems that you're catching might be - one regulator might be responsible; another might be involved. It extends to the financial services system and we would definitely value that. We see a lot of problems in financial services that could really use super complaints powers. We did actually issue a 'mega complaint', not a super complaint, just a few months ago on timeshare scheme because we see these protracted - - -

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COMMISSIONER ABRAMSON: Timeshare schemes.

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MS TURNER: I know.

COMMISSIONER ABRAMSON: I think your colleague Gerard probably has a view about that - those issues. I suppose I need to stick to my terms of reference here, Erin.

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MS TURNER: I can take you all over the place on this.

COMMISSIONER ABRAMSON: No, I'm just interested in that broader thing. But what do you think it is about super complaints and your access to information that is not available to the regulators? And I suppose I will be a bit leading here. I would say that sometimes in the regulators, my experience has been there can be a whole lot of complaints, but they don't necessarily join the dots. So is that the type of thing you're thinking about?

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MS TURNER: Yes. Look, I actually think what's great about super complaints is it forces consumer groups to do work in a certain way. And this is a good thing. It helps us go, like, look, if this problem is this big - - -

5 COMMISSIONER ABRAMSON: Yes.

MS TURNER: - - - what effort - we would actually have to go to quite a degree of effort to bring together a super complaint, to get the evidence, to make the case, and then tell a regulator that this is something we need you to deal with in a period of time because of the acute harm or the nature of the problem.

COMMISSIONER ABRAMSON: Yes.

15 MS TURNER: So it actually - it helps guide consumer groups, direct resources and bring together information in a way that we do a little bit of, but actually gives it structure and formality that I think is quite helpful. And then I think the big advantage for regulators is they're getting this information in a prescribed form. They're able to be guided by groups that have
20 connections with consumers in ways that they don't. And obviously Choice has members and supporters and we'd be using a broad network, but I actually think consumer groups that have really deep connections with people who experience vulnerability or in certain areas of Australia - they do really great things with super complaints powers.

25 They bring forward issues that otherwise don't get a look in. And then the timeframe. That's the bit that I think is really exciting and that works really well in the United Kingdom. Sometimes when you raise a problem with a regulator - and I'd say actually the ACCC is very good about this, but some
30 regulators can take a lot of time to just slowly assess an issue, and when an issue has weight and urgency and the harm is ongoing, the timeframe is really important.

COMMISSIONER ABRAMSON: Yes. So you see a real time advantage - -
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MS TURNER: Yes.

COMMISSIONER ABRAMSON: - - - and then it's the ability to join
40 consumers who might not otherwise be - well, I've always thought it's - people don't realise that somebody else has the same problem as them until someone joins the dots for them. So it's your consumer reach that really you're talking about.

45 MS TURNER: Definitely. And another example that might be useful to think about is the work Choice did several years ago with Thermomix. Again, a product safety issue, but also a consumer guarantees issue.

Multipart. Misleading and deceptive as well. We heard from a lot of people who - you know, this product exploded on them.

COMMISSIONER ABRAMSON: Yes.

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MS TURNER: They'd talk to the company and in some cases were required to sign an NDA [non-disclosure agreement] to get any remedy. So these people were deliberately silenced by this company and couldn't connect with others. It was only until Choice started to work with various groups that were affected and uncover it, we saw the breadth of the issue, and the ACCC did act. They took great action against this company. But I think a super complaints power could've helped us do it even quicker.

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COMMISSIONER ABRAMSON: Yes. And the interesting thing, without being particular to Thermomix, is where you don't actually have a direct distribution, if you've got a retail front it's quite - it's easier because you know if you're complaining about a product at a particular store well they can collect that sort of information. But some of the products, like the one you just mentioned, is a party plan type distribution as far as I'm aware.

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MS TURNER: It is, yes.

COMMISSIONER ABRAMSON: Yes, that's been very helpful thank you Erin. Back to you Paul.

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COMMISSIONER LINDWALL: Is it legal to have a nondisclosure agreement if you take a repair that, 'I'm going to give you a repair as long as you don't speak about me'?

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MS TURNER: This is one of my favourite issues, and I'm very glad you raised it. Technically our view is, the law doesn't specifically prevent it, I think it's one of the most incredibly harmful things a company can do. And we've seen it used in ways where someone is just trying to get their consumer guarantee rights and they're required to sign an NDA in order to get a refund, a replacement or a repair and I think it's outrageous, that's a company trying to silence a consumer from talking to other people who have the exact same problem.

COMMISSIONER ABRAMSON: Mind you though if the regulator comes along an NDA doesn't stand against a regulator asking its particular questions.

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MS TURNER: No, exactly and that's what happened in the Thermomix case. I think what it's more likely to do is prevent groups like Choice talking about the remedies that people can get, but the individual can't discuss it, and it prevents people from connecting with each other and even just having those chats say on a Facebook comments thread like, 'I got a refund, you

should be able to get one too'. That's really powerful and the company is squashing that.

5 COMMISSIONER LINDWALL: Now I want to explore a few things, and you may not have much to say about but just in the remaining time. So, before I do that could I encourage you - in your submission to clearly define what you mean by repairability, and durability, and other terms from your perspective so that it can help us.

10 MS TURNER: No problem.

15 COMMISSIONER LINDWALL: Now, as you know in the report we've also talked about things like changes to intellectual property, copyright law and also a positive obligation for the provision of repair manuals and spare parts and so on to third-party repairers. So, is there anything you can talk about in terms of independent repairers versus authorised repairers, is that of interest to Choice?

20 MS TURNER: In terms of kind of the back-end elements, like can they access the information they need, this isn't an area where we have strong expertise. We mostly over that consumer experience and I will say that we've got consumer comments and information from people who have used both authorised and third-party. We'll provide some analysis in our report, but we see issues in both, it's not that third-party is awful or excellent, or authorised is awful or excellent, it really does depend. People have frustrations with both. I think providing more parts, more information, and more repair tools to third party will address a lot of the problems that people are seeing. So I can't see a reason from a consumer lens not to do it, it would actually be incredibly helpful, and could actually deal with some of the frustrations -

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30 we'll bring forward this in our submission - we have got some information from our members about particular frustrations that people experience in regional and rural areas.

35 Because quite often authorised repairers will be very confined to a certain locality. There might be a repairer who can do it in their area but there's not someone who's authorised to do it. So, it leads to delays, and frustration, and it would just be more useful. On the intellectual property matters, again I think that's more an issue that the repair groups would be able to talk about in detail. But broadly, as you'd know from our history talking with you, and

40 working with you, we think the Copyright Act has a lot of room to improve. Moving to a fair use model, more broadly, would really benefit people, and it would stop large companies misusing the Copyright Act. The way that I kind of interpret some of these things that are happening, this is companies

45 throwing their weight around and using the law to do it, and they shouldn't be able to.

COMMISSIONER LINDWALL: And your point that you mentioned, I just want to be quite clear about that, there is no evidence from your point of view that authorised repairers are systematically better than non-authorised repairers?

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MS TURNER: No, or systematically worse, definitely not.

COMMISSIONER LINDWALL: Okay.

10 MS TURNER: They seem to both have challenges, and it really is product specific, area specific - - -

COMMISSIONER LINDWALL: And the skills availability presumably too.

15 MS TURNER: Incredibly, I actually think third-party repairers could be even better if some of the actions you're exploring around information provision and repair manual provision they'd be excellent.

20 COMMISSIONER LINDWALL: Now consumer guarantees of course operate for some businesses too, which is unusual in terms of the rest of the world. Is there anything you can say about the extent of consumer guarantees and who should be considered consumers under a guarantee?

25 MS TURNER: So, this is probably one where we're less able to comment, our remit is very specifically individual consumers, we don't have a lot of expertise when it comes to small businesses. But broadly I do think that small businesses face the same power imbalance that consumers face opposite large businesses. There's a good logic to extend it, but where exactly you draw you the line, and how you draw it I don't have very developed thoughts on.

30 COMMISSIONER ABRAMSON: Could I just ask to go back a point Paul if that's alright because we were just talking about it then. When Paul asked you Erin about independent repairers compared with authorised repairers there is another point in there that we did address in the report. Which was this issue about an independent repairer doing the work and it not being of a satisfactory standard and then the manufacturers say, 'Well, we're not going to actually look at it because you got an independent repairer, and we're really worried that if you opened this up it's a liability issue'. So, it's the sharing of liability issue and that is not a nothing concern, but it's something to think about because actually that repair might generate its own consumer guarantees.

45 But it is not an insubstantial concern to have about who is liable, and you come from the consumer perspective so the worst outcome for a consumer is for one person to be blaming the other, which is how our litigation system works. So, I'm just interested in how we could sort out that particular issue.

5 MS TURNER: Yes, look I do think it's the last place a consumer wants to be with the product that's potentially been ruined, and independent repairer that's not taking responsibility and the authorised party or the manufacturer not taking responsibility either. The consumer is the party that loses in that. I will say we haven't had a lot of cases like that come through, even when we've sought them out, so I'm not sure how much of a problem it is.

10 COMMISSIONER ABRAMSON: How big a problem it is, yes.

MS TURNER: I do think that proactive efforts to get more information in the hands of authorised repairers, so repair manuals, quality parts. If larger manufacturers don't horde, we'll see less of this, that's probably the most I can comment on it, but we can bring some stuff forward in our submissions.

15 COMMISSIONER ABRAMSON: Yes, that would be very helpful. I didn't want to create the impression that I had a view one way or the other about that - who's doing a good job - but it is not a stupid thing to be worries about, so we'd be very grateful for some more information from you on that.

20 MS TURNER: Great.

COMMISSIONER ABRAMSON: Back to you Paul.

25 COMMISSIONER LINDWALL: Alright, I think that's probably a good set, we're pretty much exhausted for Choice, and we've been here for a while now, so I'll just give you and opportunity to now if you wish to provide any final comments before we finish up.

30 MS TURNER: No actually I think we've explored all the nooks and crannies that I hoped to explore, and we'll obviously give you a lot more detail in our submissions. And thank you for the opportunity to appear today, it's a great topic to talk through with you.

35 COMMISSIONER LINDWALL: Thank you very much.

COMMISSIONER ABRAMSON: Thank you very much Erin and thank you Dean. Thank you.

40 COMMISSIONER LINDWALL: Thank you, and now we're going to have Kyle next but that should be in 20 minutes time. So, Kyle if you don't mind, we'll just have a short break, we'll come back just before 11 o'clock Australian eastern standard time, which is in about say 20 minutes time.

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SHORT ADJOURNMENT

[10.38 am]

5 COMMISSIONER LINDWALL: Hello, everyone. We might get shortly going. And I think you're there now, Kyle. Hello.

MR WIENS: Hello.

10 COMMISSIONER LINDWALL: Is it – Max, our transcript person, are you ready to get started now? Thank you. All right, well, welcome, Kyle. And I think Kerrie is there too, is that right?

MR WIENS: It's just me.

15 COMMISSIONER LINDWALL: Just you. Would you like to introduce yourself, and perhaps give an opening statement for the hearings about what you would like to say?

20 MR WIENS: Absolutely. I am Kyle Wiens, CEO and co-founder of iFixit. We're the free repair guys for everything. Our mission is to teach everybody how to fix all of their stuff, and we have an online community of people from all over the world that are teaching each other how to fix their things. I was pulling up some stats, and in the last 12 months, iFixit was used 6.8 million
25 times by Australians to learn how to repair things.

So each of those is a unique repair session, where someone is searching; they have – they've got a toaster or a phone, or something that's broken, and they're looking for a repair solution. And I think – the earlier conversation,
30 about how this is complex: yes, this is complex, because repair is an ecosystem. It requires a system. You pitch a product up in the world; a lot of manufacturers would like it if the relationship ended then. They pitch it over to us, and then everybody else has to deal with it.

35 Crafting that system of – providing an ecosystem to take care of a product afterwards: that's why iFixit has been all about. So we have – our system is centred around three key pieces of the repair system. Information; getting people the repair guides, step-by-step instructions, troubleshooting information to figure out what you need to do. Parts; the actual – most
40 repairs these days are part swapping. And then, the tools that you need to open things up. And don't underestimate the tools. I've got a toolkit here. This is a special screw for the iPhone. There is a different screw for the Apple watch.

45 There is a different screw for the Gameboy. These companies like to manufacture all kinds of different parts – there are very special, unique tools. Also, there are special repair jigs for some products, when they glue things

together. Maybe there will be special suction cups and things like that. So – and to some extent, that technology evolves, and we need to evolve our tools, but some of it is flat out obstructionist.

5 And so that’s what the iFixit community does. We’re kind of a backstop. We said, ‘All right, the manufacturers have completely abrogated their responsibility, so we’re going to step up, and we’ll fill in the gaps.’ And we’ve been reasonably successful at that, but there are limits to what we can do. I really appreciate the thorough report. I thought it was fabulous.

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One thing that – a tactic that we’ve seen come up recently that wasn’t discussed in the report, probably because I didn’t submit much information on it for you to build on, but we’ve seen manufacturers restrict our ability to buy parts. So, for example, there is a German battery manufacturer named Varta, that sells batteries to a wide variety of companies, and Samsung happens to use these batteries in the Galaxy earbuds.

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It’s a commodity part. They’re in lots and lots of products. But when we go to Varta and say, ‘Can we please buy that part as a repair part?’ they’ll say, ‘No. Our contract with Samsung will not allow us to sell that piece.’ And we’re seeing that increasingly. Apple is notorious for doing this with the chips in their computers.

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So there’s a particular charging chip on Macbook Pro that is made by a company that – there is a standard version of the part, and then there is the Apple version of the part. It’s just very, very slightly tweaked. But it’s tweaked enough that it only – it’s required to work in this computer, and that company, again, is under contractual requirement with Apple.

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So you have these sole dealing in contracts where, by virtue of controlling the supply chain – and of course, if Apple says, ‘We’ll buy 10 million or something from you, but you have to agree not to sell 10s or 1000s to someone else,’ of course a supplier is going to agree to that kind of restriction. I can talk – and I want to kind of get into the conversation, but just to give you a kind of a broad thrust of topics I’m available to traverse on, I have a broad familiarity with what’s happening in Europe with various regulatory regimes around right to repair.

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The European Commission has passed some right to repair around appliances. Also, of course, we’ve seen the French reparability index, and they have a lot of in-depth information on that. One thing I thought that I would share, because I think this is kind of exciting: Samsung commissioned an opinion survey company – this data just came out recently, so we haven’t submitted it to you yet, but this survey company, OpinionWay, looked into what the impact of France’s reparability rating system was on the public.

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And of the French populace, 71 per cent of the population has heard about the scoring index. That index is a little bit more toward older folks. It's 80 per cent of people over 50, but only 52 per cent of people in the 18 to 25 age range. That may be people that go to stores. Because the index – the labels
5 have to be visible right next to the price at a retail store. They also have to be available online.

But it's interesting that older – maybe older folks read newspapers, I don't know. Eighty-six per cent of citizens say that the index impacts their
10 purchasing behaviour. Eighty per cent of people would give up their favourite brand for a more repairable product. So this is really substantially driving consumer behaviour. Also, external from the index, it just asked, 'Have you tried to repair things?' and 83 per cent of French people say that they try to repair or have repaired faulty devices instead of replacing them.

15 I have no idea how that compares to Australia. It's very interesting to see. So the French index I think – and we're only seven months into this – and, by the way, it's optional. There is no fines whatsoever for not complying with this repairability index so far. They said they're not going to start enforcing
20 any kind of penalties until January 1 of next year.

But the adoption has been pretty universal across the board, in the five product categories that it's relevant for, which is washing machines, smartphones, TVs, laptops, and, especially relevant to our previous
25 discussion, electric lawn mowers, which, I totally agree that the lithium – proprietary lithium batteries schemes on these are a challenge.

And so the French index is pretty much regarded as an unequivocal success. Spain has already agreed that they're going to implement France's system.
30 We've seen interest – I think New Zealand has expressed interest in using the French system as part of their scoring. And the European Joint Research Centre is working on a Europe-wide repairability score.

I have a feeling some of the more Europe-centric folks are a little bit annoyed
35 that France jumped the gun, because everybody wants to do a broad scoring system. France did it first; they're getting the credit. But also, they're kind of a laboratory of how it's going. It's voluntary, and we can talk about (indistinct).

40 Other things, just to give you a quick overview, and then I'll stop talking. What's happening in the US, there has been a huge amount of momentum on right to repair in the United States over the last week. I have been on the phone, talking to policymakers and reporters pretty much non-stop. President Biden signed an executive order asking the US Federal Trade Commission to
45 institute a rule-making process for right to repair, and the US Federal Trade Commission has broad rule-making authority.

Also, in May, the Federal Trade Commission released a report on repair restrictions, and found – and they systematically analysed – because I know – a recurring theme in your report was requesting more data. The FTC may have gotten some more data than you did, and has – was able to come to some pretty broad sweeping conclusions.

They went through and detailed manufacturers’ objections to various – or rationale for restrictions on the repair market, and found them overwhelmingly (indistinct). We can dive into any of that detail. But what we expect to happen next is, the FTC is coming up – this next week on Wednesday it’s going to have a vote to adopt a formal policy in favour of implementing more repair-friendly policies. And then they will be instituting formal rule-making, which we expect will take at least a year, but they’ve already got the framework in that report.

So I can provide lots of (indistinct), but I want to – I’ll stop talking and let you guys ask questions, what you’re interested in.

COMMISSIONER LINDWALL: Thank you very much, Kyle, for that. You mentioned six and a half [million] users (sic) in Australia, of iFixit, and – well, certainly I’m one of those users, so I have used iFixit a few times. Now – and thank you for the information. But when I – you’ve covered a number of issues there, so could I ask right at the beginning: what do you mean by right to repair?

MR WIENS: Absolutely. Great question. I would say that it’s the ability to fix the things that you have. So, for me, that means the consumers’ ability to do the repair, but I would say, if a consumer can do it, a professional also can. That means that the system needs to be in place to allow that. And it could be an obstacle as simple as the price of parts is too dang high.

Samsung actually does make certain spare parts available for their phones, but the prices are so high that anyone will look at it and say, ‘Am I going to spend \$400 on a screen for a \$500 phone?’ So, economic realities play a factor here, and that’s unique to repair. In recycling, the term ‘recyclability’ is fundamentally an economic definition. Is there more value in the things that I’m trying to recycle?

If it’s metal, the answer is probably yes. If it’s a lead CRT [cathode-ray tube], the answer is probably no. So, it’s an economic factor, and then it’s also practicality. If you have to buy some fancy \$500 tool to do a repair on a \$300 device, you’re not going to do it, even if the tool was available. You have to provide that full system, and it’s got to be a system that is working.

COMMISSIONER LINDWALL: All right. Yes, that was good. Thank you. Now, on your first point, about refusal to supply, obviously there’s issues around intellectual property law, which is about you copying things like

repair manuals, and getting through diagnostic information and so forth, which, iFixit of course uses that too.

5 You could use 3D printing, I suppose, to produce spare parts, some type of spare parts. I would be interested to hear about that. So is there – how do you solve that issue of a major manufacturer refusing to allow suppliers to deal with parts and things like that? Intellectual property won't help you there terribly much, will it?

10 MR WIENS: Sure. I mean, I would defer to your legal expertise (indistinct). I mean, this is unfair trade practices, this is exclusive dealing, it's the kind of thing that I think competition agencies should be able to step in and enforce pretty quickly. And where it starts to blur the line with intellectual property we've seen Apple will put their logo on parts inside the products for the sole
15 purpose of preventing people from moving these parts across borders because you have to have permission from the trademark holder, and that's incredibly infuriating. We've been in a situation where we're having to use solvents to remove logos from genuine parts so we can just engage in trade so I can get them from the US to Australia.

20 So, this is - it's frustrating. 3D printing is a wonderful - we like this idea, it would be really cool, we do have some 3D printed models on iFixit where you can go and get an impeller for a coffee grinder and you can buy it and it's \$20 print on demand. Unfortunately, in our analysis of parts about 2 per cent
25 of all parts can be 3D printed with current technologies,

COMMISSIONER LINDWALL: Is that all, 2 per cent?

30 MR WIENS: And particularly I don't think there's a single off part in this phone that can be 3D printed in a reasonable way. There are other parts - where 3D printing is more compelling and interesting is in whitegoods where you have nobs and switches and - I had a switch in my washing machine fail, potentially I could have fixed that with a 3D printed part. Or if you design
35 the product from the beginning with intent the product should be 3D printable.

COMMISSIONER LINDWALL: Okay, now could I explore - and I think 3D printing is going to be interesting, and I think I agree on whitegoods because they're obviously - they're not technology as such most of the
40 products we're talking, they could be made of plastic or metal. The link between a right to repair, as in repairing products which could make less profits if it's implemented well for a manufacturer, and the likelihood of manufacturers then increasing the price in the primary market of the original sales, have you observed that and have you got any comments on that?

45 MR WIENS: We certainly haven't seen any changes in France. The only - if you think about right to repair requirements really saying hey in terms of

5 very lucrative markets for selling spare parts, if you look at the agriculture companies or heavy equipment companies, even automotive manufacturers, they make a large portion of their profits from selling spare parts. So, I would argue that this is a market opportunity these manufacturers are losing out on. And in the case, particularly with the smart phone manufacturers they're so focused on high volume and high margins that if there's a business that comes along that has say a 15 per cent margin they sort of turn their nose up to it, and they don't want to deal with it because they have much higher margin opportunities.

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So, are we saying, 'Hey, you should participate in a different market.' Yes, but I don't think it's a money losing proposition. Really the biggest economic loss for them would be if they purchased a whole bunch of spare parts that they ended up not needing. But I can tell you, I was in a recycler in California and I saw them, these recycler are under contract from manufacturers, in this case they were under contract with Apple and they had service parts - in California Apple stops providing service after seven years. So this was at seven years and Apple had warehouses full of spare parts and rather than selling out in the market place, so that someone like me who would eagerly have brought them, they were paying the recycler to destroy them and they had millions of dollars of parts they were literally taking out of the cardboard boxes and pitching them into the shredder.

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25 So, I don't have a whole of lot of sympathy, because their monopoly control is costing them money in this practical way as well.

COMMISSIONER LINDWALL: Do you see a trade-off between the durability of a product and the repairability of a product or do they go in the same direction, or is there an offset perhaps?

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MR WIENS: It depends. And it depends on how you're constructing the product. The easy short-term path that we've seen for a lot of the product designers, what I think is kind of a lazy path, is that you just glue everything together. Imagine if you have a phone, a laptop, whatever you have the bottom case you glue the battery in, you glue the top on. Actually, the glue on the battery provides part of that structural rigidity, or they call it torsional rigidity in the mechanical design space, and it can help you achieve durability in the very short term. But of course, then you've coupled the product to a battery that has an 18 month or two-year design lifespan.

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45 So, it's really, really durable until it's guaranteed to break and then be totally toast. And we've seen this with the Apple AirPods, it's an example of a product that is totally glued together, anyone with the first generation AirPods has generally seen that product fail and yes, they're durable, they're still physically intact but you can't access the batteries. So, I would challenge - and I've run design workshops for industrial designers from leading electronic manufacturers and other industries, and we work on this problem

of training people; how do you design a product to be both durable and repairable? And there's a wide variety of strategies that we employ, and I can go down the rabbit hole with you on that.

5 But I would point as an example Microsoft had a surface laptop, we rated it on our repairability score, normally we rate products from 1 to 10, the surface laptop got a zero. It had a glued in battery exactly the design I'm talking about where the whole thing is glued together, we actually had to cut our way inside the product and destroy it in the process of trying to get inside. So, 10 very poor product. In response to market conditions, perhaps the French repairability index, Microsoft decided to redesign that product and they kept the exact same external form factor, same durability, same thickness, thinness, it's a really sexy form factor for this laptop. And the current Microsoft surface laptop gets a five out of ten on our score card.

15 So, they went back to the drawing table but they told their designers we're going to innovate our way out of this, and I think that's the solution is that this isn't the defeatist, 'Oh if we make it repairable it will be less durable', no we can have both, we just might have to try a little harder.

20 COMMISSIONER LINDWALL: That's a good point, yes. Now I've got some questions, but I should throw to Julie to see if she's got some that she'd like to ask.

25 COMMISSIONER ABRAMSON: Thanks very much Paul and thank you Kyle I feel that we've been in your loungeroom or your living room a lot lately so thank you very much. I just wanted to ask a little bit more about the repairability rating, and I think you were online before when we were talking to Choice about that. So, I'm just interested in what are the - and I have read 30 your submission, but just for the transcript - what are the factor that you take into account? And how are you objective about that so it's not just your view that, 'Oh you can't undo this because of this, this and this.' So, where's there's an objective view outside of it, so if I make myself clear, it's about having some key things that we could look at.

35 MR WIENS: Sure, absolutely. And of course, it goes product by product, and when we look at the French index, they have a different spreadsheet for each type of product. I think the score card generally lines up reasonably consistently with the French index. So, before I tell you what we factored 40 into it I'll tell you a few things that are not factored into our score that are factored into the French system. We don't factor the availability of software updates in, we don't factor in price of parts, and that's because we rate products usually on day one when they come out, and we don't know what the parts pricing is going to be. Whereas the French system does factor in 45 pricing of parts and timeline of availability which I think is a wonderful thing.

5 So, I think the scoring system is more similar to, there's a kind of mechanical
subset of the French system which is really just focussed on how easy or hard
it is to take a product apart, as well as is there information available. That's
the first thing, one point out of our ten is is there a service manual publicly
available? Now Samsung has started posting their service manuals in French
in order to score better on the French index, but they are not yet posting them
in American or Australian, we'll see, hoping it will come soon. So, what does
our scoring system factor in, the first thing that we're looking is whether what
we call critical components, so if you have a product what are the things that
10 are most likely to fail first.

COMMISSIONER ABRAMSON: I'm sorry Kyle I just missed the word
after critical?

15 MR WIENS: Critical component or critical part.

COMMISSIONER ABRAMSON: Thank you.

20 MR WIENS: Yes. So, in a given product, with a cell phone - a smart phone
the two critical components for us are the screen and the battery. Other
products may fail, actually everything in it will fail eventually, but the screen
and the battery are normal service components. And so, we'll look, and we'll
analyse a product based on how many steps, how difficult is it to hey to the
screen or the battery. This particular phone, I don't have to tell you who
25 made it, but the screen on it - you have to take the screen off in order to get to
the battery and the screen is very, very thin and in the process of ungluing the
screen it's easy to break the screen. And so, you might be trying to get to the
battery and break the screen in the process, so that's the kind of things that
we'll factor in.

30 Number of fasteners are they using proprietary fasteners, so like the Apple
watch has a brand-new screw. Sometimes we're sitting there trying to take a
product apart for the first time and we have to make a screwdriver on the fly
to be able to get inside it. So that's kind of it in broads, we'll provide more
35 technical - - -

40 COMMISSIONER ABRAMSON: Yes. I'm very interested in this idea of
critical components because that seems to me that that would be quite a key
part of any scheme. As you said, we've got to differentiate between products,
so I would be interested in some more information on that. And from what
you said, it's actually quite transparent what you rate against, so we're quite
interested, which went to my point about, you know, how objective it is.
Well, it's quite transparent. You're looking at the screen and you're looking at
the battery. So, thank you. Back to you, Paul.

45 COMMISSIONER LINDWALL: Yes. Okay. Is there any appetite, do you
think, Kyle, for the French labelling scheme in the United States?

MR WIENS: Great question. Our advocacy - so this probably is more on the repair advocates and what we've been asking regulators for, and we have not asked for that in the US, but I think the time may be coming. We have been
5 focused on access to the parts, tools and information and kind of regulating a minimum level of access; that's what the US state laws - like the one that passed the New York Senate the other day. That's what those have been focusing on. And honestly, naively we had hoped that the US marine environmental optional standards - things like EP is an optional standard.
10 We had hoped to get some of these kind of labellings in there, but the manufacturers have co-opted that process and made it so that - we've been trying for a decade to get some kind of (indistinct) manufacturers, but I will specifically call out Apple, have completely stymied forward progress.

15 COMMISSIONER LINDWALL: It has been put to us at various times that the US and Europe have taken different approaches for different purposes. So if you look at the motor vehicle scheme, for example, in the United States, it's often about allowing competition in the repair market and also the ease of repair for the purposes of independent repairers and so forth, whereas the
20 European Union is probably more from an environmental perspective. Is that a broad generalisation? Does it make sense or - and how do you amalgamate those two different perspectives?

MR WIENS: Yes, I think that's reasonable. The United States does not have
25 a whole lot of appetite for environment legislation. We haven't passed a whole lot in the last 20 to 30 years, where the European Commission has. And I mean, the European Commission has made like - we don't have lead in our electronics, and that's not because of any laws that the United States passed; that's because Europe (indistinct) and it has been very effective at
30 eliminating lead and toxics from electronics globally. This phone might be many things, but it's not particularly toxic, and you can - we can all thank the European Commission for that.

COMMISSIONER LINDWALL: Okay. Yes, yes. And what other
35 legislative responses are following in the United States and - so the Magnusson-Moss Warranty Act - how effective has that been and could you explore a bit about that, Kyle.

MR WIENS: Absolutely. So the Magnusson-Moss Warranty Act does a few
40 things: (1) it says you cannot tie a purchase of service to a warranty, and then it explicitly bans manufacturers from voiding warranties if after-market service has been engaged in as long as that service has not damaged the product, and the burden of proof is on the manufacturer to prove that the consumer (indistinct) damaged the product in the process of repair. The
45 agency in charge of enforcing the Magnusson-Moss Warranty Act is the US Federal Trade Commissioner, FTC, and they have been asleep at the job. I think they would admit that they have been asleep on the job. And so, for

example, we have pervasive evidence that consumers are unwilling to try to fix their own things because they're afraid of the warranty.

5 Even if it's well out of the warranty period, they're still afraid of opening it up. And when we've done kind of research to understand why, these 'warranty void if removed' stickers and clauses in user manuals really have a stifling impact on consumer behaviour, to the point where it sometimes is like pulling teeth to get someone just to remove the screws. And so the FTC has started weighing in on this. They've sent letters to five game console
10 manufacturers. I know that you know that one of the game console manufacturers in Europe - some of them have shaped up their act. We still haven't seen it. And we haven't seen systematic enforcement. Of course, U.S. PIRG [Public Interest Research Group] has released a report, you know, where they surveyed white goods manufacturers and found that almost all of
15 them were infringing Magnusson-Moss in some way or another.

So when you get to a point where the default is everyone in the market is, you know, ignoring a law, then the regulatory agencies need to step in. And with the new administration and the new tone that we're seeing from the FTC,
20 I would expect that. The FTC in their report that they issued in May told consumers if you ever see a 'warranty void if removed' sticker, take a picture of it and post it to reportfraud.ftc.gov. So they're flat out calling it fraud and we're excited to see what comes of that.

25 COMMISSIONER LINDWALL: Yes. Has it had any effect upon the warranty duration?

MR WIENS: No, I don't think so.

30 COMMISSIONER LINDWALL: No. Don't think so. Okay. Could you - do you have any idea why warranties vary in duration so much? A lot of warranties for many products are a year, say. I think that's true in America, whereas in some motor vehicle they're now talking about 10 years or something. So is there competition in that particular market for the warranty
35 duration, do you think?

MR WIENS: I think so. I think - I can speak as a businessperson.

40 COMMISSIONER LINDWALL: Yes.

MR WIENS: We sell products; we have warranties on our products and we've experimented with different warranty lengths and how can we, you know - but I would say it generally is kind of manufacturer by manufacturer. I just bought a welder; it came with a three-year warranty.

45 COMMISSIONER LINDWALL: Yes.

MR WIENS: I was pleasantly surprised at that.

COMMISSIONER LINDWALL: Yes. Is that normally available at point of sale?o that - do you think that's - - -

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MR WIENS: Yes.

COMMISSIONER LINDWALL: Yes.

10 MR WIENS: Yes, and that's - Magnusson-Moss requires very clear language. It explicitly defines what a warranty is, and you'll often see the difference between a limited warranty and a full warranty. The requirements to be a full warranty are so extreme that I've never seen a product with a full warranty. Everyone has a limited warranty and a limited warranty is a very
15 specific definition under Magnusson-Moss of what it can be.

COMMISSIONER LINDWALL: Yes.

COMMISSIONER ABRAMSON: Paul, could I ask some questions about - -

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COMMISSIONER LINDWALL: Please.

COMMISSIONER ABRAMSON: Thanks, Paul. Some intellectual property. Kyle, you will have seen that we put on the table some issues that
25 we see with Australian Copyright Law and we have talked about fair use and fair dealing. One of the arguments that's being put to us is that fair use would not solve the problem because the US has fair use and that doesn't seem to solve the issue. Now, I have some views about that, but it would be helpful if perhaps you could address that for us.

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MR WIENS: Sure. Fair use is very helpful. It is a really critical underpinning of US copyright law. When the pandemic started, a big project that iFixit initiated was to help connect the repair technicians at hospitals with the service information that they needed for medical equipment. It
35 turned out that the state of affairs - and I have friends in the medical industry around the world - the state of affairs for exchange of information in hospitals around how to repair equipment is USB thumb drives exchanged between biomed technicians with PDFs on it, and this sneakernet is how almost all medical equipment around the world is serviced, and so a
40 biomedical technician is only as good as their thumb drive. And it's not just repair information; it's also preventative maintenance.

Things like changing the air filter on your ventilator regularly, and that is essential information that hospitals have. Increasingly they had been locked
45 out, and so we decided at the beginning of the pandemic that we were going to collect all of these thumb drives, organise them in one central place and post a biomedical service manual. And the legal theory underpinning that

from our legal counsel and some legal NGOs [non-government organisations] that assisted us with the project predicated that whole project on fair use. So I would not have felt comfortable launching that project in Australia like we did in the US.

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COMMISSIONER ABRAMSON: It would be very helpful for us, Kyle - I know you addressed it in your earlier submission - if you could address some of those issues in a submission which I'm assuming that you've put in to the draft report.

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MR WIENS: Okay.

COMMISSIONER ABRAMSON: Thank you.

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MR WIENS: Yes, we can work on that. The other (indistinct) we do get copyright to take down those for manufacturers. We've gotten them from Apple on schematics and we removed the schematics, and then we've gotten them from medical device manufacturers and have responded to them saying no, we believe what we're doing is very useful (indistinct).

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COMMISSIONER ABRAMSON: Thank you. Back to you, Paul.

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COMMISSIONER LINDWALL: I'm not going to question you about the view of the benefits of making technological protection measures easier to obtain. You publish breaks on TPMs [technological protection measures] on your website. But are they becoming like a cat and mouse game, that you show one way of getting around it and then they think of a more sophisticated way of locking it down and then you might get a break and so on? I mean, where does it all end up, I suppose?

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MR WIENS: It certainly is always that way. Sometimes, you know, circumventions are easier. I would say - I mean, in some cases the TPM is just highly good, and we have trouble; we just can't break it. Or, in many cases, it's relatively trivial, but it acts as an overall impediment.

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We've seen wheelchairs - powered wheelchairs are an area where I cannot believe there are service passwords on these things. And there are common settings that you might want to make to your wheelchair. For example, there is a setting called traction, where you might want to change exactly what the traction parameters are on your wheelchair, depending on the time of year.

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Maybe it's snowing outside, and you want to tweak it. No, schedule a service appointment and have someone come out and enter the service password, to be able to make a change. And I very offended by this particular password, because this is someone's mobility. This is someone's life. This is really important. And I think this sort of shows this systematic removal of (indistinct) that we have across the board. (Indistinct) like to say,

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if someone else puts a lock on something that you own, and doesn't give you the key, they're not doing it for your benefit.

5 COMMISSIONER LINDWALL: No, that's exactly right. All right, well, I think we're probably out of time - - -

10 COMMISSIONER ABRAMSON: Just one more question, very quickly, Paul, if I may. Kyle, you mentioned some survey work that had been done, and the percentages of people that thought certain things. So, anything that you could put in your submission will be most welcome.

MR WIENS: Sure, absolutely.

15 COMMISSIONER ABRAMSON: Thank you. Sorry, Paul.

COMMISSIONER LINDWALL: Kyle, you've been very helpful to this inquiry, and thank you very much for your patience, and what you've provided to us today. It's been fantastic.

20 COMMISSIONER ABRAMSON: Thanks so much, Kyle.

MR WIENS: Thank you to you, and all of your hardworking staff.

25 COMMISSIONER LINDWALL: Thank you, Kyle.

COMMISSIONER ABRAMSON: Thank you.

30 COMMISSIONER LINDWALL: All right. Our next guest is Leanne Wiseman from Griffith University. Leanne, are you there?

35 PROF WISEMAN: Yes, I am. Can you hear me?

COMMISSIONER LINDWALL: Good morning. How are you today?

40 PROF WISEMAN: I'm very well, thank you. How are you?

COMMISSIONER LINDWALL: I'm very well, thank you. So, if you could just state your name and give us an opening statement, that would be fantastic.

45 PROF WISEMAN: Thank you, Paul. My name is Professor Leanne Wiseman. I'm a professor of intellectual property law at Griffith University. This morning we've heard intellectual property being mentioned a few times this morning, and I thought I would seek to go to IP more generally, but I've put forward three bullet points, really, to concentrate on.

And the first is improved manufacturer responsibility. And that's an overarching comment, and I'll just give you some insights into my thinking as to how we can improve point-of-sale information, so that we can rebalance this relationship that we're seeing between individual consumers, and, in some cases, small and medium businesses, and the global technology and manufacturing companies that we're actually dealing with.

Secondly, I'll talk about intellectual property, and also about TPMs and the ability or the need to prevent contracting out of repairability; and thirdly, this discussion around fair use and fair dealing in Australia, and whether there's a need for a specific fair dealing defence. So, I would like to pick up on some of the things that Erin from Choice spoke about this morning, and that is just to recognise and reinforce the power imbalance that we do see here in Australia, and in many other countries, between individuals and the global technology providers and manufacturers in the digital space.

This was particularly highlighted by the recent ACCC digital platforms inquiry, and we see similar issues present here. We're talking about individuals buying everyday items. There is no ability for those individuals to negotiate with the big global brands that manufacture those goods, whether it be your toaster, your kettle, your whitegoods, your appliances, your motor vehicle, or your farm machinery. It is just not the case.

So this power imbalance: we need to look at that and keep that in mind. And in terms of our regulatory responses, empowering consumers by giving them defences under copyright law, or giving them more information about their consumer warranties really I don't think helps very much. It is the manufacturers and their teams of in-house and external lawyers who advise them, who write their contracts, their licences, whether they be software licence or data licenses, who know what those contracts contain, and who draft them in a way that basically makes them very, very difficult for an individual to understand.

So that power imbalance – and part of the work that I've done for many years is actually just sit down and read the licence agreements that come with new technology. I've specifically had experience in the agricultural space, and I can tell you, from reading those licence agreements, they are very long, they are very detailed, and for an intellectual property trained lawyer like myself, they're very, very difficult to understand.

And any suggestion by manufacturers that, for example, farmers who run large farms, or who are even on corporate farms, are somehow on an equal footing with global manufacturers of agricultural machinery is really just a nonsense. Individuals do not take lawyers with them when they go to buy appliances, and nor do farmers take a team of lawyers to go and investigate a particular licence agreement when they turn their combine harvester on, or their tractor.

5 So that mere suggestion that there is some equal footing between the players is something that we really need to address. Put simply, I really suggest that manufacturers need to take more responsibility to provide information for the smart goods that they're providing at point of sale, as Erin has said this morning. This can be relative to the complexity of the product at hand.

10 We know ourselves, if we buy an expensive ballpoint pen, perhaps we would like to know whether we could replace the ink within that pen. And that is information, as a consumer, that we should be able to find out at point of sale. This whole notion of 'caveat emptor', buyer beware, that it's the buyer's responsibility to ask all the questions that they can possibly think of, make a positive obligation in that sense really does not apply in these everyday transactions that we have in this digital world that we're living in now.

15 Most consumers are not even aware of the range of limitations that are imposed on buying physical goods these days that are embedded in software. So, how could they even begin to ask the questions that the caveat emptor principle really applies? So if you sell a ballpoint pen, why shouldn't you tell the consumer that that particular pen will have to be thrown away and replaced if the ink runs out, and that you can't replace that?

20 That's a very simple thing. If you translate that into a very complex transaction, where you're buying a car, or perhaps a washing machine or a fridge, that you know that you can never get that spare part for, and that fridge will need to be replaced, even if a (indistinct) goes, or a simple part breaks, why should not a manufacturer be obliged to tell you that at point of sale? That would give the consumer the power to make a decision about whether to buy that particular good or not.

25 The whole operation of Australian Consumer Law, particularly section 18, in terms of misleading and deceptive conduct, it recognises, as you've already pointed out, this notion of omissions. There's no positive obligation in our Australian Consumer Law for manufacturers to make positive statements about what their product will do and what it won't do, and what you can't do with your product. And I think that there is scope within our Australian consumer law to place more responsibility on manufacturers.

30 As I said, manufacturers produce these goods. They know them best, and they know the terms of the licences upon which they sell these goods. So why not make that available at point of sale? In terms of how that would look, a simple one-page document. We see fabric care labels on a T-shirt that is often in several languages, explaining how to wash it, how to dry it, whether you can iron it, whether you need to dry-clean it, for example. And these are on fabric labels that are a couple of inches tall.

They're a very, very simple point of information at the point of sale. They are also in several languages. This whole idea about having basic information about whether you will have a certain lifespan expected of your product, or the ability to repair those products, is simple. But as I said, who is best to provide that information? It is the manufacturers and their lawyers.

To have – to suggest a voluntary or self-regulated scheme, I think, as Erin has already suggested, that is probably not the best way forward. Manufacturers have the opportunity at present to provide this simple information at point of sale, and they're not doing so now. So it is necessary that we impose some regulation upon them.

Similarly, in these contracts that I've looked at, this issue of IP is often raised as one of the concerns of manufacturers, that there are – intellectual property will be taken, or stolen, or copied. Interestingly, in most of the contracts I have seen, intellectual property has been defined in such a broad way that it actually goes well beyond what the law recognises as intellectual property to be.

Professor Matthew Rimmer will follow, and he also is an intellectual property professor, and he will probably speak more about this as well. But we really need to understand that intellectual property is not this broad all-encompassing right that manufacturers have. It is a series of regimes. It involves patent law. It involves trademark law. It involves design law. It involves copyright law and confidential information. And not everything is covered by intellectual property.

And so these broad claims about, 'My intellectual property will be stolen,' are really something that I think that we have to pay close attention to. And most of the time when we're looking at opening a device that we own, there is no infringement, no threat of infringement of intellectual property law in those instances. So I think, essentially, positive obligations on manufacturers to provide simple – whether it be a one-page document – about their warranty, the relationship with the Australian Consumer Law and repairability.

And increasingly – I know that I've made this point in the earlier submission, but increasingly we are seeing the misuse of individuals' and consumers' data that is being collected by this machine. Consumers are becoming more and more aware of the misuse, or the potential for misuse of their data. Each and every device that has software embedded, that has data collection: why shouldn't the manufacturer disclose what those data management practices are?

Particularly in the agricultural machinery, motor vehicle industry, the issue of data collection – and we see the rollout of consumer data rights here in Australia – that is an area that I think that the Productivity Commission really

could pay some more attention to, perhaps. Similarly, our unfair contract terms provisions in our ACL, they don't get a lot of mention.

5 We have a scheme of unfair contract terms, and that's essentially addressing the power imbalance where you have manufacturers or corporations who use pre-printed, standard form contracts that are not negotiated. There's very clear criteria set out in unfair contract term provisions of the Australian Consumer Law. And we would find that many of the terms that we see in these software licences that accompany our everyday products would
10 potentially fall within those remits of unfair contract terms.

15 That scheme has been introduced into the ACL, and again, that places the onus on the consumer to bring an action under the ACL. And, again, what consumer has the funds or the legal access to lawyers to do that? There's – as far as I know – I've looked at the UCT provision of the ACL – I'm not aware of any actions that have actually been brought under those.

20 But we know, in particular in very – a number of industries, and we've seen only recently, with COVID and the travel industry, of some of the unfair terms that we see in people's contracts. But it really needs a spotlight to be shone upon them regulators, rather than placing the onus on individuals to bring those actions.

25 So the unfair contract terms schemes is sitting there. We have it, but the mechanism is difficult for individual consumers to bring these terms, when (a) they often can't even access these licence agreements themselves, to understand what's actually happening. I will just say a couple of points about IP more generally, about the protection (indistinct) – and remember that as intellectual property academics, perhaps Matthew and myself – I don't want
30 to speak on behalf of Matthew, but we are aware of the strengths and weaknesses of intellectual property and the laws.

35 And we are very familiar with each of the schemes, and how those laws operate. Be mindful of people who talk about their IP as if it is only a good thing, because we know that intellectual property can both hinder as well as enable repair in certain instances. So when we're looking at – the Commission has already identified that you're thinking about preventing a contracting out of copyright exceptions, for example, whether it be a fair dealing or a fair use.
40

We've seen that in previous copyright reviews, and it's been put forward that this is necessary. We see it already in existence in the Copyright Act, with respect to backup computer programs. It's a simple, straightforward section. Fair dealing and fair use provisions should not be able to be contracted out of
45 by manufacturers, and that is a fairly straightforward process, I would argue.

5 Again, the discussion around repair – a specific fair dealing defence for repair, or the defence of fair use: the fair dealing defences have been the subject of a lot of litigation and a lot of academic commentary. What’s really important to underscore is, these are defences, and they are defences that individuals – can be raised in response to a copyright action of infringement.

10 So, to start with – and we heard from Tim Hicks, who was pursued by Toshiba at the Repair Summit – do we want a situation where we have to rely up on a defence, and engage lawyers, and go to all of that expense when we get a takedown notice or a threat of copyright infringement? Again, this power imbalance is really evident. A global manufacturer can get a lawyer to write a letter very simply to an individual.

15 And even if you have a fair dealing defence of repair, would you be in a position to mount that defence, engage lawyers, and argue that? And that is not a position I would suggest enhances the consumer’s right at all. It really places an onus on the consumer or the individual to spend a lot of money. And we’ve seen that in both of the cases that have been in our courts; in GM Global, in the (indistinct) infringement case, looking at the repair defence, and we also saw it in Calidad which went to the High Court.

20 Both of those decisions involved a huge amount of money, essentially to come to the conclusion that what was being done was all right. So I think we really have to think about, it’s great to have a fair use defence in Australia. There’s many, many reviews that have recommended that. Obviously it’s not particularly palatable to the Federal Government at the moment, because it’s continually being recommended.

25 It would service a whole lot of needs, rather than just the repair industry. But remembering at the same time that this is merely a defence, and it is not a right; it won’t empower consumers in the way that some might think that it would. So I think at the heart of my concern is the practice that we’re seeing more and more as we see more sophisticated machinery, devices being made available to consumers.

30 The idea that anyone should be expected to read the terms of service, and know or ask about the terms of service that are being presented to them, or even not being presented to them, is something – it’s really – I think it was the New York Times that said it’s basically preposterous. They’re written in a way to discourage people from reading them, so that we don’t understand.

35 And as Erin highlighted, there’s this general kind of reluctance or reticence to take up any of these rights, essentially, under the ACL. So, basic access to information; copyright law does not protect mere ideas or basic raw facts or information. So, how to open a device is not protected by copyright law or
40 intellectual property law.

5 So I think it's really important that we kind of recognise what IP covers, but also, this basic right of individuals to access information about the products that they own is something that's fundamentally important in the society that we live in today. So, I've just touched on a couple of things, and I'm happy to respond to your questions.

10 COMMISSIONER LINDWALL: Thank you. Thank you very much Leanne. Could I just ask, on our recommendation order our thoughts on fair use versus fair dealing, and I've noticed their defences, by what you're saying you would prefer fair use rather than fair dealing if we were to go that way?

15 PROF WISEMAN: Very much so, fair use would be a much more useful defence than a specific fair dealing defence. When you think about fair dealing defences and they way that they work the fair dealing defence for, for example, research and study has within it a very specific in section 10 you look at what's a reasonable portion, there's very specific rules about how many words on a page, how many pages in an article, or how many chapters in a book you can use so there is. Fair dealing has both a quantitative and qualitative test, so you're looking at what information is taken, how much is taken - so there's a limit - and fair dealing only will assist an individual, it's a private defence.

20 So, it's an individual who can make use of certain information, but only for very limited purposes. So, the fair dealing defence in Australia are very, very narrow and I suspect that if we had a fair dealing defence for repair it would similarly be very, very narrow, and again what guidance would be needed? I mean obviously a lot more research would need to be provided around copyright defences and how that could work. But really, looking at it simply you can't just add a fair dealing defence for repair without explanation as to what does that mean, does it mean schematics? All of the schematics, 100 per cent of the documentation, or the instrumentation, or whatever.

25 COMMISSIONER LINDWALL: Now, on your point about a positive obligation which of you've said about a simple one-page document of some sort, and in our report, we've spoken about positive obligation as providing spare parts and user manuals and ways around the TPMs for example, they're different obviously. Would your idea of a positive obligation in terms of further information being exercised through a change to the Australian consumer law? And if so, how would it benefit people that buy agricultural machinery for example who are not consumers under the ACL?

30 PROF WISEMAN: Well I think it would, with respect to individual consumers, I think yes you can have it in the consumer guarantees. In contract law, for example, when we look at exclusion clauses and we say for example there's a body of law that says if you try to exclude your liability - and that's in a particular set of circumstances - there's positive steps that you have to take to bring that to the attention of the other contracting party.

There's a series of cases around that, and that is if you're going to - or have you taken all reasonable steps to bring that to the attention of the other party? That is something at we could easily import into the Australian Consumer Law – that manufactures who have something unusual in their terms of
5 service around a digitally enabled good that would be in contrast to what people's general understanding of that physical good would involve, should be set out clearly.

10 So, I think we see precedent for this in contract law with respect to the operation of exclusion clauses in contracts, and that's not a problem. With respect to agricultural machinery, I would suggest that we take a leaf out of Canada's book and look at their agricultural implement legislation that they have in the provinces. I think Scott Smith's initial submission talked about this, but they have specific - because of the high cost and value of
15 agricultural machinery there are specific legislation that sets out manufacturers obligations with respect to that machinery. At the heart of that we're talking food security.

20 COMMISSIONER LINDWALL: Okay, do you want to ask some questions Julie?

COMMISSIONER ABRAMSON: I was just thinking, you sent me back to second year university Leanne, I have to say contract law was not one of my most favored subjects. I just wanted to ask, when you talked about
25 repairability disclosure, did you have that in mind for all products or were there a range of products where you think that would be most useful for?

PROF WISEMAN: Well as I said Julie, I think it really would depend on, for example, the level of information depending on the complexity of the
30 product. For example, I've always worn Swatch watches for many years. I've got a draw full of them because if the buckle breaks or the winder breaks, I can't get those spare parts to fix it. So that's one simple example but as we go up the scale of appliances to fridges, whitegoods, iPads, iPhones for example. I think certainly the more complex a good is perhaps the more
35 information should be provided by the manufacturer about what it is that you can't do with those goods that we would normally expect to be able to do.

There's a reasonable expectation when you buy something that you own it, that you can deal with it in a physical way, and not infringe intellectual
40 property rights, but that is no longer the case. So I think there is an obligation; if there is a disconnect between what most people understand physical ownership to entail that the manufacturers would say, 'You think you own this' - and we've heard John Deere say this about agricultural tractors - 'You think you own your tractor, well actually you don't, you just
45 licence it for use.' If that's the case, if we're buying products that we can't touch, we can't open, we can't fix the manufacturer needs to tell us that so we can decide whether to buy that product or something different.

5 COMMISSIONER ABRAMSON: Of course, section 58 goes part of the way there already, doesn't it, because if you're not able to provide spare parts of repairability I think that's the section that says that you have to tell a consumer that?

10 PROF WISEMAN: Yes, that's exactly right. And so, I think that that is the type of provision that could easily be expanded to make sure that manufacturers take a positive step. As I say, manufacturers have all the information here, they know what their product can do, they know the terms upon which they're selling their products, they should make the consumer aware of those so that the consumer can make informed choices.

15 COMMISSIONER ABRAMSON: Leanne I was just going to ask one final thing, Paul, that argument that you spoke about, about the exclusion clauses in contract apart from my shudder at contract law that's actually a really interesting idea, so I'm assuming that you're giving us another submissions so it would be interesting to have you explore a bit in the submission.

20 PROF WISEMAN: Thank you, yes, I will.

COMMISSIONER ABRAMSON: Thank you. Thanks Paul.

25 COMMISSIONER LINDWALL: I'm not a lawyer so I can ask a question like this, I agree with what you're saying about providing further information to consumers, but how would you do it in law so you don't have to be so prescriptive in the law to say that this is the form in which that disclosure must be made, or I mean then you'd have to get to the type of product that that disclosure would be in, it would be a very complicated law I'd imagine.
30 So how can you do that, give flexibility to the manufacturer to provide that information without trying to avoid that information as many manufacturers might well try to do?

35 PROF WISEMAN: So, just to put it simple, how - - -

40 COMMISSIONER LINDWALL: Well not precisely, but how would the government even legislate such a thing so that we got more information from the manufacturers, but provided flexibility to the manufacturers to provide it in a form that useful for the product it's selling, which as you say is depending on its complexity, without getting all tied up in the legislative nuance of being very prescriptive in the law about how it should be disclosed. I can see conflict there, that's all.

45 PROF WISEMAN: Sure, look I appreciate that, and to be honest I haven't actually - that is my job for this week to get my report to this team. But I mean in some senses I think you could probably begin by identifying two or three key areas that need to be disclosed around and if that's the product

lifespan if that's the spare parts information or repairs - repair information or ability to be repaired. I would add to that data management, data policies, particularly as we see with the increasing use of the collection of individual data, and the potential for misuse of that, I think a lot of the tech that's going
5 into new products there's really a side benefit with that collection of that data as well.

So, I think that sits along side that, and particularly when we're talking about interoperability of products and as we see in agriculture that the data side of
10 things is very important. So, I would say start with three. Start with product lifespan; how long should you expect it to last? Perhaps look at access to repair information, spare parts, or physical ability to repair the product. And I would include in that some information about, do you collect data, do you share that data, (indistinct) control of that - - -

15 COMMISSIONER LINDWALL: And how it's done, yes, exactly. That data inside, of course, as the (indistinct) has written previously about a lot about data (indistinct) product.

20 PROF WISEMAN: Yes.

COMMISSIONER LINDWALL: Final thing, then - I mean, you're right about complexity of all these disclosures. As a non-lawyer, that's a good
25 treatment for insomnia, actually. Do you have any comments about our view of positive obligation - not that we proposed it, but we asked about it - about a manufacturer being required to provide spare parts to a third-party repairer, repair information and so on, which is beyond copyright, obviously?

30 PROF WISEMAN: Yes. I think Kyle mentioned this. I think there's opportunity for manufacturers, in terms of - there's a very healthy repair market out there. Repairing - breaking that authorised network I think is something that's really important, and I would be really interested to see how this plays out in the automotive industry. Provision of spare parts to
35 independent repairers doesn't dilute the IP of the manufacturers. It potentially will increase the sales in those instances.

But in terms of providing information around schematics, as I said, a lot of the time this will not involve information about copyright, that's protected by
40 copyright. So, I think what you're proposing is something that's positive, and it's not infringing - it's not going to cause any problems for manufacturers, and should be brought willingly. And some - I must stress, some manufacturers do do well in this space. So I think it's just bringing everybody along.

45 COMMISSIONER LINDWALL: All right. Thanks, Leanne. Julie, any final questions?

COMMISSIONER ABRAMSON: I was just going to say, thank you, Leanne. As Paul has said previously to one of the others, your help with this inquiry has been very much appreciated.

5 COMMISSIONER LINDWALL: And it was great that you were able to do the Repair Summit in person.

COMMISSIONER ABRAMSON: Absolutely.

10 PROF WISEMAN: Thank you very much again for your participation as well, and thanks for the opportunity today.

COMMISSIONER ABRAMSON: Thank you.

15 COMMISSIONER LINDWALL: Thank you, Leanne. Take care.

PROF WISEMAN: Thank you.

20 COMMISSIONER LINDWALL: Well, Matthew Rimmer now – Matthew, if you're around - - -

DR RIMMER: Good day. How are you going?

25 COMMISSIONER LINDWALL: Very well. Welcome again. If you could just introduce yourself and give us a statement, that would be perfect.

30 DR RIMMER: Sure. I would like to acknowledge the Turrbal and Yuggara as the First Nations owners of the land where QUT now stands, and we recognise that these lands have always been places of teaching, research and learning. Even for a topic like the right to repair, I think there's an Indigenous intellectual property angle to the topic. I think about the great show, Bush Mechanics, which has now become a staple of the National Film & Sound Archive, which was all about ingenious fixes for broken - - -

35 COMMISSIONER ABRAMSON: Matthew. I saw that. I think it was great.

40 DR RIMMER: And historically, Australians have always been very reliant upon the ability to repair and fix their technologies. Thinking back to colonial Australia, there were companies like Furphy's, which was a blacksmithery, which would not only make new things, like water carts and agricultural machinery, but it would also fix broken down technology of one kind or another.

45 So, in some ways, there's a very kind of long history to the discussion about repair in Australia, because of the (indistinct) difference. Once upon a time, we very much depended upon the ability to engage in local repair. In terms of engaging with the submission of the Productivity Commissioner, I recall

having a chat to Shane Rattenbury, who is now the ACT Attorney General, back in 2020, about the topic of the right to repair.

5 And he was kind of relating his desire for the Productivity Commission to engage in an inquiry on the topic, because he thought there needed to be some sort of fact-finding process, but there also needed to be a comprehensive analysis of the topic. So I'm very pleased that the Productivity Commission was given a referral to investigate the complex and tangled topic of the right to repair.

10 In some ways, I'm very envious of the draft report, in terms of that it provides a great deal of clarity in terms of the topic. It very neatly breaks down the different dimensions of the topic of right to repair, and untangles it in thinking about how consumer law works, and how competition policy works, the relevance of intellectual property, and the larger questions about private stewardship and environmental law.

15 I think this kind of approach, this holistic approach has been very helpful, in terms of understanding the topic. I think there were a lot of problems with the Treasury investigation of the topic of repair information in relation to motor vehicles, because they had such a narrow, limited perspective. I think that really affected how they approach that particular topic.

20 So I think that's a kind of a great strength of the draft report, that it is so multidimensional, and it takes on board the relevance of all those different disciplines. I think the report is also really useful in terms of showing a great comparative awareness of what is happening in other jurisdictions. In many ways, it has been a very dynamic topic.

25 Joe Biden has pressed ahead with executive orders on the right to repair. He has installed Lina Khan as the head of the Federal Trade Commission, and she has been promising to break up various different monopolies. In Canada, the Parliament has been discussing a right to repair in relation to copyright and technological measures, particularly during the coronavirus pandemic.

30 We've heard about some of the developments in the European Union and the United Kingdom. Other jurisdictions at the moment, like South Africa, are debating the merits of the right to repair. So I think the report does a really good job at capturing those dynamic developments. But I think it also kind of emphasises the need for a bold approach to the topic by the Productivity Commission.

35 We don't want to be left behind, necessarily, by Joe Biden pressing ahead with pretty strong reforms in relation to right to repair, and not going as hard as Joe Biden might do, in terms of his administration. I think there's also important other international dimensions of the right to repair, particularly in

light of the UN [United Nations] Sustainable Development Goals, and I think that dimension is important as well.

5 And I do think, as with any other topic in this area, you have to kind of
navigate around some of the various international regimes that impact upon
intellectual property exceptions. So there are, no doubt, issue in relation to
the TRIPS agreement [The Agreement on Trade-Related Aspects of
Intellectual Property Rights], and the Trans-Pacific Partnership, and the
10 Australia-United State Free Trade Agreement. But there are flexibilities that
can be used in those areas.

15 Unfortunately, I didn't put in a submission to the initial issues paper. There's
been a bit of hectic restructuring going on in the higher education sector, and
that took up a lot of my time earlier this year. But I have been writing a
larger submission this week, and I will submit it at the end of the week.

COMMISSIONER LINDWALL: Thank you.

20 DR RIMMER: In terms of my recommendations, I do have a kind of a focus
upon intellectual property. And then I also have some other
recommendations in relation to consumer law and competition policy, and
environmental matters. I guess the one area where I think there might need
to be a little bit more attention in the final report is really the topic of
25 healthcare and the coronavirus.

It's very striking that in both the consultations that I've had with you
previously, and now, that Australia has been suffering various lockdowns as
we try to grapple with the coronavirus. Certainly for me, I think that that
particular context is a really important one. Ron Wyden, the very influential
30 Oregon senator, had a very interesting bill in the US Congress, trying to push
for right to repair in relation to medical infrastructure, covering a whole wide
range of different forms of IP; copyright law, designs, patents.

35 And it's been interesting to see proposals of a similar nature in South Africa
around the right to repair as well, in the health context. And I know my
colleague Dr Abbas is very interested in that context. So I think perhaps the
one kind of context that might need a little bit more attention is that area of
healthcare. And perhaps that has been highlighted by the pandemic, but also
with new technologies being developed, the ability to repair various different
40 technologies becomes quite important, particularly with hip replacements and
implants. We have various different robotics researchers working on ways in
which robotics could be used. So, I think that's another important context
that might need a little bit more attention, I think.

45 COMMISSIONER ABRAMSON: I should say just one thing, Matthew, if I
may is that the medical equipment devices inside people's bodies was not an
area that we actually spoke in for, I think that was right Paul Lindwall? But

we are interested in some of the conversation that you have been having about particular products, you know like the respirators and the US response to it. So, one of the reasons you didn't see that from us Matthew was because how big was the ocean for us? So, we looked at specific things, and we
5 certainly were very interested in consumer experiences with things like wheelchairs, but it's fair to say we haven't actually had many submissions or comments on that.

DR RIMMER: Well I do think it's worth attention, I mean it is I think really
10 topical at the moment, you know there is debates going on around the TRIPS waiver in relation to intellectual property and COVID-related technologies. So, India and South Africa have argued there should be a TRIPS waiver for all COVID technologies. Joe Biden has said that he's willing to support a TRIPS waiver for vaccines, Angela Merkel is resisting any form of TRIPS
15 waiver. But I think the TRIPS waiver would actually also relate to questions around repair, if you had a TRIPS waiver in relation to COVID technologies that could conceivably relate to repairs in relation to intellectual property relating to COVID technologies.

I mean just having a look at my largest submission here, I kind of note that
20 Cory Doctorow kind of noted there was this controversy in Italy over whether or not a local 3D printing of replacement parts for ventilators raised larger questions about intellectual property. You know a range of civil society organisations in the US, including iFixit who you've heard from today
25 already, and repair.org and US PIRG were really concerned about US hospitals not having enough ventilators in 2020 - - -

COMMISSIONER ABRAMSON: Matthew, I must say, I might be wrong
30 about this but I had an idea that, in Australia at least, I did see a report about this that there had been information sharing between the people who made respirators to enable - I think Paul will like this - 3D printing to be made to make parts.

DR RIMMER: There were quite a few 3D printing projects underway, so
35 you know the ANU the MakerSpace there turned into a place to make particular products and various other institutions were involved in different projects. Some of them relied upon open licensed IPs, so Prosper who is from the Czech Republic, but I haven't come across any particular IP disputes yet in Australia. But certainly, in the European Union there's been a bit of a
40 debate about them, and as we've heard from iFixit they've certainly had issues. And I think the bill put forward by Ron Wyden and Yvette Clarke was really designed to ensure that there would be the opportunity to fix a whole wide range of things during the public health emergency.

45 And those situations have shifted of course in the United States, but it did cover critical medical infrastructure, it dealt with copyright law, it dealt with technological protection measures, it dealt with design patents, and there was

a particular clause around contracts - stopping contracting out - it focussed on manufacturer requirements and also asked for further investigations of that particular topic. But, yes, it's an interesting kind of context, and I've certainly seen in some of the more general debates about right to repair in the United States sometimes some of the medical manufacturers try to make arguments that they should keep medical equipment out of the general right to repair proposals, they sometimes argue there are special considerations involved in relation to product safety, and quality and other concerns.

5
10 I just think it's a very interesting context to explore the right to repair. But anyways, in my longer submission I will have a more extended discussion of that topic.

15 COMMISSIONER LINDWALL: Thank you.

20 DR RIMMER: In terms of my recommendations in relation to intellectual property, I guess I kind of encourage the Productivity Commission to not only make some recommendations in relation to a form of copyright law and technological protections and contracting out, but also think about ways in which some of the other fields of intellectual property could also be dealt with in terms of designs, and patents, and trade secrets. I think reading the report, I think the draft report took the view that some of the evidence around IP restrictions were either anecdotal or patchy. I guess I'd try to make a stronger argument that really we've had disputes that have reached the High Court and the Federal Court around repair, that kind of indicates to me that perhaps they have reached the next level of being a critical issue if you need judges to try to work out how to interpret those divisions.

30 And I was very taken by the comments from Steve Wozniak the co-founder of Apple recently about how he's purported a right to repair and how he was very upset about Apple shifting from an open platform to a closed walled garden. And he was very distressed that Apple had been making various different threats over the right to repair. I'm very conscious, thinking about the example of Apple, that they rely upon all the different species of intellectual property in relation to their products, they rely upon copyright, and designs, and trademarks, and patents and trade secrets, and I'm just a little bit concerned if we only have reforms in relation to copyright, an entity like Apple conceivably could rely upon some of those secondary forms of intellectual property like designs and like trademarks.

40 COMMISSIONER ABRAMSON: And Mathew could I just ask you there because you've given us the entre into it, we certainly though copyright was probably the lead issue. What, in terms of trademarks and design law, and the things that you've just mentioned, what would be the priorities there?

45 DR RIMMER: So, I mean as you kind of note in your report, we do have a new precedent around the operation of spare parts and feeling like an old man

here I remember when I was taught about that provision back in the 1990s. That used to be the focal point of the discussion around repair was all around the designs defence. I just think that if you're arguing for a defence of fair use, or defence of fair dealing in relation to copyright perhaps you need some
5 sort of equivalent defence in relation to design flaw. And I think looking at that defence, even as someone whose kind of worked on intellectual property for heading towards three decades now, I find that current spare parts defence really hard to comprehend, and articulate, and understand.

10 And as Professor Wiseman was noting before, there are sometimes some dangers in terms of complicated defences or narrow defences. And I think the judge tried really hard in that particular decision but I just think there could be scope there for some sort of equivalent defence to the one that
15 you're putting up in relation to copyright law because I think it would be useful to have some sort of equivalence there. And I'm very conscious from the work of Mitchell Adams from Swinburne University that Apple do extensively use their design regime, and indeed some of the mega disputes between Apple and Samsung have been over designs.

20 So I guess I would, you know in some ways Australian design law has been quite anachronistic, and there have been some halting efforts to reform it, but I just wonder whether we can construct a better defence in relation to spare parts than what we have at the moment.

25 COMMISSIONER ABRAMSON: We'd be very interested in your thoughts in that Matthew, especially in your submission.

DR RIMMER: All right. Well, I will certainly elaborate upon that. And I
30 also note the Productivity Commission kind of do deal with the question around trademark disputes in relation to repair matters, and quite rightly looks at the Norwegian trademark dispute between Huseby and Apple. But I've been kind of digging away, and there are some other disputes in other jurisdictions around trademarks and replacement parts, and advertising.

35 There's a very interesting South African dispute, involving BMW replacement parts, in which BMW try to make arguments that that was a trademark infringement. And essentially, the court said, 'This is a functional part. You can't really protect it in that way.' But there's also been some
40 interesting disputes over in the United States, over advertising Toyota cars. In that particular dispute, it's very interesting.

United States trademark law has been influenced by the doctrine of fair use. So they talk about nominative fair uses under trademark law. And I just kind
45 of wonder, reading the report of the Productivity Commission, the position taken would be, it might be quite difficult to run the Apple-style action in Australia. I think, if that's your position, would it be helpful to have some sort of explicit defence under trademark law in relation to repairs or

replacements, to ensure that these technology developers can't run these secondary arguments of one kind or another?

5 COMMISSIONER LINDWALL: Matthew, could I ask, in our report we've spoken about trademark and design— specifically about copyright, but also the others. We asked about fair dealing and fair use. Do you have a preference for one versus the other?

10 DR RIMMER: Well, I've been making submissions on the topic for decade now, because there's been so many law reforms (indistinct) investigating whether or not Australia should have a defence of fair use. The Copyright Law Review Committee, the Harper Review, the Productivity Commission previously, the Australian Law Reform Commission have all made
15 recommendations that Australia should adopt a general broad-based defence of fair use, particularly to take into account the wide array of different purposes, in terms of uses that are made in relation to copyrighted works, but also to deal with changes in respect of technology.

20 And I would certainly support a more general defence of fair use. I think copyright law has become increasingly important in relation to repair, particularly as it kind of started to cover computer software as well. So (indistinct) from Berkeley Law School was thinking about reverse engineering and software, and mentioning repair in that context.

25 Really, there has been a kind of a political issue in terms of getting support for a general defence of fair use in the Australian Parliament. So what has happened is that various copyright industries have lobbied against the introduction of such a general defence. We have seen some new purposes created in relation to the defence of fair dealing. So, parody and satire was
30 introduced as a new purpose by Philip Ruddock as Attorney General in 2006.

More recently, we've had a new purpose in relation to the topic of disability rights. As Professor Wiseman has noted, we've had some new cases dealing with the defence of fair dealing of late. So, Clive Palmer, as one of his
35 contributions to the Australian jurisprudence, was involved in a battle with Twisted Sister. In that particular case, Justice Katzman had a good discussion about the history and the nature of the defence of fair dealing, but also kind of talked about its scope and its limitations.

40 We've also had the *AGL v Greenpeace* case, which was a really interesting case. And in that case, the court in most cases found that Greenpeace could raise arguments about the defence of fair dealing, but there were certain uses that were outside the scope of the purposes related to parody and satire (indistinct) review. But I think that case in particular really shows how
45 pernicky the Australian defence of fair dealing is, and we've certainly seen that in previous litigation - - -

COMMISSIONER ABRAMSON: Matthew, sorry to interrupt you – one thing we could say, though, is that a fair dealing defence could be very – could be drawn very carefully. So it was clear to the courts that it was all about repair.

5

DR RIMMER: Yes. I mean, I think that would be helpful in terms of the way it's framed. But I guess my point is that if you're going to have a defence of fair dealing for repair, you should ensure that it is broadly framed. I think your proposal in relation to technology or protection measures is also really useful and helpful. I remember watching in person the High Court of Australia of *Stevens v Sony*. The High Court of Australia was very concerned about the dangers of an over-broad construction of technological protection measures and digital locks.

10

15 Justice Kirby in that case was very concerned about the competition aspects of technological protection measures, and some of the consumer implications of a very broad construction of technological protection measures. So I think that proposal is really important, and I note that the Parliament of Canada has got agreement from four of the largest political parties at the moment to support a proposal on repair, dealing with technological protection measures at the moment.

20

And I would certainly agree with the points made by Professor Wiseman about, you need to stop companies from contracting out of any exceptions, but maybe you need to ensure that other regimes of intellectual property don't allow for contracting out. I always find it kind of quite interesting – in terms of the history of fair use in the United States, Justice Dori came out with both the defence of fair use under copyright law and the defence of experimental use under patent law.

25

30

And I kind of remember being involved in the push a decade ago in which we got a statutory defence in relation to experimental use under patent law. And thinking about the complex patent exhaustion dispute before the High Court of Australia, I just wonder, if we're going to have a defence of fair use of defence of fair dealing for repairs under copyright law, would it be helpful to have such a defence in relation to patent law, to have some sort of defence in relation to repair, particularly - - -

35

COMMISSIONER ABRAMSON: Just on that, Matthew, one of the difficulties might be – I don't have a view, by the way, but one of the difficulties might be that of course the ratings all target different things, and it would be very hard to cause a hierarchy, to say that if you've got the protection under copyright law, then you can't use the other acts as a way of doing it. Now, I know you're talking about (indistinct) defences in all of them, but I am sort of thinking, well, how would that work?

45

DR RIMMER: Well, I guess my point is that there needs to be some sort of harmony between the different intellectual property regimes, in terms of the defences that are available, particularly because many technologies and many products involve a combination of different (indistinct) intellectual property.
5 So, I mean, I certainly understand your point. Certain regimes have rules about overlap, like copyright law and design, but others do not. I guess in my submission I'm really kind of making the point that we need to ensure that there is a similar position in relation to repair across the different regimes.

10 COMMISSIONER ABRAMSON: Well, we do start with one benefit, in that it's all federal legislation.

DR RIMMER: I guess I'm just trying to nudge you a little bit further.

15 COMMISSIONER ABRAMSON: Take it that we understood the nudge. Thank you, Matthew.

COMMISSIONER LINDWALL: Could I ask, Matthew, about the application of the Therapeutic Goods Administration's federal principles for
20 medical equipment, and how you would see that interfacing with repair rights.

DR RIMMER: That's a really complex area. I've had to kind of grapple a little bit with the TGA at times in relation to 3D printing and bioprinting. But
25 I think that's one of the most kind of complex areas of interface between the IP regime and the TGA system. Historically, some very particular provisions were put in place in the Hatch-Waxman Act in the United States, to try to have some sort of balance between pharmaceutical drug makers and generic drug makers.

30 And that involved there being rules around data, some very specific rule around data. And as a result of the Australia-United States Free Trade Agreement, we kind of got a version of that. But I find it a really difficult area to deal with, because you have general rules around confidential
35 information and trade secrets.

And then, there's some very particular rules about data protection in relation to pharmaceutical drugs and agricultural chemicals. And then there's this raging debate over biologics. And I find it really difficult to navigate
40 between those areas. I remember Julia Gillard was the Shadow Minister for Health at the time, and I remember having complex discussions with her advisors about how those provisions would operate.

45 But I do think that that raises really interesting questions, in terms of, how do we deal with repair in terms of the general rules around confidential information? Australia's exceptions are not well-constructed, and there's still

this kind of ongoing common law debate between Kirby and Gummow about whether or not you should have broad or narrow exceptions to trade secrets.

5 I know some technology companies, like Tesla, have asserted trade protection in relation to (indistinct) information. You raised before the question of non-disclosure agreements. I guess that's another context for confidential information. Should technology developers be able to say that the information about their technology needed for repair is confidential?

10 COMMISSIONER ABRAMSON: Matthew, I thought confidential information was, at least in Australia – and I might be wrong here – quite narrowly construed. Or have I misunderstood that?

15 DR RIMMER: Well, I think there has been a massive expansion of trade secrets and confidential information. In the US they had the Defend Trade Secrets Act, passed under Obama. But they've also had criminal remedies in relation to trade secrets, which have become much more commonplace. So there was a big dispute between Waymo – Google's self-driving company – and Uber.

20 But in Australia, we've also, under the Turnbull administration, have got new criminal offences for trade secrets theft directed at a foreign principal, or directed by a foreign principal. So it's one of those areas that cuts across a number of different sectors. But I guess a really important theme coming from your inquiry is that it's often about data and information associated with repair.

COMMISSIONER ABRAMSON: Yes.

30 DR RIMMER: I just wonder whether you need to kind of contemplate that. I mean, I think that was my bugbear when I made submissions a couple of years ago to Treasury, who was very focused upon sharing repair information, and I was busy making submissions that they need to really think about whether that information is subject to intellectual property protection, particularly trade secrets or confidential information. How are they going to interface with one another?

35 COMMISSIONER ABRAMSON: Well, we certainly thought about that in the context of copyright, because you'll see there's an information request, that we actually ask quite specifically about other agreements which might blunt that. And you would want, if you went that way, to say that that provision trumps other things, like you can't contract out of it.

40 DR RIMMER: Yes. I think that would be important to think about. If you had an unpublished copyright work, it might also be protected by confidential information as well. So, I've been kind of digging around this particular

topic of trade secrets a bit more, and hopefully over the next week I'll try to find a bit more.

5 But as I read in some of the American right to repair submissions, I came across a number of technology developer companies kind of arguing that they shouldn't be forced to share their repair information if that was confidential information of one kind or another. So I think it's kind of those secondary areas of intellectual property that might need a little bit more attention, I think.

10

COMMISSIONER ABRAMSON: Well, it matters, that's why we were quite deliberate in the draft report, because if you fix one point, it's no benefit to anybody if then all of the use of confidentiality agreements and other agreements trumps the provision. That's why it's kind of couched in that way. So your thoughts on that, Matthew, would be most welcome.

15

DR RIMMER: Yes. But I think it's an area that's undergone great expansion recently.

20

COMMISSIONER LINDWALL: It's likely to continue that way.

DR RIMMER: Yes.

25

COMMISSIONER LINDWALL: Matthew, given the time, we might have to call for a lunch break now.

DR RIMMER: Sure.

30

COMMISSIONER LINDWALL: So, thank you. But it sounds like you're going to put a lot of what you've just articulated to us in your submission, and so we'll welcome that, and we'll explore any questions that come from that separately. So, thank you very much for appearing today, and we much appreciate it.

35

COMMISSIONER ABRAMSON: Thank you, Matthew. Much appreciated.

DR RIMMER: Thank you kindly. All the best with the rest of your inquiry. It's been fascinating to listen in.

40

COMMISSIONER LINDWALL: It's a fascinating inquiry. Thank you, Matthew. We'll now break, and resume at 1.30 Australian Eastern Standard Time, so one hour away, or just less than an hour now. Thank you.

45

LUNCHEON ADJOURNMENT

[12.35 pm]

RESUMED

[1.29 pm]

5 COMMISSIONER LINDWALL: Have we got Gayle and Jacqueline there?

COMMISSIONER ABRAMSON: I can't see them on our screen. Yes, I can. I can see one of our participants.

10 COMMISSIONER LINDWALL: Hello, Gayle.

COMMISSIONER ABRAMSON: Gayle, you're on mute.

15 MS SLOAN: If I hear those words again, I think I'll top myself. Sorry about that. It logged in on mute.

COMMISSIONER ABRAMSON: I remember last time when we spoke with you – you've got children, so I assumed that you've got the home schooling happening as well.

20 MS SLOAN: Yes, I have all that joyful stuff happening right now, in COVID interpretation as well.

COMMISSIONER ABRAMSON: Well, thank you for making time to appear today. I'll hand back to Paul.

25 MS SLOAN: Thanks, Julie. Thanks, Paul.

COMMISSIONER LINDWALL: Is Jacqueline there as well, Gayle?

30 MS SLOAN: Yes, Jacqueline is listening.

MS ONG: Yes, I am. Hello.

35 COMMISSIONER LINDWALL: Hello. Would you like to just introduce yourselves for the transcript, and then make a bit of a statement, please?

40 MS SLOAN: Yes. Thanks for having me. I'm Gayle Sloan. I'm the CEO of the Waste Management and Resource Recovery Association of Australia. We're the national peak body for the waste and resource recovery industry. Jacqueline Ong, who is with me today, is my Policy and Communications Manager for the Association.

45 We are here today – I guess there's a little bit of a different (indistinct), and it was great to see the report when it came out, because we have met before. Our interest in this report is obviously the impact of material, and waste management and resource recovery. I note the report has covered off the

actual points within the report, about the impact that particularly e-waste has on waste management and the importance of repair.

5 I guess I come at it from a point of view that this is about creating a circular economy in Australia, which is, I would say, the policy of this current government and also the opposition, and how we manage the materials sustainably in order to I guess increase the lifecycle, and how we manage end of life, and how repair and durability is key to that, and how we move away potentially from a consumption-driven replacement model within our
10 Australian economy towards one that looks at how we expand life, give informed knowledge to consumers around what they're buying, and the true cost and impact of it.

15 So I guess probably I'm not necessarily going to address all the clauses or queries you've got about the depth of consumers and impacts, but very interested in the comments from the report about agricultural machinery and how businesses take into account true lifecycle of products, and how we potentially give consumers that knowledge, so that they also understand genuine lifecycle impacts, costs, and how we can address that.

20 I do have a couple of concerns about some of the comments about landfill; as if the report says it's all right that 50 per cent goes to landfill, because we had good landfill. We do have good landfill; it's not all right in any way, shape or form that 50 per cent of even just the materials you're looking at with e-
25 waste go to landfill, when we've got a government policy of 80 per cent diversion of landfill – to landfill by 2030. So, from the material management point of view, I think we can do definitely more.

30 COMMISSIONER LINDWALL: All right. Is there anything else you wanted to say, then, Gayle?

MS SLOAN: Isn't that enough?

35 COMMISSIONER LINDWALL: I mean, I don't think we said – (indistinct) recall that we said that it's good that these go to landfill. I just – I think - - -

MS SLOAN: It's not bad.

40 COMMISSIONER LINDWALL: No, we just said that it's well managed, that's all.

MS SLOAN: Well, landfill is well managed, but - - -

45 COMMISSIONER LINDWALL: I was going to say, and that if you have bans on landfill, it can cause it to be dumped elsewhere. I guess it's something we would - - -

MS SLOAN: Well, I think that's a common misconception with landfill bans. We've got three states already that have landfill bans for e-waste, in whole or in part. And I think we've got to – it's very easy to say, with the levies and bans, that people (indistinct) landfill. I think if we start talking
5 about material from the start of the supply chain, and talking to people about the value of the material that they're using in these products, and how we're doing things like reducing reliance on virgin material, and how we can start to move towards a low-carbon society, which I think is very much front-of-mind for a lot of people. They don't just want plastic eliminated. They want
10 waste eliminated, and that's what we want as a society and an economy as well.

COMMISSIONER LINDWALL: All right. Now, could I talk a bit about e-waste generally, and the hazardous material composition of e-waste.
15

MS SLOAN: Yes, and I hope I can give you an informed answer.

COMMISSIONER LINDWALL: Yes. Obviously government policies have changed, in terms of what's allowed to be used in the manufacture of
20 products. We don't use fluorocarbons, for example, and other products change. I mean, my prior would be that these policies which are aimed at reducing the amount of hazardous waste should have ultimately an impact upon the waste stream altogether, and that the composition of e-waste would be proportionally less hazardous over time. Is that fair to say?
25

MS SLOAN: I think that, on a general level, potentially, but we don't have anywhere near enough design guidelines, restrictions on material, than what can go into materials in Australia at all. So if you think about products such as PFAS [Per- and polyfluoroalkyl substances], and other POPs [Persistent organic pollutants], the organic pollutants that we have, these are still within
30 so many products that do end up in landfill, because there's no – there was actually no requirement to design those sort of products out, or even give labels to consumers to say that it contains it.

35 So we're not letting people know that they're continuing to buy those products. So I would say the labelling and the design scheme that Europe has is the one we need, and we don't have anywhere close to that in Australia. So, we should be - - -

40 COMMISSIONER LINDWALL: The French labelling scheme, you're referring to?

MS SLOAN: The French labelling scheme is good in relation to durability and repairability, but there's a broader scheme – I think it's called CLAP or
45 something – that actually talks about labelling of chemicals and other products that consumers have both to register – sorry, so manufacturers both have to register, but also publicly state that the material is contained within

those products. So, separate to the durability, the French scheme, more the labelling generally about what's within it.

5 COMMISSIONER LINDWALL: All right. Could you tell us a bit about that scheme?

10 MS SLOAN: The scheme for the labelling of the chemicals and – well, we'll include it in our submission, but the European Union, they do have a scheme around, and we looked at it obviously recently a lot, for PFAS and a few other things we've been doing. So it actually gives the consumers knowledge about what they're buying upfront, and they have to register the chemicals within it. So, PFAS is a very big issue for (indistinct) industries, but also as a society, and people don't actually know they're consuming it.

15 COMMISSIONER LINDWALL: That's true. There is some evidence that we're read during the course of this inquiry that labelling can be confusing, and that there is a cost to labelling. So, how do you do it in such a way that illuminates, rather than confuses a consumer?

20 MS SLOAN: I think that there needs to be a standard label that gives the information they require. And do – Paul, you mentioned the French scheme. So, from the little bit that I know about that, I think there's always a cost, but there's also value. And we have to get away from finding reasons to not do it. So, label upfront; that gives the consumer the informed choice to buy products knowing how long it's going to last, and whether repair and spare parts are available, which is what the French scheme is trying to do, to try and encourage people to repair rather than replace, is a good thing.

25
30 We have a very linear approach – and I know that sounds like jargon – in the sense that we have, for a very long time, encouraged people to keep buying. We look at retail sales figures; we focus on consuming, rather than thinking about what we're consuming, how long it's going to last, and the impact at end of life. Because we don't generally have – other than product stewardship schemes, which don't go far enough, I'd argue, we don't have the true cost of end of life within those products.

35
40 So if we had proper costing around some of the end of life, and labelling, for people to know that what they're buying is going to last 10 years for sure, and there's spare parts available, it would inform decision-making at the front. There was a really good piece, I thought, in the report, about how the agriculture industries tend to look at that because they're businesses.

45 We've got to help consumers do those things, too, right? Because if you know you're replacing every two years and creating waste along the way, you might not be concerned about the waste, but you'd be concerned about continuing to replace the product.

5 COMMISSIONER LINDWALL: Could we talk, then, about the product stewardship schemes in Australia. You just said that you don't think they go far enough. So, in what way are they flawed, and how would you improve them? And perhaps talk about the difference in the voluntary scheme, such as MobileMuster, versus, say the NTCRS, which is a co-regulatory scheme.

10 MS SLOAN: There's a third scheme, that's missing, which is a mandated scheme. So we don't have any of those in Australia. So I think, while they're voluntary and well-intended, the challenge is, both in a voluntary and a co-regulatory, there's no strong emphasis or requirement to do it. So there's a lot of coercing under both. Whether they end up being fully funded and comprehensive is very challenging.

15 There is no genuine obligation on generators to manage end of life under either. And there's still a big emphasis on – and you've captured it in the report – on recycling, potentially, as opposed to, say, managing lifespan and impact of that lifespan. So the Packaging Covenant is an example where it's supposed to mitigate the impact of packaging on the environment and the community. Questionable whether that has been achieved in the year that it's
20 in, and that's the co-regulatory.

25 If you are responsible for end of life, which we're saying with a lot stronger requirements and emphasis on eco design like we see in Europe, you would think a lot longer and harder around how you would design that product so it lasts and you can repair it so that you don't have to make the full costs of managing that end of life. And that is definitely lacking in Australia. And we've just seen one of the major operators under the NTCRS, MRI, no longer operating.

30 COMMISSIONER LINDWALL: That's right.

35 MS SLOAN: So that's probably because in part because it's not fully funded in the cost, and there is no emphasis or requirements on how we get those generators who make that material to purchase it back, for example. So if they designed for disaggregation and reuse of their own parts and brought them back in - because one of the big challenges we face in all parts of our sector is that market demands for that recycled product that we make at the end of that current supply chain, to bring it back into market and reuse it and reduce the reliance on the virgin.

40 COMMISSIONER LINDWALL: Well should the consumer be fully funding this then? So, the manufacturer takes the responsibility in this type of scenario from go to whoa if you like, and then would it be responsible for the recycling of it or the reuse of it, or whatever, that would then be passed
45 onto the consumer for a higher price presumably?

MS SLOAN: Well we've seen through schemes like the Container Deposit Scheme that when you do it, and you actually put the cost into the market, and yes it ends up on the consumer but it ends up on the household at present when we think about the cost going into, generally, what is a curb side
5 collection system. So, the consumer is currently picking it, what you're doing is you're actually transparently putting it in the purchase price at first instance arguably. And then once you've got that financial impost you think as a manufacturer you'd think longer and harder around how that total cost is going to be because it's going to have an impact on the cost of my product,
10 the same of my product, the sales of my product, you know.

And if I start to have to have a genuine responsibility for that I might look at how I de-risk those costs through other things such as purchasing it back, setting up facilities that I can actually have some control over the cost and
15 management of to bring it back into the supply chain. So, ultimately the consumer is paying now be it at the retail shelf or its been in a curb side bin or their alternative disposal that they have to actually manage now.

COMMISSIONER LINDWALL: What percentage of consumers, do you think, are aware of the lifetime costs - or what percentage of consumers would ever be aware of it - I mean I assume like any people there's a spectrum, there'll be people who are very committed to reusing and getting
20 the best out of their products and not causing waste, and then there's another group that won't care a dime I guess.

25 MS SLOAN: Yes.

COMMISSIONER LINDWALL: And there's a whole lot in between, and how do you move people from the latter end - in other words the ones that don't really care - to start appreciating the negative externalities as an
30 economists speak.

MS SLOAN: Look, I think that again you're spot on. You've got that highly engaged, highly evolved 5 or 10 per cent out there, but as certain issues
35 become higher in the public conscience, as we've seen with plastic, I'm sure that export bans from Australian contexts, about reducing waste and creating manufacturing onshore. And these issues have gone on really since 2018; China and the impact on the national - of the global economy - people are getting more and more engaged and involved around this. You know the
40 right to repair is an active conversations, I guess, on social media because people are more and more aware of it.

But also, it's the multiplication and the jobs aspect too that gets sometimes lost in this. You know, creating a circular economy - the Ellen MacArthur
45 model - a regenerative or repair model is about trying to stop waste being create in the first instance by creating those systems, and those create jobs.

COMMISSIONER LINDWALL: Okay, I should give Julie a chance to ask some questions.

5 COMMISSIONER ABRAMSON: Thanks very much Paul. Gayle I just wanted to ask if you'd seen out proposals in relation to reforming the NTCRS where we'd actually recommended that it should enable reuse not just the recycling, and this was a disincentive in the scheme, and I just wondered if you had any views about that?

10 MS SLOAN: Yes, I did see that Julie and I thought that was a really good thought process to be able to capture the reuse and repair aspect, because I think if we step back and think about what we're trying to do here, we're trying to elongate the life of an item. So, I think that the ability to capture what are higher order steps in the waste management hierarchy of avoidance is a good thing, yes.

20 COMMISSIONER ABRAMSON: Thank you. One of the things Gayle, one of the things that was said to us though was that the products when they come to the recycling scheme are often older products, they're at the end of their life scheme, so there was sort of an implication really that they couldn't be refurbished. Do you have any views on that? Or any information you could share with us?

25 MS SLOAN: No, I haven't got data around that. I guess I would point to the other parts of your report though that talk about the software and other IP updates that are not available which they're designed to make them almost obsolete. But as far as data goes, I couldn't support or contradict.

30 COMMISSIONER ABRAMSON: No that's fine, because the other thing was, we also had a proposal regarding GPS tracking and that was in relation to the waste, I wondered if you had any views on that?

35 MS SLOAN: Look, I think it's really important that whatever we do - and I saw that in relation to exporting as well - I think that it's really important that we make sure we're not dumping. So, I think that anything that gives us certainty as to where the material is going in the supply chain is really important. I think my preference again would be like anything else that we could actually try and keep as much of that product onshore and be actually putting it through the circular economy, metrics, and systems in Australia, and creating those jobs here. I'm not sure about the - you know when you look at the data and you say I think it's estimated as 45 million e-appliances in hour holds with about 2.5 million dumped each year, or discarded each year, I think there's a fair amount out there that if we could how we disaggregate and repair, reuse, and then consolidate them we could actually find some good economies of scale.

And I think that's what Victoria and others have tried to do with having clear e-waste policies that make it really clear about not going to landfill to try and drive some of that market development pace as well.

5 COMMISSIONER ABRAMSON: Thank you Gayle, thanks Paul.

COMMISSIONER LINDWALL: Could I talk Gayle about what type of products you're most concerned in terms of excessive turn in them, in terms of waste and circular economy. Are there particular types of products that
10 you're mostly concerned about?

MS SLOAN: I think the challenge is with a lot of the genuine e-waste, the PCs and the phones. I also have a concern about whitegoods, like I say a lot about if we think about the volume of white goods, and we've not actually got
15 great data on that from a weight point of view. So I did see the figures in the report about the half a million of e-waste appeared to come from a global report, we do need better granularity around how much e-waste, but also whitegoods specifically is out there, because that is a phenomenal amount of scrap metal and material that is being discarded. I think that there's a - and I
20 think I've got some data around that - that was closer to 700,000 tonnes annually when it came to whitegoods specifically.

I think it's great that we're seeing increasingly sort of these being taken away by retailers, but following that supply chain when you get new ones - which
25 is a great service - but then what's happening to those products? You know there's a bit of transparency around refrigeration, absolutely, because of certain requirements for refrigeration mechanics, but there is an awful lot of these larger bulky goods items that are not necessarily being recycled transparently. The last data I saw from some work down was as little as 12
30 per cent of those products were being recovered or recycled and they're large items taking up lots of resources that arguably could be designed for disrepair and scrap arguably better, or even better looking at how we can increase their lifespan to larger longer lifespans through the repair piece and spare parts.

35 Which is what, if you look at the European model - and I guess I am a fan of that - they're moving much more in a feels like everything old is new again to that service type model, so that Radio Rentals lease hire type model, guarantee a part. We had those as kids, suddenly we've got to own
40 everything. So more a leasing type model, which is for me where the circular economy piece is about sharing.

COMMISSIONER LINDWALL: But on the other hand with leasing, you as a consumer if you have something that you lease you often don't have the same incentive to maintain it as well as if you own it, I mean that's the
45 tragedy of the commons that we were hearing, where there's a lot of ownership of products and there tends to be an abuse of them rather than well maintained products. So, it's not entirely clear to me that products that are

leased are going to be kept for as long as products owned, but I would like evidence on that. Yes.

5 MS SLOAN: Yes. It comes back to the fundamental, and I guess it's the transition that hopefully (indistinct) society, that this is valuable material. Whether you own it or lease it, we need to stop depleting the planet and thinking about the carbon impact we're having. So, you know, if we start - if it's about ownership and that drives your approach to materials, I guess we've still got a way to go in the behavioural change to say we should actually be
10 respecting our planet. And I know that sounds very green and a bit hippy-ish, but that's really what we're trying to talk about because, you know, if you think about the fact that 70 per cent of carbon emissions is related to material management, we have a big role to play in these areas.

15 COMMISSIONER ABRAMSON: Paul, I wonder if I might ask a question if that's okay.

COMMISSIONER LINDWALL: Please.

20 COMMISSIONER ABRAMSON: Gayle, what do you think about the proliferation of product stewardship schemes? Like, we've got one now for - you know, for the televisions; we've got one for phone; got one for batteries. I'm not quite sure how you would actually (indistinct) for it unless you had, like, one single mandatory scheme with parts to it. But just interested in your
25 views on that.

MS SLOAN: Well, I think product stewardship seems to come about when we're not necessarily managing a product as best as we could, right? So - you know, and you don't have necessarily an obvious home for it because we
30 can't keep putting everything in the kerbside bin for the household and externalising that cost. So I think if we have potentially legislation such as we're saying with the circular economy package in Europe that actually puts greater emphasis on things like economic - environmental design and puts obligations on producers about how they manage end of life, you might not
35 need to have individual schemes because there would be far more (indistinct) about how you manage your products and services when you come to market.

COMMISSIONER ABRAMSON: Thank you, Gayle. The other thing I wouldn't mind asking about is have you got any experience with the scale of
40 stockpiling in waste, particular e-waste, and is it a growing problem? There certainly was an incident recently in Melbourne where I live.

MS SLOAN: I think - and look, I have members within my remit who work in that area.

45 COMMISSIONER ABRAMSON: Yes.

MS SLOAN: I think there's a real challenge with sectors of having markets developed sufficiently enough to be able to make the products into the next stage of the supply chain. So if, for example, you're heavily reliant on someone buying back your product and you have challenges with them operating, like in the global market at the moment, there might be instances of stockpiling, but I'm not made aware of large amounts at this time.

COMMISSIONER ABRAMSON: Thank you, Gayle. Thanks, Paul.

COMMISSIONER LINDWALL: Could you comment perhaps, Gayle, on - well, in our report we talk about forecasts from e-waste going forward, obviously solar panels and batteries, and taking batteries in particular which, of course, if we're going to move to electric vehicles and so forth, the European Union is talking about 2035 for Europe for electric vehicles. How do you see the recycling and reuse of batteries going since it's a particular technology obviously and it could be a bigger problem than we think given if we're suddenly all going to go to electric vehicles, there could be a huge amount of e-waste there which is hard to recycle.

MS SLOAN: I come back to my response to Julie about would we need all these product stewardship schemes if we had greater emphasis on design and legislation about how you create design and manage products through its life cycle. You know, again we've still got way too much linear thinking in Australia in the sense of 'I can bring it to market and someone else can solve my recycling challenge'. We've got to have way more emphasis on being really clear about when you bring a product to market, where its end of life home and purpose is. And ideally it should be designed to be able to be refurbished, repaired, reused long before we're focusing on recycling because these are larger issues, you know.

Solar panels are going to be a real challenge for us, and we're already seeing it now. They're made of very many different parts. We need to aggregate them and bring them together in a place arguably adjacent to resource recovery precincts that we can then turn into other products and people buy that, you know. So unless - generators have got responsibility, and I've seen examples of contracts that have been let by governments that are saying not only have you got a supplier, you've got to manage its end of life and give detail of that. And we need to see more of that. It can't be all care and no responsibility.

COMMISSIONER ABRAMSON: One final thing, Gayle, and it's not necessarily within your purview of experience, but (indistinct) consumer guarantees because you will see that we made a number of recommendations about that, and one of the big ones was around what's acceptable quality and also that it can be very difficult for consumers go get things repaired because they're not actually aware of the rights that they do have under Australian law. So just interested in your general views.

MS SLOAN: I think the one in particular about using independent repairers would not void your warranty is really important because I think there's a lot of misconception, and I do think that the vast majority of the
5 recommendations were good in relation to the label and knowledge, because for me it was all about trying to give that consumer that informed consent to be able to know what their rights and - you know, rights were in relation to getting them repaired, aligning warranties. I'd love to see more aligning of
10 warranty with the genuine lifespan of a product. I believe that that's what's happening with France, and also the requirement to also be able to have parts available and knowing that true cost at the upfront. So I thought the recommendations were strong. I would've gone further.

15 COMMISSIONER LINDWALL: Thank you.

MS SLOAN: But you know that.

COMMISSIONER ABRAMSON: Thank you, Paul.

20 COMMISSIONER LINDWALL: Anything else you would like to add, Gayle, while you're here?

MS SLOAN: No. I just, you know, say thank you to Julie and Paul again. We have met before and, you know, I wasn't so sure we'd get that much
25 (indistinct) but I'm very pleased that we definitely got to the table on this one and keep fighting the fight of creating that circular economy for us in Australia.

30 COMMISSIONER ABRAMSON: Thanks very much, Gayle.

COMMISSIONER LINDWALL: That's all right. Thanks very much, then, Gayle.

35 COMMISSIONER ABRAMSON: Thank you.

MS SLOAN: Thanks for having me.

COMMISSIONER LINDWALL: Thank you.

40 MS SLOAN: All right.

COMMISSIONER LINDWALL: Now I would like to invite Muhammad Zaheer Abbas. Are you here, Muhammad? He's not due until 1 o'clock, so we've got a few more minutes (indistinct) there you are. Hello, Muhammad.
45 Can you hear me? I can't hear you.

COMMISSIONER ABRAMSON: Muhammad, we can see you, but we can't hear you. That looks like big progress.

5 COMMISSIONER LINDWALL: No. Can't hear you still, no. No. Can you hear us? Connecting audio.

COMMISSIONER ABRAMSON: We're connecting.

10 COMMISSIONER LINDWALL: Something is happening now, yes.

COMMISSIONER ABRAMSON: You're on mute.

COMMISSIONER LINDWALL: Now you're on mute.

15 DR ABBAS: Okay. We are finally sorted out.

20 COMMISSIONER LINDWALL: Welcome to the hearing, Muhammad. I would like to say that my wife is over in Islamabad at the moment for the High Commissioner and I was there earlier this year, and I will be going back later on. So I read that you studied there as well as in Australia, of course. And so welcome, and would you mind introducing yourself and perhaps giving a statement.

25 DR ABBAS: Yes. Thank you so much. My name is Muhammad Zaheer Abbas. I'm a post-doctoral research fellow at Queensland University of Technology. I completed my PhD with Professor Matthew Rimmer and he is my supervisor in my post-doc as well. So I submitted this submission to the Productivity Commission and I'm presenting the same submission with some changes, and my key focus is on the intellectual property restrictions on the right to repair. And it's my pleasure to appear before this public (indistinct)
30 inquiry on the right to repair, and this inquiry (indistinct) Australian Government's recognition of the problem. I really appreciate the Productivity Commission's ongoing work to address this problem and I'm grateful to the Commission for providing me this opportunity to put forward my (indistinct)
35 and to share my thoughts. First of all, why we need more clarity on the right to repair. Time delays in assessing repair information and repair services may result in preventable loss of human lives. The right to repair is not merely a legal concept, but is a matter of life or death when it comes to fixing critical medical devices in a health emergency like COVID-19.

40 Hospitals cannot wait for days, or even weeks, for an authorised technician, because patients cannot be made to wait if a ventilator or a defibrillator goes down. In such a situation, healthcare providers facing life-threatening logistical problems cannot and should not rely on optional goodwill and
45 benevolence of profit-driven manufacturing corporations.

5 The COVID-19 crisis also exposed vulnerabilities of supply chains, and put global healthcare systems under critical strain. It highlighted the importance of the right to repair medical devices to combat those shortages, because you need to make the best use of the existing resources you have when the new supplies are disrupted because of the emergency situation.

10 I think government policy and legislative response is required to address the imbalance between the corporate interest and the public interest in the context of the right to repair. There are substantial barriers to competition in the repair market and after-sales market. We need to really think about corporations' socially irresponsible behaviour, and the existing gaps or imbalances in our laws and policies.

15 There is need for more regulation and more clarity on positive obligations of corporations with regard to right to repair. Corporations are expected to pursue profit-maximising strategies, because they are corporations. Their purpose is to make profit. They don't like competition; they like to dominate markets. They love to have monopolies, and they love to extend their monopolies.

20 It is the duty of the Australian Government to intervene through policy and legislative layers when the public interest is actually or potentially undermined. There is definitely a need to restore competition in the repair market and after-sales market, in order to ensure consumer welfare and to have a sustainable future for planet Earth.

30 Now I will focus on the intellectual property restrictions on the right to repair. Patent protection potentially conflicts with the reverse engineering and 3D printing of medical parts if such activities are carried out without the right holder's consent. Most of the modern medical equipment is protected under patents, as the medical equipment industry relies on a closed innovation model, and grants relatively higher importance to patents.

35 As compared to other industries, the medical equipment industry relies on patent protection, more than other industries. There are certain exemptions and limitations to the patent holder's exclusive rights. Exceptions to patent rights cleared safe harbours for users to use a protected product in ways that are otherwise considered as infringement of patentees' exclusive rights.

40 The right to repair is one of the plausible differences available to third parties who engage in repairing patent-protected medical devices without authorisation from the patent holders. The problem is, the notion of the right to repair is not a well-defined, free-standing concept in patent law. Not in Australia, not in other countries; it's a very grey area in patent law.

45 This lack of clarity is highly problematic, especially in a health emergency like COVID-19. There's no clearly defined standard or test to assess whether

or not a repairer of a patented product engaged in infringing conduct or permissible conduct. The broad test is that the repairer's activities do not deprive the patentee of their exclusive rights. The right to make a patented article is one of the exclusive rights of the patentee.

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So when you are repairing a product, you should not conflict with the exclusive rights of the patentee, and the right to make or manufacture a protected product is the exclusive right of the patent holder. So there are conflicts. The right to repair is not an established concept under the Australian patent laws. Schedule 1 of the Patents Act does not impugn the right to repair a patented product.

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There is a lack of clarity regarding the distinction between infringing manufacturing and permissible repair. Courts and tribunals evaluate subjectively what constitutes the right to repair in Australia. In the absence of a Brightline test, courts and tribunals rely on subjective assessments, and a consumer may be liable for infringement if a manufacturer is able to prove that the consumer, instead of repairing an object, reconstructed it.

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If the rights holder is able to prove, in a court of law, that instead of repairing, the consumer reconstructed or re-manufactured the article, it can be held liable. Consumers have to carefully consider whether their repair activities potentially infringe the rights of manufacturers. In the absence of clear guidelines, it is hard to predict the litigation outcomes in suits against consumers who engage in controversial repair activity.

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3D printing further complicates matters. I will discuss how 3D printing further complicates matters. First, I will provide a brief introduction to 3D printing, and what's (indistinct) in a health emergency. (Indistinct) manufacturing, which allows the rapid conversion of information from digital 3D models into physical objects, is uniquely well-positioned to address the shortage of critical medical devices, by enabling the fabrication and repair of medical devices in a timely and cost-effective manner.

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3D printing technology can be an enabler of quick and cost-effective repair work. 3D printing of replacement parts of medical devices should be specifically allowed in a health emergency. Unlike any other manufacturing technology, this advanced fabrication method manufactures three-dimensional, tangible products from a pre-designed computer-driven two-dimensional (indistinct words) computer-aided design – or CAD – file of the required shape.

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This unique manufacturing method suits time-sensitive innovation, manufacturing and repair, as it does away with time-consuming and costly tooling and machining requirements. In Italy, there was a critical shortage of (indistinct). Within three hours of studying the (indistinct), two gentlemen –

Christian and Alessandro – were able to create a (indistinct) prototype. Within three hours, they were able to create a prototype.

5 The (indistinct) used a desktop 3D printer to fabricate these replacement (indistinct). In less than 24 hours, they were able to apply (indistinct) to more 120 (indistinct) to a local hospital in Italy. You can imagine the amount of time traditional manufacturers would have taken to make these (indistinct) available to the hospitals.

10 From a legal perspective, 3D printing further complicates matters and creates new challenges for the repair/reconstruction doctrine, because it increases the scope of possibilities in the context of right to repair. With its unique capabilities, 3D printing empowers consumers with broken objects around the house to create many parts by simply downloading, scanning, creating the
15 CAD file, and printing it in plastic, metal, or other materials.

20 3D printing even enables consumers to engage in the reconstruction of patented products, by reducing costs and infrastructure needs for creation processes, and by making these processes simple to carry out, without specialised knowledge and skills. These processes were once cost-prohibitive and technically too cumbersome to be carried out by consumers. Those tasks were specifically performed by the corporations, or by
25 specialised – by people having specialised knowledge and tools. Now these are in the hands of consumers, with the power of 3D printing.

30 3D printing is rapidly growing. It is increasingly becoming important to define clearer standards to distinguish permissible repair of a patented article from the impermissible reconstruction. There is a need for a Brightline test to determine whether a consumer infringed upon patent rights; for instance, when they replace several parts on one occasion, with the high probability of such a repair activity in the future.

35 Because of the enabling (indistinct) of 3D printing, such clarity is critical to provide consistent and predicable applications of the law. The (indistinct) distinction between repair reconstruction is too ambiguous to provide legal certainty to potential infringers of patent rights. This murkiness negatively impacts their ability to predetermine the validity of their conduct, the freedom to operate, and their ability to make more informed legal decisions.

40 There can be people who are willing to help out the hospitals and the medical sector in a health emergency, but they may feel hesitant, because they're not clear whether their conduct is going to be legitimate, to be covered within the domain of right to repair. Are they going to indulge in some infringing activity? So there's a lack of clarity, which causes this hesitation.

45 Recommendations: Australia needs to provide a clear distinction between permissible repair and infringing reconstruction so that consumers have more certainty about the legality of their actions while deciding the extent and

character of repair work. The legal doctrine of exhaustion of patent privacy the right to repair - I'm focussing my attention to another policy tool. That is the views of the legal doctrine of exhaustion of patent privacy, because it offers for the right to repair as well.

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Under this doctrine the rights holders right to control or restrict further distribution exhausts upon the first sale. You have the patent, the product is patents protected, once you sell it the first time you exhaust your rights to make further profit on that product. Purchasers who lawfully acquired patented products cannot be prohibited from engaging in repairing activities if patent owners have already exhausted their exclusive rights upon the first sale. Patent owners, once they have received their full profit from the first sale, should not be able to control the aftermarket, secondary market for repair and service. This legal doctrine can be used as an effective advocacy tool to prevent patent owners from having control over the property of others.

Until very recently this doctrine of exhaustion was not applicable in Australia. The High Court of Australia finally endorsed the doctrine of exhaustion in 2020 in the Seiko Corporation case. Australia's current position is still not clear on whether the doctrine of exhaustion applies on a national or international basis, there are two concepts under this legal doctrine of exhaustion. It can be either national exhaustion or international exhaustion. International exhaustion is better, and it would see the consumer welfare because it provides more possibilities like valid importation. If you have national exhaustion it applies only with Australia, but if you have international exhaustion you can use the option of valid importation of medical devices of patented products.

So, it's still not clear whether Australia has national exhaustion or international exhaustion - there's scope for more clarity. And this is up to WTO [World Trade Organisation] member states to decide whether they're going to adopt national exhaustion or international exhaustion, it's not predetermined in the TRIPS agreement, there's policy space in this regard. Making use of this flexibility is in line with the objective and purpose of the object and purpose of the WTO TRIPS agreement, Article 7 of the TRIPS agreement is a balancing provisions which states that intellectual property rights should be protected and enforced to the mutual advantage of producers and users of technological knowledge, and in a manner conducive to social and economic benefit, and to a balance of the rights and obligations.

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So, TRIPS argument is it's still possible to balance out rights and obligations. Article 8 of the TRIPS agreement further illustrates why these public policy objectives of enforcing intellectual property rights, it allows WTO member states to,

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'Adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development.'

Article 9 of the Doha Declaration 2001 reaffirmed that,

'The TRIPS Council shall be guided by the objectives and principles set out in Articles 7 and 8 of the TRIPS agreement.'

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The proposed right to repair exemption, trade implemented medical devices and the use of the flexibility of exhaustion of rights, it mirrors the objectives and principles enshrined in Article 7 and Article 8 of the TRIPS agreement. There is scope for further balancing of rights and obligations. Article 30 of the TRIPS agreement says that,

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'Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner.'

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If you read the wording of this provision, I would read it again, it is more inclined to - - -

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COMMISSIONER ABRAMSON: Muhammad, I'm sorry to interrupt you but perhaps if I could just answer a specific question on that. So, what you're saying is that if you have an exception it may not fall foul of TRIPS which is what you're taking us though at the moment, is that the argument you're making to us?

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DR ABBAS: Yes, I am making the argument that if we use the flexibilities provided within the TRIPS agreement to protect the public interest in health emergency like COVID-19, it falls within the provisions of the TRIPS act itself, Articles 7 and 8 of the TRIPS agreement and Article 19 of the Doha Declaration which are consented by all the members of the WTO.

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COMMISSIONER ABRAMSON: Is that - sorry to interrupt you, the point is quite important - but you're making that argument only on respect of medical devices, is that correct?

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DR ABBAS: Yes, I'm making this argument in the case of health emergencies, to deal with the shortage of medical devices.

COMMISSIONER ABRAMSON: I understand.

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COMMISSIONER LINDWALL: Okay, Muhammad did you have much more to say or shall we move on to questions?

DR ABBAS: Yes, we can move on to questions.

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COMMISSIONER LINDWALL: Okay. Well thanks very much for that. Can I ask, why do you think medical devices in particular have relied more on patents, where as other products it's more on copyright?

5 DR ABBAS: Because of the technical nature of the medical devices; they rely more on design patents and the patent law because they are technological devices. Copyright mainly covers the expression and the artistic expression, the medical devices they are not artistic they are scientific technological devices which are more likely to be covered under patents and designs.

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COMMISSIONER LINDWALL: So too are smart phones, which is a highly technological device?

DR ABBAS: Yes.

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COMMISSIONER LINDWALL: So, you're arguing that we haven't gone far enough in our report. Because where we spoke in our report about whether copyright should have a fair dealing or a fair use exception then you think something similar should be given in terms of patents - - -

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DR ABBAS: Yes, the copyright and - sorry to interrupt, you can complete first.

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COMMISSIONER LINDWALL: I was going to ask, in terms of medical devices what role does the TGA play? Because that's something we're a bit uncertain about. And what type of medical devices would you argue there should be a greater flexibility for repair, and certainly for consumers to repair them rather than having to go through the manufacturer? I mean, I'm sure that a lot of the manufacturers would argue there's a lot of safety issues and that's what - a pace maker I could understand is something you wouldn't want self-repair for, but maybe a wheelchair is something quite different obviously. So where do you draw the line, I suppose, for this flexibility in repair?

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DR ABBAS: Yes, if we can categorise medical devices into more complicated and more complex devices and less complicated devices. The more complicated devices if you try to fix them, and if you are not a qualified repairer and if you don't have the background knowledge and the qualifications means that you can do more harm than good. But there are some straightforward repairs, like when you go to hospitals it's not too complicated or too scientific that you need formal qualifications to treat that. There are certain other medical devices like hospital beds and other devices that are more straight forward to repair. But still I think that COVID-19 highlighted the importance of putting the safety mechanisms in place, and to prepare ourselves for the next emergency the government needs to work on these safety issues and equality issues.

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5 And even for the straightforward repairs there should be guidelines available, and there should be mechanisms in place, and we should learn from other jurisdictions as well. Like in the US they have a mechanism to verify and approve the CAD files on the government level. And the national institute of health, it has a website and a repository of approved CAD file designs.

10 Other countries, like Australia and (indistinct), they can follow suit, they can learn from the US model. And they can make a repository of CAD files at a national level, and it should be approved on a fast-track basis in a health emergency, to provide verified and approved CAD files to fix the medical devices. We should learn from the COVID experience, because there are certain areas that need more attention, like safety and quality control measures in relation to 3D printed medical devices.

15 If we make proper use of 3D printing and its capabilities, it can be a go-to technology in the next health emergency, and we can make a more optimal use of this technology.

20 COMMISSIONER LINDWALL: One of our earlier participants – we talked about 3D printing, and – I think it was Kyle, actually – he thought that they were quite useful for certain type of products, but not everything, obviously. So where do you think that 3D printing would be most propitious in most of the future of repair, and in particular replacing spare parts, for example?

25 DR ABBAS: As I said earlier, there are certain technologies that are more scientific and more complicated, and 3D printing may not be much helpful in fixing those devices. But for less complicated devices, which need only hardware – fabrication of hardware pieces, 3D printing is a real help, because it enhances the scope of possibilities, and you can do things very quickly.
30 Time is very sensitive in a health emergency.

I provided an example of ventilator (indistinct). Within three hours, they were able to create a prototype, and within 24 hours they were able to provide the finished product to the hospital.

35 COMMISSIONER LINDWALL: Was that made of plastic or metal?

40 DR ABBAS: Plastic. If you can (indistinct) for 3D printing for instance to provide (indistinct) more scientific things, it may not be helpful, because it is helpful in producing the hardware.

COMMISSIONER ABRAMSON: Could I - - -

45 COMMISSIONER LINDWALL: Sorry, one more question, Julie. I did ask about TGA, the Therapeutic Goods Administration. Does it have a role in restricting third-party repair, do you know? So, apart from patents and that

type of thing, is there some role – is the Therapeutic Goods Administration potentially a blocker?

5 DR ABBAS: I haven't looked into it. I won't make a comment on it.

COMMISSIONER LINDWALL: That's all right. Julie, please.

10 COMMISSIONER ABRAMSON: Thanks. Muhammad, I just wanted to ask, this morning, when we spoke to Matthew, he made the point to us that one of the difficulties with copyright law that it interacts with trade secrets and confidential information. So we could resolve a copyright issue with a defence of fair use, for example, but things would still be prevented by confidential information and trade secret laws. We made the point in our report. Does the same issue arise with patents?

15 DR ABBAS: No. To get a patent, you have to disclose your invention. That's a prerequisite. Because it's a bargain between the patent applicant and society. The patent owner has to give his invention to society, and in return, he actually gets 20 years' monopoly. So, if you are withholding any
20 information, you can't get a patent. You have to disclose your invention to get a patent.

25 So when we talk about only in the case of patent protection, the information is in public domain. It is disclosed. But corporations make choices. They have a choice. Either go for patent protection, I keep your invention, your innovation secret. We can't force them. If they choose to keep it secret, we can't force them to share it. But if they are going for patent, they can't keep it secret. They can't have two bites of the cherry.

30 COMMISSIONER ABRAMSON: That's very helpful. Thank you.

35 COMMISSIONER LINDWALL: You were talking about clarifying it for consumers about, what's a repair versus what's a change and improvement, if you like. How would you, in practice, do that, do you think? If the government was minded to do so, to make it very clear about – what you call international exhaustion, I suppose, with (indistinct), to make it very clear, what is allowable and what is not allowable. How would it do that, and where would you draw the line, I suppose?

40 DR ABBAS: As I pointed out, in Australia, the right to repair is not defined in the patent law. There is no provision, there's no class that defines the right to repair. It should provide a proper definition of right to repair in the patent law. It makes things easier for the consumer and for the people who want to use it as a defence. If there is (indistinct), and the consumer has to read
45 multiple court judgments to draw what are his entitlements, what are his rights, it makes things difficult for the consumer.

5 So I want it to provide a clearly defined right to repair in the patent law, that informs the consumer, what you are doing, it is going to be permissible, or this is going to be prohibited. So if we have no definition at all, the consumer is confused. No one will bother to go to the court judgments, to read the court judgments, to interpret what are their legal entitlements and what is their permissible scope of the right to repair. So it's very important to provide a well-defined definition of the right to repair in the patent law, in the Australian patent act.

10 COMMISSIONER LINDWALL: Is there a good example overseas which does have a very good definition of what a right to repair is?

15 DR ABBAS: No. Normally, the US is the leader in making these legislative changes (indistinct). But even in the US, there is no clearly defined right to repair. There are court judgments, and the court judgments are also confusing. They provide a list of activities, but they don't provide the definition of the right to repair.

20 COMMISSIONER LINDWALL: Because if I'm not mistaken, some of the repairs – well, in the case where sleep apnoea machines were into ventilators, is that right?

DR ABBAS: Pardon?

25 COMMISSIONER LINDWALL: Sometimes – I heard that during the pandemic, at the worst parts of it, when there were shortages of ventilator machines, that some people had managed to turn sleep apnoea machines into ventilator machines. Is that right?

30 DR ABBAS: Yes. They were – these things were reported (indistinct).

COMMISSIONER LINDWALL: And would you consider that to be a repair, what should be a right to repair, rather than a remodification?

35 DR ABBAS: That's a remodification, obviously. But we – in a case of health emergency like COVID-19, we need to create exceptions.

COMMISSIONER LINDWALL: Yes.

40 DR ABBAS: We can create these exceptions, we can provide these exceptions beforehand, instead of allowing people to do things, and then asking the question, whether it is permissible or not. We need to make these exceptions within patent laws, and which should guide people, that, if you do it in a health emergency, that's permissible; if it you do it otherwise, it's going to be prohibited. So, instead of making a guess whether what they are doing is wrong or right, they should have proper information, proper exceptions provided in the laws.

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5 COMMISSIONER LINDWALL: So, could you – if I have a product which is subject to a patent, and currently in Australian law, and use either – some sort of scanner to – let’s say a part was broken, and I scanned the part that’s broken, and then used a CAD design from that – so I basically reverse engineered it, if you like, and then used a 3D printer, what you’re saying is – I’m putting it in a blunt form, I suppose – that that is uncertain, whether that is violating the patents rights or not, as it stands in the current law?

10 DR ABBAS: In the current law, we don’t have any provision. But what I draw from the court judgments, if you are doing it just to prolong the life of the product, and you are fixing it, you are not reconstructing it, you are not making it all over again, it’s permissible. But if you are making – because to make a product is the exclusive right of the patent owner, of the patent
15 holder. If you make a product, if you reconstruct it, you are messing up with the domain of the patent owner, their exclusive right.

20 COMMISSIONER LINDWALL: I see what you mean. I mean, to put it in another very crude way, I suppose, an axe has two parts: the handle and the axe itself, if you like, and if I have - the handle broke and I used a patent - and it was patented, I could reconstruct that because I'm then re-building the - I'm maintaining it; I'm not actually building a new - - -

25 DR ABBAS: Yes, maintaining is permissible; rebuilding is not permissible.

COMMISSIONER LINDWALL: Yes, yes. Okay.

30 DR ABBAS: But what (indistinct) even rebuilding in a health emergency, as an exception.

COMMISSIONER LINDWALL: Yes. Exactly. I get you. And you would also prefer the international exhaustion - - -

35 DR ABBAS: Yes.

COMMISSIONER LINDWALL: - - - because then you could have parallel importation - - -

40 DR ABBAS: Yes.

COMMISSIONER LINDWALL: - - - which the Productivity Commission has previously supported in the case of books and various other things. Parallel importation has a very good competitive device. Julie, did you have any final - - -
45

COMMISSIONER ABRAMSON: No, no. That would really welcome a written submission which I think you're in the process of providing. Thank you.

5 DR ABBAS: Yes.

COMMISSIONER LINDWALL: Thank you very much, Muhammad.

10 DR ABBAS: It's my pleasure, and I really appreciate your efforts in this inquiry and I appreciate the efforts of your team. You are doing a very good job.

COMMISSIONER LINDWALL: And thank you very much for your help today and take care.

15 COMMISSIONER ABRAMSON: Thank you.

20 COMMISSIONER LINDWALL: Well, everyone, our next is Jesse Adams Stein at 3 o'clock, so we will just have a bit of a break for about 25 minutes now to keep everything on time, and then we will resume just before 3 o'clock, if that's all right, Julie?

COMMISSIONER ABRAMSON: Yes, perfect. Thanks, Paul.

25 **SHORT ADJOURNMENT** **[2.31 pm]**

30 **RESUMED** **[2.58 pm]**

COMMISSIONER LINDWALL: For some reason, I can't start my video, because the host has stopped it. There you are. All right, start my video. There you are. That's better.

35 COMMISSIONER ABRAMSON: Yes, I know. It's a bit of a long day, Paul.

40 COMMISSIONER LINDWALL: Yes.

COMMISSIONER ABRAMSON: From our prison cells at home, Jesse, like you, no doubt.

45 DR STEIN: Yes, that's right.

COMMISSIONER LINDWALL: Well, let's get started, then. Welcome, Jesse. Did you want to give us a bit of – introduce yourself, and say – give us a bit of an opening statement?

5 DR STEIN: Sure. I'm Jesse Adams Stein. I'm a senior lecturer and
DECRA fellow at the UTS School of Design. And I'm co-CI of a research
project called Repair Design, which is led with Associate Professor
Alexander Crosby at UTS. The project was mostly active in 2019. I was on
maternity leave in 2020. And then, we are just sort of starting to write in this
10 area again now.

So, most of our observations and research was to do with the relationship
between repair and design, with a particular interest in the Australian
perspective and in community responses. So I would really like to thank you
15 both for having me speak, and also for the issues paper and the draft report,
which have been really, really comprehensive, and it's fantastic to see these
sorts of discussions in the Australian context, finally. Thank you. I also
wanted to acknowledge that I wrote the first submission when I was on
maternity leave, and I'm now working on this material with a one-year-old
20 and a five-year-old, and home schooling. So it's been a bit mad, and I don't
feel I have been able to be as technical as I would have liked.

COMMISSIONER ABRAMSON: Jesse, you're amongst friends. We have a
variety of new babies and home schooling, so we share your pain.

25 DR ADAMS STEIN: Yes, I don't think I'm alone in any way. All right, I'll
just jump straight in, then.

COMMISSIONER LINDWALL: Please, yes.

30 DR ADAMS STEIN: So there's about four things I wanted to speak to. The
first one relates to consumer attitudes to repair, which I think are changing,
and I think we need to be quite fair about thinking that, at the moment,
Australian attitudes to repair are probably in their early days, and we
35 shouldn't be too quick to make assumptions about what people might do in
the future, because this is a rapidly changing space.

And we have seen Australian consumers change quite quickly in their habits;
for example, in relation to green bags in the supermarkets. So once you have
40 a combination of awareness and regulation, then you can actually get fairly
quick consumer uptake, at least a fair percentage. So I think we need to –
when we make assessments about what consumers might do, be aware that
they change.

45 There were parts in the report that referred to consumers making decisions to
prematurely discard their technologies. So, being participants in premature
obsolescence; the lure of the new, of course, and that's something we think

about a lot in design. However, I want to look at little bit more at the relationship between consumption and discard here, because I don't think it's that straightforward.

5 And it is, of course, difficult to generalise across different technologies, and
in the absence of full statistical data about something as complex as the
lifecycles of everyone's products, which we don't have. But we did uncover
a fair bit of qualitative evidence that when consumers do decide to upgrade a
device, then, if the old model is still working, generally speaking, it doesn't
10 get discarded into waste stream straight away.

So, we don't have a system where a large number of people are buying new
things and chucking out the old ones, unless they are broken or
malfunctioning in some way. So, generally speaking, at least in our research,
15 we found that if consumers have an old model that's still working, they tend
to give it to somebody else: family member, friends, charity; give it away for
free online, or try and sell it second hand.

So there's vibrant second-hand markets going on. People are using second-
20 hand devices. All that sort of thing is happening. So, people don't like
throwing out fully operational technology. The problem is that the stuff
that's getting thrown out is the broken stuff; stuff that is technically
repairable in a lot of cases. So I think that suggesting that consumers
contribute to premature product obsolescence probably doesn't give the full
25 picture, and is probably a fairly minor part of the problem.

Of course, there will always be irresponsible consumption and discard. That
does occur, but I thought, just because some people do do stupid things
doesn't mean that we shouldn't improve the situation for large numbers of
30 people who genuinely do want to find better avenues for repairing broken
devices before they send them over to the (indistinct words).

COMMISSIONER LINDWALL: A lot of people I think would – I'm sure
some of us have working devices that sit in a drawer, unused, too.

35 DR ADAMS STEIN: Yes, there is a lot of that. But it's very hard to
quantify. There is a little bit of data about what we know about boxes of e-
waste in people's attics and things like that. There is a bit of information
about that. There's a fair bit of it around. I did want to also talk about
40 encouraging the longer use of products.

One of the sort of backbone understanding that our research team conducted
– had, as a sort of a back of a backbone of what we were looking at, was that
we wanted to encourage longer use of technological devices for
45 environmental reasons. So we were interested in the consumer rights side of
things, but that wasn't really our motivating force.

Of course, the most obvious reason you would want to extend product lifetimes is addressing e-waste, and that's been dealt with extensively, so I'm not going to go there at the moment. But the second consideration of why you might want to extend product lifetime actually relates to the beginning of the product cycle, not the end; production, and the sheer amount that is being produced.

So, slower consumption means less production, which means less drain on the earth's finite resources, which means less need for mining of rare minerals, less requirement for oil-based plastics, less emissions-generating production, less emissions-generating long-distance transport of products and so on.

So we have to start thinking about the climate impacts of production. There's a recent report from the European Environmental Bureau, which just – they had so many stats in there, but one example is that if you extend the lifetime of all smartphones in the EU by just one year, you could prevent 2.1 metric tonnes of CO2 emissions per year, which is the equivalent of taking over a million cars off the road.

So we have to think about, if you extrapolate from there and imagine the carbon reduction benefits, if you applied that to a broad swathe of products, even just extending product lifetimes by a year, so the benefits would obviously be greater, the longer you can keep products.

So, I guess by way of saying, yes, let's consider the end of the product lifetime, but also, we have to get to a point where we think, all right, when we have such unsustainable resource demands on the environment, and threats to the climate balance, we can't go on, business as usual, just assuming that high growth at all costs is the way things operate.

Of course, some of that would be outside the terms of reference of this particular inquiry, but I did want to keep that in perspective. The other thing I wanted to address is the somewhat vexed issue of planned premature product obsolescence, which was dealt with quite extensively in the draft report. And I did want to reiterate something I said in the submission, and that is that planned premature obsolescence is not – I wouldn't see it as – it's not like a conspiracy.

It's not like there's manufacturers rubbing their hands together and saying, 'This bit here: I'm going to make that break in two years.' I don't think – generally speaking – I'm sure there are a couple of examples of that, and some of them we'll never find out about, but generally speaking, I think the issue is much more structural.

So, product obsolescence is effectively business as usual when you have a neoliberal globalised capitalist model, when you have whole sets of device

manufacturers, generally overseas, whose entire business model is based on a high throughput of short-term devices, with an assumption that the products they make need only last a few years. So that becomes the entire basis of the system.

5

So the system then expects a constant cycle of software updates, new models always flowing through, and in turn, retailers and consumers come to expect this, too. And it follows, then, that they need only design something that will last two or three years, because that has become the expectation. But we certainly have the capacity to do otherwise, and indeed, should encourage as much as possible manufacturers to provide other options. They won't like it, but we need to start pushing back on that.

10

In many cases also – and this is from an industrial design perspective – I've spoken to industrial designers who say, 'I would love to use better quality materials. I would love to design something that I know won't break as quickly, or that just makes more sense for the functional object. But I've been told that this is my price point I have to keep the design in, and I am limited to these plastics. This is the supplier that I have to use for these plastics. I can't choose any old material. I'm bound by what my boss tells me.'

15

20

So you have product designers and engineers who are frustrated by their inability to actually design sustainably, particularly if they work for a very large manufacturer. And over time, what happens is, everybody's standard seems lower about what they expect from their devices. So that includes manufacturers, designers, and consumers.

25

We've found respondents saying that they only expected a kettle to reasonably work for three years. And it only takes common sense to compare that situation to, for example, how we thought about kitchen appliances in most of the 20th century. So, things – I think to say that things are becoming more durable or long-lived over time, when we actually even just use common sense and think back in the past, that proves not to be the case.

30

35

On top of that, we know that particular companies, with Apple being probably the most egregious offender, do engage in strategies that deliberately discourage consumers from seeking independent repair, and all of the rest of it that goes along with that. I won't elaborate; you've heard it many times. But those strategies do affect product obsolescence. And so I think we need to think more broadly about product obsolescence in this broader structural sense, rather than as a (indistinct) conspiracy.

40

The final thing I wanted to address was to voice my support for a repair ratings labelling system. I, unfortunately this morning was home schooling, and I couldn't hear what Choice had to say on that matter. I have read some of their other material on that though. Did they address that?

45

COMMISSIONER ABRAMSON: Yes, they did and we're happy to do times tables if that's what you were doing with the 5-year-old, Jesse.

5 DR ADAMS STEIN: He's pretty good with his times tables actually. So, I did want to speak to a couple of issues with that. Look, we haven't done a lot of work in our own research group on this but, I felt the need to sort of have my two-cents anyway. And my first point to make is that I do believe that there is a strong consumer desire for better information about repairability and durability at the point of purchase and that, Choice may have already shared their results but, one of their survey's found that 85% of respondents said that buying products that would last a long time was important to them and 73% said that repairability was important in their decision to buy a product. And we also know that high price point does not necessarily mean that a product is more durable or repairable, even though consumers commonly assume that this is the case.

20 So, there are huge differences in repair experiences for consumers, depending on which manufacturers they're dealing with. So, I think, if there was to be a repair ratings or labelling system, there would be a couple of key principles that it would need to have. Of course it would need to be consistent and have a really standard visual labelling scheme which perhaps offered more detailed repair relevant information online, as an extension for those who wanted to look into it further. I think it should be mandatory for certain classes of products rather than sort of an opt-in system. You could start with white goods and expand from there. I think it should include some of the key offender products, for example, smart phones, printers, tablets and so forth.

30 I think if the system was going well you could expand it to other key offender products, for example, heaters or small kitchen appliances. I think the labelling system needs to have really clear visual communication. It would need to be run independently, potentially by a government-funded body, not industry run and run with quite a wide set of repair criteria assessment consideration, including product design. So not just being about information and service factors and I think the labelling system should appear both in store and online because a lot of these devices are now being bought online, particularly in this environment.

40 So, as I'm sure you've heard, we already have an independent energy efficiency product grading system. So, you could argue, and I know John Gertsakis has preferenced this possibility that we do have a regulator, we have an existing infrastructure for this sort of thing. You could modify the existing infrastructure by having a cross-disciplinary repair specific advisory team and a repair specific review committee. I would caution against much industry involvement in the assessment process so as to retain the credibility of the scheme, so that it wouldn't be called into question, for instance, in the way that the health star rating system is sometimes criticised. I also think the

5 repair labelling system should be a separate differently coloured sticker, rather than cluttering out the existing energy efficiency star rating system. I think combining the two would just be too confusing to consumers. I think it needs to appear visually separate, even if it's administered through the same body potentially.

10 I think also thinking about getting the settings right as to who it's influencing, is an important consideration. So, the energy efficiency system, as it is now, targets manufacturers, although it does also provide some extra information for consumers. I have no problem with targeting manufacturers for a repair specific labelling system. I think manufacturers do need to be nudged in this way. But, I think also there is a consumer demand for information, and I didn't want to give you a long list of potential criteria, but I perhaps might mention design criteria that could be considered in this kind of labelling system. I won't go into all the other potential criteria. I don't want to take up too much of your time and it's beyond, in some cases, beyond my particular expertise.

20 COMMISSIONER ABRAMSON: We're very interested in the design aspect that you just want to talk about in the sense that iFixit spoke to us this morning about repairability and what they look for in repairability to do their ratings. So, what you would say, from a design perspective, aligns with a rating system, we'd be interested in you expanding Jesse.

25 DR ADAMS STEIN: Sure, okay. So, some of the most obvious criteria factors would be the openability of the product. So, can the product be easily opened without damaging it? For example, does it have a screw panel or is it sealed or soldered shut? When you ask repairers what they need most, they need access and they need access to hardware, not just software.

30 Spare parts availability, I guess that goes beyond just design consideration, but it is also a design consideration. Within that, modularity is an important factor. So, does the product tend to require fairly standard parts that are easily sourced from other models or is this particular product a very rare and specific and obscure model that has parts that are hard to source, particularly in Australia? So, questions of where you can get those parts and are they standard or not.

40 The ease of disassembly where relevant. So, those are related considerations. When I say 'ease of disassembly' it is slightly different to just being able to open an item. I mean that do you have two materials that are sealed together such that when you actually decide to bring the product to a discard stage, is it really difficult to recycle those materials because they're welded together, for example, or is it actually fairly easy to separate the materials for the purpose of recycling? So, I think those things are aligned. You want to be able to repair the products as much as possible but there is a point the product is beyond that. It doesn't make any sense to repair it, therefore, you want to

be able to bring it into a waste stream in the most sustainable way you can. So, those things are related.

5 Durability of material choices and also of product formed. So, material choice and the shape of a product, these are different considerations but related considerations. That would obviously include assessment of weak points and assessment of what is reasonable for that particular product type. So, it has to be fairly specific in terms of what is the product used for? How is it used?

10 Replaceability of batteries, if that's a relevant consideration? The simplicity or the complexity of the object and the question of whether or not product complexity is actually necessary. So, in some cases, actually product complexity improved chances of a repair because it gives the repairer lots of options but, in other cases, product complexity is totally unnecessary. For 15 instance, adding a microchip to something that doesn't really need a microchip.

20 Compatibility with commonly used ports or peripherals and other accessories. So, simple stuff like does it use the USB or does it use something really obscure? Compatibility with common tools for opening the product, for example, can you use a standard screwdriver or an Allen key or do you have to use a proprietary specialist tool to open it.

25 Ease of maintenance by the user. So, does the design of the object affect easy maintenance or is it quite difficult? Does the design encourage things like dust build-up or overheating or does the design, is it easily cleaned in a way that the consumer doesn't even really think about very much? And 30 incorporating user feedback about faults and breakages which may not be immediately apparent from just an examination of the object alone.

I could probably go on but those are the key ones I think.

35 COMMISSIONER LINDWALL: Are these demanded by the rating scheme or are you talking about actual design standards?

40 DR ADAMS STEIN: I would say to start off with a rating scheme. I think applying design standards is a pretty ambitious step and is difficult because products are so diverse and so, when you start regulating that, you may end up accidentally making lots of problems that you weren't trying to do. So, I think, in general, I am a fan of government regulation of, for environmental purposes, but I think if you were to introduce design regulation you have to do it very cautiously.

45 I think if you were going to introduce any form of design regulation, then it should apply to the openability, the ability to open the object for the purposes

of repair or maintenance. Beyond that I think it gets quite difficult because products are so diverse.

5 COMMISSIONER LINDWALL: Sorry, they were your four points, I think. Is that right?

DR ADAMS STEIN: Yes, yes.

10 COMMISSIONER LINDWALL: In terms of a French scheme, a French ratings scheme, how do you see it or how well do you know it? How does it rate according to those criteria you just listed here that I've written down?

15 DR ADAMS STEIN: I'm not an expert on the French scheme. I have read a bit about it, but I haven't seen how it works in practice or anything like that. I think it is definitely worth close consideration to see how it's going, but I think we still need to think about it within our own system, particularly in relation to whether or not the E3 energy efficiency regulator could be involved in that; whether we have the infrastructure already for something slightly different.

20 COMMISSIONER LINDWALL: Then, going back to the lifecycle, I think there are consumers – maybe I'm a bit of an economist here, but often, manufacturers will make things consumers want, according to the designs and the price point that people are willing to pay, I suppose. I'm also not – we shouldn't neglect the people who live in developing countries, in terms of making products too expensive, that they won't be able to afford to buy them.

25 I lived in Pakistan for a number of months, and they had old phones, most of them, and driving around in very old cars. Whenever you make policy changes, you have to be cognisant that it can impact the (indistinct), obviously. And it's very well for us to – so you have to be aware of implications on that. So, is there a way, perhaps, of incorporating some of these ideas that are of benefit to poorer people, as well as the – makes us all a bit more aware about our consumption patterns.

30 And following on from that, to what extent are the products that are shorter lifespan than they should be due to technological change? I mean, I've got the same lounge chair in our dining room that we've had for a very, very long time, mainly because of inertia, rather than any other reason I don't get rid of it, but it's fine. Whereas I've probably replaced quite a lot of technological things, because the change in the technology has been quite noticeable over the last – (indistinct) the power of the (indistinct) doubled every 10 years or so.

35
40
45 DR ADAMS STEIN: Yes, there's a lot of questions in there. I think one of the things that I wanted to respond to was that you were talking about ways in which, if you were to make changes, how can you make changes that have

– that are helpful for lower – for working-class people, or for lower income people. I think, remembering that repair is an employer, a massive potential employer, and a potential employer for skilled work, or for the training towards skilled work, I think there’s a lot of scope there for jobs in Australia that is not being made good use of.

We also have a lot of ex-manufacturing workers with fantastic repair skills. And so, thinking about how changes that encourage repair might also be extrapolated in ways that helps people economically, you’ve got to look on the job side of things. I think – I have particular understandings and views about technological change that are probably not so mainstream. I don’t believe technological change is this sort of rapidly hurtling thing that we have no control over; that it somehow just sort of runs ahead of us.

Technological change is made by people. It’s made by companies. It’s made by decisions. It’s not just separate from us. And we have some degree of power to make regulatory and consumption decisions in relation to it. And if enough people make those decisions, then manufacturers do respond, and also can be regulated in particular contexts as well. So I don’t believe that we just have to kind of keep catching up with technology.

COMMISSIONER LINDWALL: Fair enough, yes. What about – are you aware of that phone that’s in the European Union, called Fairphone?

DR ADAMS STEIN: Yes. I was going to mention - - -

COMMISSIONER LINDWALL: Yes, please.

DR ADAMS STEIN: It would be fantastic if Fairphone was something accessible in Australia, or if there were other equivalents in Australia. It’s pretty difficult right now to have a Fairphone working in Australia, unless you’re a real tech expert that really works at it. It would be great if there were more options along those lines. What I do see a lot of fantastic things happening in Australia is a lot of reuse. Have you heard of The Reconnect Project?

COMMISSIONER LINDWALL: I believe I have, yes.

DR ADAMS STEIN: So, options like that, where people’s working or not quite working phones are given to The Reconnect Project, reconfigured, fixed up, and then handed on to people in need. So there’s a lot of really fantastic community systems like that going on. Again, there’s jobs in those sorts of initiatives as well, particular if they were actually funded in a much more fuller way, rather than sort of working off an oily rag, as they currently do.

COMMISSIONER LINDWALL: When you said earlier, Jesse, that higher price products are not necessarily more durable, compared to lower price

products, is that just a general observation, or there any types of products that this is more likely to be observed? Because I would have thought that, normally, the more expensive products you would expect to last longer than the less expensive products.

5

DR ADAMS STEIN: That is a general consumer assumption. Choice has examined this, and that was their assessment. So I found that from Choice. So it's probably better to ask Choice about how they came to that conclusion. But if you were to going to go there and ask questions, I think – appliances –
10 for instance, dishwashers and things like that – we had good examples of where a high price point does not necessarily mean that something works better.

COMMISSIONER LINDWALL: I should give Julie some questions now.
15 Thanks, Jesse.

COMMISSIONER ABRAMSON: Thanks, Jesse. I just wanted to ask you about the Australian Consumer Law. I understand in your submission you proposed elevating repair over replacement, except where that's
20 unreasonable. I'm interested in how this would work, because of course, Choice made the point to us that they don't like a hierarchy of repair or reuse, because they believe that that impacts upon consumer choice. So, I'm just interested in why you think what you do, and what your trigger point of 'unreasonable' is.

25

DR ADAMS STEIN: That's a good question. I'm not sure I'm going to be able to answer it adequately, but I do think that I was coming from an environmental position there, not a consumer rights position, which is probably why my position was different to Choice's on that. I thought that
30 starting from a presumption of repair before replacement where possible meant that, effectively, less stuff is getting produced in the world.

So, starting – and it also was about a cultural change towards making repair the norm. I think throwing that in as – saying that there should be regulatory
35 (indistinct) repair before replacement was probably a bit ambitious, but I thought I'd throw it in as a way to sort of say, let's get really serious about this, and think, well, what if we thought that way? In terms of how it would actually operate legally, I'm not a lawyer, so I'm not going to answer that.

COMMISSIONER ABRAMSON: Because the issue around that really is – one of the issues in the law at the moment is that a lot of the rights, if we can call them that, rely on what a supplier or a manufacturer chooses to do for you. So it's questionable – unless it's a major fault, it can be very difficult
40 for consumers, even if they wanted to get something repaired. But the interesting thing is, the manufacturers say to us, 'Well, a lot of consumers don't want things repaired. They want you to give them a new item.'

45

DR ADAMS STEIN: Yes. I mean, I think if it involves the consumer waiting for long periods of time before a repair can be effected, then that kind of voids the point, or it says, all right, well, depending on the device, can they have a replacement device during that period, while you're waiting on a
5 repair? I think that's a massive factor. And it's also an issue of being a country that doesn't have a big manufacturing industry.

So when spare parts are coming from overseas, in the COVID context, things take months to arrive. So I think this is something to aim for, in the context
10 where more could be produced – spare parts could be produced in Australia. I think when you end up with consumers waiting long periods of time, then you are better off offering the consumer a replacement in that context, yes.

COMMISSIONER ABRAMSON: Thank you. One other question I wanted to ask you is that, I think in your submission, to overcome planned product
15 obsolescence – and I know that's how you phrased that – you've suggested OEMs [Original equipment manufacturers] provide technical support for their products up to seven years. I'm just wondering why you landed on seven years.

DR ADAMS STEIN: Yes. I think I was specifically talking about computer (indistinct). I thought seven was ambitious but achievable for something like a laptop computer, for example. I think beyond that, you start getting to the
20 point that the processing just can't keep up with the available apps and things like that.

I think at the moment OEMs don't want to provide support for things that are that old, and so many people get caught out by approaching an OEM and saying, 'I've got this thing. It's not working,' and they say, 'Sorry, it's too
30 old. We can't do anything.' So I think being really ambitious and saying, 'No. These devices use very valuable earth resources. We should be able to make them last at least seven years' – I think 10 is pushing it too much.

COMMISSIONER ABRAMSON: Thank you. Thanks, Paul.
35

COMMISSIONER LINDWALL: All right. Do you have any final – because I know we're running out of time, but that list that you just gave us, about design criteria, is very good. I think I wrote down everything, but we've got the transcript anyway. You've given us some very good food for
40 thought there. So, thank you very much, Jesse. Did you have any final points you wanted to make?

DR ADAMS STEIN: Only in terms of, if there were questions about, well, how are we going to pay for this? I did want to point out that the Federal
45 Government subsidised the fossil fuel sector by \$10.3 billion last financial year. So there are ways in which money can be found. I think that's all I'll say.

COMMISSIONER LINDWALL: Yes. Some people would say our defence budget is quite high, too. Thank you very much, then, Jesse.

5 COMMISSIONER ABRAMSON: Thank you, Jesse.

COMMISSIONER LINDWALL: And we might move now on to Spyro Kalos from MobileMuster.

10 MR KALOS: Hello. Good afternoon.

COMMISSIONER LINDWALL: Good afternoon, Spyro. How are you today?

15 MR KALOS: Very well, thank you.

COMMISSIONER LINDWALL: Excellent. Would you like to give us a bit of an opening statement or whatever?

20 MR KALOS: Yes, definitely. I've got a bit of an opening statement, and I just want to reference a couple of points in the recommendations, and then I might just open it up to questions, and I'm sure there will be. So just as a way of an introduction, I'm from the Australian Mobile Telecommunications Associations, better known as AMTA, so obviously the industry association
25 for the mobile telecommunications industry, and our members consist of not only the network providers, the network infrastructure companies, and also the handset manufacturers.

30 So my role specifically within AMTA is to head up MobileMuster, which, as you may know, is the industry-led product stewardship scheme, established in 1998 and voluntarily funded by its members since that time. So it does include handset manufacturers, and what makes us quite unique, it also includes the network carriers.

35 We have been operating for over 23 years, and hold accreditation under the Waste Reduction and Recycling Act. And in that time, we've collected and recycled over 1,600 tonnes of product, effectively diverting it from ending up in landfill. And that includes handsets, the batteries, charges, and
40 accessories. So, as an industry, we want and encourage people to think about reusing or repairing their mobile phones. It's an important step in extending the lifecycle of these devices.

45 We know that repair is a complex issue, and it does vary from product to product, especially when acknowledging that there are already established repair frameworks for some of these product streams. So our research indicates that one in three consumers have repaired a mobile phone, with 60

per cent of those individuals utilising the services of an independent repair store.

5 What we're also seeing is, more consumers are going back to the place of purchase to deal with a warranty or a repair issue. I will say, in terms of the independent repair network, it's actually a growth channel for MobileMuster specifically. So we've seen the volume of products collected through this channel increase year on year over the last four years, and we have over 300 independent repair stores currently participating in the program.

10 So there's probably three points that I was going to touch on, in terms of the recommendations out of the draft report, which are software updates, warranties, and I might just finish on the role of product stewardship, which is I guess where my expertise sits. So, from a software updates perspective, I think the recommendation was made that brands would make software updates available for a reasonable period of time.

20 From a mobile phone perspective, we're already seeing this happening within our industry, with most brands supporting updates for a minimum of two years. But we are now seeing brands are using this as a differentiator, or a value-add to their devices, and increasing software updates, or increasing software update support with up to five years in some brands. But ultimately, the flow-on effect here is that consumers are actually holding on to the devices for a longer period of time, and we're seeing the average ownership close to three years – 2.7 years, sorry.

30 The next point is around warranties. Customers who are within their warranty will quite reasonably risk I guess (indistinct) loss of their warranty if they attempt to repair a device themselves, or seek a repair from an independent repairer, and damage (indistinct) caused to the device through that process. So damaged caused by an individual or a third-repairer tends to not be covered by warranties, and we believe that this is a reasonable approach.

35 However, there are brands that will honour their warranty even where a consumer has opted to use an independent repairer, provided genuine parts are actually used in the repair process. And it's these same brands that are also making parts available to independent repairers, either through third-party distributors or directly via the manufacturer themselves.

40 The final comment I want to make is on the role of product stewardship. So, AMTA's view is that product stewardship schemes like MobileMuster can play a greater role beyond collecting and recycling product at the end of its useful life. And we want consumers to think how they can play their part in the circular economy, by either reusing, repairing, or recycling their device.

5 What we are seeing, though, is that a significant volume of product is being stored at home, with one in three consumers telling us that data security and management is stopping them from recycling. And actually, this is not unique to mobile phones. We have received some funding through the National Product Stewardship Investment Fund to look at building a business case to expand the scope of product that's actually being collected currently by MobileMuster.

10 Part of that process is, we've done some independent market research, and we're seeing consumers holding on to a range of products, ranging from modems, landline phones, smart home tech, and wearables. And I guess there could be two reasons – and we're still exploring why this. Data is certainly playing a role, but also not having a scheme that currently accepts that product is probably that storage at home.

15 So, from the MobileMuster perspective, we are taking steps to change consumers' attitudes and behaviours, and we've developed tools and resources to help educate them on how they can manage their data, so they can reuse mobiles by either selling them, passing them on, or, when they reach the end of their useful life, to have them recycled through MobileMuster.

20 So from my perspective, I see product stewardship playing educational (indistinct) in helping us tackle the barriers when it comes to reuse and repair. And I don't think the data issue is going to go away. If anything, with more products starting to be connected to the Internet, there will be an increased concern in the interest of better managing our data.

25 I think product stewardship should complement a healthy commercial market that already offers reuse and repair. Regardless of reuse, repair or recycling, consumers want to know that there are measures in place to ensure their data remains secure and private. And I guess this ties back into the recommendation that schemes like the NTCRS set targets for repair. But it could amplify the data issue, increasing products being stored across the board.

30 And so the missed opportunity here, in terms of storage – I guess the great thing is that this product isn't ending up in the general waste stream or in landfill, but there is a missed opportunity in extending the life of this product, or effectively the missed opportunity to recover the materials that go into making these products. So I might just leave it there. I'm sure there will be questions, and I'm happy to answer any specific questions.

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45 COMMISSIONER LINDWALL: That's great. Thanks very much, Spyro. Could I ask, the interaction between MobileMuster and the NTCRS – and given that one could argue that phones are morphing a little bit – I mean, they do similar types of things.

MR KALOS: When you – the interaction – how we work together, or - - -

5 COMMISSIONER LINDWALL: The work together: do you see the
(indistinct) competitive, even – and one’s a self-regulated scheme, and one is
a co-regulated scheme. So I guess the merits and demerits of both, and - - -

10 MR KALOS: Yes, absolutely. So we certainly don’t see them as a
competitor. The product scope for each of these schemes is quite different.
So, from the MobileMuster perspective, it is mobile phones, their batteries,
charges, and accessories. And from the NTCRS, it’s obviously TVs and
computers. So, quite unique on how each of the programs operate.

15 There are synergies, and we work quite closely with some of the retailers that
offer take-back programs for their products. So if you think about
Officeworks, you can drop off your TVs and computers at an Officeworks
store, but you can also drop off your mobile phone. So we don’t work
directly with one another. I think in terms – if you look at the NTCRS,
20 there’s four – or currently two arrangements under the banner of the NTCRS
where we are a single program in terms of how we operate.

25 COMMISSIONER LINDWALL: And would you (indistinct) comment on
yours as an independent scheme that's been around for a long time and
NTCRS is co-regulatory. You know, some of the people who have spoken to
us today are more in favour of regulated schemes and industry-run schemes.
So here is your opportunity to provide some defence for the industry-run
scheme.

30 MR KALOS: Yes, definitely. I mean - and we've been operating for 23
years and we certainly have been advocating for a voluntary approach to
product stewardship. And I guess over the 23 years we've highlighted the
successes of the program, that it's not simply about collecting product, but in
terms of if you look at our metrics, it does also look into recycling and
35 recovery rates, products collected, and I think the advantage that we have - it
does make us agile with a significant amount of energy in marketing the
program and educating consumers on how to, you know, manage their data
and what to do with those devices when they've reached the end of life. It's a
program that is quite unique that goes beyond just to OEMs. In our space we
40 have all the three network providers that also fund the program and help
educate their consumers on how to better manage their product when it
reaches their end of life. And so I think the voluntary approach - and I think
(indistinct) has highlighted how voluntary can actually work and work quite
successfully.

45 COMMISSIONER LINDWALL: Yes. Well, 23 years just speaks for itself,
doesn't it. Obviously mobile phones have grown incredibly rapidly over the
years and reached a form of saturation where basically everyone has a mobile

5 phone, and one of my previous inquiries we looked at telecommunications,
universal service obligation, and looked at a number of surveys. About 95
per cent of homeless people, say, in Sydney have a mobile phone often
without a connection (indistinct words) Wi-Fi, but still - it shows that they're
quite prolific and, of course, as you just mentioned, people may be holding
on to them a little bit longer than they have in the past. And is that due to
technological change being less rapid or is it - what - and where do you see
this? Because if it's reaching saturation and people are holding them for
longer, then one would expect it to flow into the recycling (indistinct words).

10

MR KALOS: I think there's two shifts that we've actually seen. (1) If you
think back a number of years, the way the upgrade cycle was centred around
the length of the contract, so 18 to 24 months is - and there were subsidies
involved through the network providers. Now, those don't exist any longer,
so effectively there are no contracts in place with your provider, although you
can opt to pay your handset off at the recommended retail price, at the cost
price, over a 12/24 month or 36 period. The fact that we're actually now
paying for these devices means that we're putting greater value on them, so
no longer can you receive a free handset when you connect to the particular
plan. So those options don't exist. I think the other thing that we're seeing is
the fact that you can actually upgrade the software on the device without
necessarily having to upgrade the hardware means that we are holding onto
these devices for longer. So you actually still use a handset that's two to three
years old with the latest software without having to update that hardware.

25

COMMISSIONER LINDWALL: Yes. No, that makes a lot of sense. And
in terms of the instructions on them, do you have any comment - in a
previous session we just spoke about Fairphone in Europe. Products that are
more repairable rather than less repairable. I mean, I remember phones not
that long ago where you could just take the back off and take the battery out
and put them in which, of course, you don't really see anymore. Is that
something you would like to comment upon?

30

MR KALOS: I think the comments I would make - I am aware of Fairphone
and I'm aware that it's not actually currently available in Australia at the
moment, but I believe Fairphone also ran up against some challenges with
devices that were a couple of years old where they were unable to get parts
for whatever the reason may be. I think Jesse also previously talked about
the recyclability of devices that - you know, where, you know, you think
back to when mobile phones came into the market and you talk about, you
know, being able to pull the backs of them.

40

COMMISSIONER LINDWALL: Yes.

45

MR KALOS: From our perspective, we haven't seen a difference in terms of
recyclability. So regardless if they use screws or if they're glued in terms of
the material recovery, we're getting the same recovery rates. And from a

Mobile Muster perspective, everything that we collect is actually pulled apart by hand, so we don't use a shredding process, and then we separate products into its various material types. So your casings, your batteries, your screens and the circuit boards, and then they will go further downstream for processing. We believe manually dismantling the phones allows us to recover such high recovery rates through the recycling process.

COMMISSIONER LINDWALL: Julie.

COMMISSIONER ABRAMSON: Thank you. Thanks, Spyro. I wanted to ask some questions about product labelling and also about warranties. Not quite in your area, but it's more with your (indistinct) hat on, and I wondered if you did have any views about product labelling and in the case of mobile phones and devices what that might look like.

MR KALOS: The only comment that I would make on the labelling: I think whatever labelling is established, it can't be subjective, and I think it really needs to be measurable, and I'm not really close to the repairability rate either that's been established in France, but maybe there's opportunities to take some learnings from the French system. But I think with any labelling, I think if it's going to add value to the consumer experience and it's not subjective, then it's something that we would consider.

COMMISSIONER ABRAMSON: Thank you. Can I ask you a bit more about warranties because you did touch on them. We've got - and you might not be in a position to give us a view, but one of the concerns is that when consumers do go to independent repair - and I think you gave us some statistics on that - then they're told that, well, you used an independent repairer, therefore your manufacturer's warranty is void which, of course, is not the Australian consumer law. So we've got some proposals around what we would put into warranties at the very least saying to consumers that you still have your access to consumer guarantees. Do you have any views on that?

MR KALOS: I think there probably is a gap in terms of what consumers are aware of when it comes to their rights under the Australian Consumer Law or the guarantee that you're referring to. I know from a Mobile Muster perspective - you know, I talked a little bit about - recently we've done a number of campaigns on educating consumers on reuse.

COMMISSIONER ABRAMSON: Yes.

MR KALOS: But we're looking at doing something similar in terms of repair. So building some mini campaigns to actually educate consumers on, you know, what options exist to them when it actually comes to repair.

COMMISSIONER ABRAMSON: Thank you. And what's your timing on that, Spyro?

5 MR KALOS: Later on this year. So it's part of our marketing and comms activity for the current financial year.

COMMISSIONER ABRAMSON: Yes. So it would be too late for our report, I think, but we're interested in what you might be doing in that space.

10 MR KALOS: Yes, absolutely. And I'm happy to share some of that material as it becomes available.

COMMISSIONER ABRAMSON: Thank you. Thanks very much. Paul.

15 COMMISSIONER LINDWALL: I should ask you, Spyro, if you have any comments or other recommendations on (indistinct words) that we put in which, I suppose, are less relevant to the very small (indistinct words) mobile phone.

20 MR KALOS: Yes. Look, I think from a Mobile Muster perspective, we have an obligation to our stakeholders to ensure transparency on where that material actually goes and where it's actually processed, and I think that is an important aspect of the integrity of the program. The comment that I would make - from our perspective we use a single recycler, but what we expect as
25 part of our arrangements with that recycler is they are accredited to the Australian standard which is the AS: 5377 which provides some guidelines in terms of the handling, transporting and processing of electronic waste. And our recycler also holds the R2 standard which is a global standard. So I would encourage any scheme in our space to maintain those minimum
30 standards in terms of how the material is transported and processed.

COMMISSIONER ABRAMSON: And could I just a question if that's okay, Paul, about product stewardship.

35 COMMISSIONER LINDWALL: Yes.

COMMISSIONER ABRAMSON: What changes do you think could be made to improve the product stewardship in Australia? And the other thing
40 is, do you see any issues with calls to increase the scope of the NTCRS?

MR KALOS: So, two questions. In terms of my views on product stewardship; so, MobileMuster is a voluntary accredited scheme, and obviously you would be aware, the DAWE, so the Department of Ag, Water and Environment, have updated their product stewardship logo. I think there
45 are opportunities there for government to better promote what being a voluntary accredited scheme actually is, and what (indistinct).

5 And we obviously have metrics in place that the program is measured against year on year. In terms of expanding the NTCRS – we are advocates for voluntary. I would love to see more industries step up and set up voluntary schemes. But where there are challenges, then potentially the NTCRS is the solution.

10 COMMISSIONER ABRAMSON: Thank you, Spyro. You also previously – you might be in a position to answer this, but you did have what MobileMuster’s annual collection target is, in terms of weight, I think in previous years, but you don’t report that anymore, apparently.

15 MR KALOS: We do report our yearly target and actual weight. Julie, you might be referring to – so we’ve got – as part of our accreditation, we’ve got – our metrics are set for a five-year period. And they weren’t included in the printed report that we published last year, but we will include that moving forward, just to give some visibility in terms of the program’s performance. But our target is something that we report on. So, last financial year we had a target of 85 tonnes, and we’ve actually achieved 106 tonnes for the last report period.

20 COMMISSIONER ABRAMSON: Thank you, Spyro.

25 COMMISSIONER LINDWALL: The final question from me, Spyro, is about the implications of the new generation of 5G, which is obviously rolling out, and will attract a number of customers, myself included, to buy new handsets. Did you see these – so when 4G came out, there was an increase in the sales of 4G-compatible handsets, and now 5G will be the same.

30 MR KALOS: Not necessarily. I mean, if you think – 5G devices have probably been around a year, and there hasn’t been a significant increase. And that’s probably because we’re now just starting to see more of the brands release 5G devices. And so I think there is a natural tendency for us to move towards 5G, but I don’t think it’s going to be a massive driver for consumers. When you think about functionality of what 3G and 4G devices can do today, it’s a very similar experience to 5G. And I think over time there will be a slow migration to 5G devices, absolutely.

40 COMMISSIONER LINDWALL: And 5G obviously is a bit of a competitor to the NBN, to some extent.

45 MR KALOS: And I think that’s – what we’ll probably see with the rollout of 5G, the expansion of products that actually come into the market, and that’s part of the work that we’re doing in terms of the expansion, especially where it sort of aligns with the mobile telecommunications industry. What can we actively introduce in scope for the product, even though lifecycles of some of these products won’t hit the end of their lifecycles for five to six years?

COMMISSIONER LINDWALL: Yes. Well, Spyro, I don't have any more questions. Did you have any final points that you wanted to make?

5 MR KALOS: No, I think – the only thing I would add is, I think one of the final recommendations was, there's probably more work that needs to be done to analyse the impacts of repair, or what the challenges are with repair. And we welcome the opportunity to work with government or the Commission in terms of providing I guess some analysis specific to the
10 mobile phone industry.

COMMISSIONER ABRAMSON: Thank you, Spyro.

15 COMMISSIONER LINDWALL: Sorry, we do have one more question, and that's about, how can you alleviate consumer concerns around data security? I think you've mentioned that before, and obviously that's a reasonable point. And of course, most of our devices have flash memory and so on, and a lot of people store things in the cloud, I suspect, too.

20 MR KALOS: There is definitely a shift for people storing their data on cloud services. We've done a heap of resources, including how-to videos, one for iOS and one for Android, and a lot of resources on our website. What we're seeing is, younger consumers are more comfortable with managing their data – so, deleting it, transferring it, or storing it on cloud – and they're the ones
25 that are more likely to sell their device. So they're more likely to reuse it through that method.

It's the older consumer, unfortunately, that has a tendency to find it challenging or overwhelming. And instead of actually taking steps to
30 manage that data, will store it. Part of the work that we're doing is - - -

COMMISSIONER ABRAMSON: I need to go on your website, clearly.

35 MR KALOS: We even ran a campaign last year that looked at the personalities when it came to data management. And so you do need to tweak the message to actually encourage people to take action. And I think the longer you leave it, the more likely you're going to forget how to use that device. You're going to forget where your charger is. And rather than
40 actually doing something with it, we end up with this idea that we're storing it.

So it's just this continued education that we need to give consumers on managing the data as soon as they've updated that device, rather than holding
45 on to it.

COMMISSIONER LINDWALL: Well, thank you very much for appearing today, Spyro, and thank you for your submissions and help with the inquiry.

MR KALOS: Pleasure.

COMMISSIONER ABRAMSON: Most appreciated. Thank you.

5

MR KALOS: Pleasure. Thank you for having me.

COMMISSIONER LINDWALL: Now we'll move on to Janet Leslie if Janet is there, please.

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MS LESLIE: Yes, hi, I'm here. I'll start the video. I can't start my video, because the host has stopped it. All right. There we go. There we are.

COMMISSIONER LINDWALL: Hi, Janet, and welcome to the hearing.

15

MS LESLIE: Thank you.

COMMISSIONER LINDWALL: Now, you don't want to make an opening statement, I understand, that's right?

20

MS LESLIE: Well, I thought I would make a little bit of an opening statement.

COMMISSIONER LINDWALL: Please, yes.

25

MS LESLIE: But the first thing I need to do is mention that I'm accompanied by a colleague, Paul Robinson, who should also unmute his mic on his phone. So, Paul - - -

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COMMISSIONER LINDWALL: Hello, Paul.

MR P ROBINSON: Hi.

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MS LESLIE: So I guess the opening is just, I'm here – although I work for Canon, I'm here representing the Australian Information Industry Association. And in particular, I'm the chair of the CSR [Corporate Social Responsibility] Policy Advisory Network, and Paul is the chair of the Product Regulations and Standards Group with AIIA. And he is also – he chairs the Australian National Standards Committee for Safe Developed Electronic

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Equipment. So we've sort of got our – not presentation, but we thought we would answer in two parts.

So I'm here really to talk about the product stewardship aspects of your recommendation, and Paul is here to talk more about safety issues. So, would you like me to make a few points, or would you like to just - - -

45

COMMISSIONER LINDWALL: No, I'm very happy for you to make some - - -

5

COMMISSIONER ABRAMSON: That would be very helpful, Janet.

MS LESLIE: All right.

10

COMMISSIONER ABRAMSON: Paul – I need to clarify something with Paul Robinson. You sent through a slide pack, I think, to us.

MR P ROBINSON: That's right.

15

COMMISSIONER ABRAMSON: Did you want that to be part of the transcript?

MR P ROBINSON: If you wouldn't mind. I was told that we can't present it visually on this talk, but I'm happy for that to be (indistinct) transcript if you can.

20

COMMISSIONER LINDWALL: That would be great.

COMMISSIONER ABRAMSON: Yes, thank you.

25

MR P ROBINSON: And I will be talking to it. That's what I'll be talking to.

COMMISSIONER ABRAMSON: Thank you. Back to you, Janet.

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COMMISSIONER LINDWALL: By the way, Janet, having Yes, Prime Minister and Yes, Minister, I know what it's like, having different hats.

MS LESLIE: Yes. Some of you would have heard these comments before, but I guess - - -

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COMMISSIONER ABRAMSON: You've frozen, Janet. Is it just Janet? Paul, I can see you.

MR P ROBINSON: I'm still here.

40

COMMISSIONER LINDWALL: Janet, you've dropped out. Could you start again, please.

45

MS LESLIE: All right, sure. I should just mention that the OEMs that are part of our CSR group in the AIIA include mainly the large computer and printer companies; so, Dell, HP, IBM, Microsoft, Epsom, Brother. So that's the group of companies that we represent. And all of our companies are very involved in a whole range of product stewardship schemes.

5 So we're involved with the NTCRS, but also Cartridges 4 Planet Ark, APCO
[Australian Packaging Covenant Organisation], and battery stewardship
scheme. And in relation to the NTCRS, we were major players in the
development of the scheme, so we worked for like a decade, you know, with
the government and sat on government industry working groups in the design
of the scheme, and we're pretty keen to continue to play an active part in the
evolution of the scheme. All of our members have, like, design programs in
place to reduce the environmental impact of our products and also to improve
10 things like repairability and reliability, and we all also have repair programs.

15 So whether it's programs of authorised repairers for local consumers or - we
also - many of our members have programs where products come back to us
and a lot of our products are leased out. So when they come back, they're
repaired or refurbished, and often that's not necessarily in Australia. So a lot
of our companies have global hubs where they repair products or
components, and then those products or components can come back into
products sold in the Australian market or in other markets. And most of our
companies also have avenues to buy second-hand products or refurbished
20 products. So that's a basic statement.

25 The other thing is a lot of our members are also members of Australia and
New Zealand Recycling Platform which is one of the largest co-regulatory
arrangements under the NTCRS. It's a not-for-profit industry-funded
program, and I understand that you'll be hearing from them tomorrow. So a
lot of our members are founding members of ANZRP, and we founded that
organisation specifically so that we could have transparency over health and
safety standards and manage the actual recycling process. So that might not
be information that people are aware of. So in response to the report, I'm just
30 mostly talking about the sections related to product stewardship. But first of
all, I guess, on the premature obsolescence point, we were very glad to see
your finding about the fact that there was little evidence of obsolescence, and
we certainly don't design our products in that way. So do you want me to
carry on with talking about the - - -

35 COMMISSIONER LINDWALL: Please do.

MS LESLIE: Okay. Okay. So in response - - -

40 COMMISSIONER LINDWALL: You can talk about what you think about
our proposals, too.

45 MS LESLIE: Yes, okay. So if I come first of all to the proposal about
labelling for durability or repairability. So we're not opposed to that idea. A
lot of our members do, you know, quite well in some of the published reports
on repairability. But what we would say is that, as Spyro said, it really needs
to be based or harmonised, really, with what's going on in Europe. We don't

want another Australian-specific labelling scheme. All of our products are made overseas. And the important thing about that program obviously is that there are agreed standards and that they're harmonised. So that's our position on the labelling scheme.

5

In terms of the proposal to include repair targets in the NTCRS, one point I should make is that when we developed the NTCRS it was specifically designed to be an end of life recycling program, and that wasn't because we were anti-repair or anything; the idea was that hopefully there would be lots of channels, and we think there are lots of channels, where products that are reusable get into other streams before they end up with a recycler at the NTCRS, and we certainly promote that idea. Following on from that, most of the products that do end up in our scheme are very old and not really reusable.

15

So one of our members is actually doing some work on that at the moment which we will be able to provide in the not too distant future. It's just been held up a little bit with COVID. But that's an important point. We don't see lots of really nice new machines coming through the NTCRS. Having said all of that, like, we're not totally against the idea of repair targets, but we're very unsure about how that would work with the existing targets. I can't see how you could possibly do it without double counting or triple counting which might help us meet the targets a lot easier, but I guess we would want to be very much involved in, you know, working through how that could work.

20

And one of the things - one of the points that we have actually recommended for improvement of the NTCRS is the fact that now it's a mature scheme, we actually question whether the targets should actually change their orientation, and maybe we don't need targets on volume and maybe we do need targets on availability. So if we have a scheme where basically anyone who wanted to dispose of a piece of e-waste had ready access to an avenue where it could be responsibly disposed, then you don't need a volume target because the volume target brings with it not just problems of recounting if you wanted to include reparability in the scheme, but also there's a whole lot of trading of e-waste that goes on, which isn't really of any environmental benefit, but, you know, people are sort of trading ad hoc e-waste. And I guess the other point that we would make is that - and I'm not sure if people really understand this, but the targets for the NTCRS are only for the OEMs that are actually involved in the program. So we have quite a thriving e-waste market or I should say asset management market, including sort of end of life management, where players who are not regulated - and we don't think we understand enough about that market, but I think if you are going to be setting - you know, reviewing the targets, you would be wanting to look at e-waste flows outside of the NTCRS because in Europe what they've found is that it's a very high percentage of the flows that are outside of the formal product stewardship schemes. So we think that's quite an important point.

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COMMISSIONER ABRAMSON: Janet, can I just ask you - - -

MS LESLIE: Yes.

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COMMISSIONER ABRAMSON: - - - a few questions on the (indistinct words).

MS LESLIE: Sure, of course.

10

COMMISSIONER ABRAMSON: We didn't actually recommend repair targets; only that repair can count towards the current targets if - - -

MS LESLIE: Right.

15

COMMISSIONER ABRAMSON: - - - the (indistinct words) bodies set them up.

MS LESLIE: Yes.

20

COMMISSIONER LINDWALL: And I wonder, does that change your (indistinct words).

MS LESLIE: No.

25

COMMISSIONER LINDWALL: We do understand the issue about double counting and that.

MS LESLIE: Yes.

30

COMMISSIONER LINDWALL: That would be a risk.

MS LESLIE: Yes. So - well, I think it would be more than a risk; I don't see how you could avoid double counting. So to me, I guess I didn't really see a distinction there. If you're going to count products that have been repaired as part of the 80 per cent of available waste that's been captured under the scheme, then to me that's counting repaired material as part of the target.

35

COMMISSIONER LINDWALL: Well, we did say it would have to be quite a change (indistinct words).

40

MS LESLIE: Yes, that's right. And we would want to be involved in that design, and we were thinking that one way to be involved in it would be, like I said, to refocus the targets not on volume, but on availability or convenience.

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COMMISSIONER LINDWALL: Okay. Did you have anything - did you want to talk about the GPS tracker idea?

5 MS LESLIE: Sure. Sure. So, you know, it's a very vexed question, keeping track of where the waste goes, and even though we have in ANZRP and amongst our individual OEMs really rigorous standards, it's still hard to keep track of where things go. And so in ANZRP we do already use trackers in devices, and we have actually stopped using a couple of recyclers because of where those trackers ended up. But there are issues. So there's surveillance
10 legislation in Australia which means that you have to advise anybody that you're putting trackers in the device, so that makes it a bit tricky. We've got contracts, obviously, with our recyclers and with our logistics providers. But the other thing, there's also some devices – some things – and you were talking about this to Spyro, but some small laptops as well are too small to
15 put the tracking devices in.

And I guess the other thing is that recyclers at the moment are not captured under the NTCRS. The regulation is at the co-regulatory body level. And so I'm not quite sure how you would actually make that happen. But, yes, those
20 are our thoughts. It's a useful tool.

COMMISSIONER LINDWALL: Was there anything else you wanted to - -
-

25 MS LESLIE: Yes, there's one other point, which is, I think all of this has to be taken into account with the Basel directive – Basel – it's not a directive; it's Basel – whatever it is; agreement, law.

COMMISSIONER LINDWALL: Agreement about the export of hazardous
30 waste.

MS LESLIE: Correct, that's right. So, as I said, a lot of our multinationals have central repair hubs, and they have a legitimate reason for transporting products for repair or refurbishment, and that's an important part of the
35 circular economy. But there is a move internationally from some other players to review the guidelines, so that anything that is not working is counted as e-waste, and can't be transported. So I think that's another important barrier if we're trying to improve the circular economy. It might be a bit of a sideline to this issue.

40 COMMISSIONER LINDWALL: I understand (indistinct).

MS LESLIE: Yes, all right. So that's really – that's the end of my
45 comments. Have you got any questions?

COMMISSIONER LINDWALL: How do you think the co-regulatory approach compares to a voluntary approach?

MS LESLIE: I don't think there's a country in the world that doesn't have regulated e-waste legislation. And when we first started the scheme, and everybody was talking about, 'Wouldn't it be lovely if it's voluntary?'
5 There's a lot of players in the electronics industry, and when we started, we actually ran a pilot program with Sustainability Victoria, and encouraged everybody to join, and there were 50 per cent of the major OEMs that didn't join.

10 Now, that might have changed a little bit in the current environment, but we think there's a lot of improvement, and we've put detailed submissions to the government about how it should be improved. But we think, in terms of capturing most of the players, it's been very effective, and we probably wouldn't support going back to a voluntary scheme for electronic waste.

15 We are involved in other voluntary schemes that work well, like the Cartridges 4 Planet Ark program. That works well. But once again, it's a small number of players.

20 COMMISSIONER LINDWALL: All right.

MS LESLIE: And I would be happy to take that on board and provide them more information. It's not something that we have really contemplated.

25 COMMISSIONER LINDWALL: Well, if you compare it to some overseas schemes – there's one in Ontario, for example. Julie, do you have any questions?

COMMISSIONER ABRAMSON: No. I'm quite keen to hear from Paul Robinson if that's all right.

30 COMMISSIONER LINDWALL: All right. We'll give Paul a go, and then come back if you're happy.

35 MS LESLIE: Sure, yes.

MR P ROBINSON: Thank you. Thanks, Janet. Basically, I have wanted to address the issues of the risks involved in product safety in the third-party repair industry. And while a lot of people are focused on the third-party
40 repair industry as some kind of cohesive industry, in fact it's made up of a large range of different organisations who – some are well set up to do third-party repairs, and many are more opportunistic than that, and try to – I mean, you can look at the smaller shops in shopping centres that work on a walk-by basis.

45 So there's a whole range of third-party repairers out there. Now, in our experience with working with third-party repairers and assessing their ability

to repair products to a suitable standard, we find that in many cases, they're not properly qualified. And almost every time we bring a new repairer on board to work with our companies, we have to go through their entire repair systems, their quality management systems, their training systems, their
5 knowledge base.

And what we're finding is that when we originally engage with them, they have very little training in product safety, specifically. They don't have awareness of the safety-critical parameters in product design. There's
10 mandatory government safety certifications required for all electrical and electronic equipment, and there's safety inspection and test standard (indistinct) repair equipment.

So we're finding that a lack of awareness of these kinds of things can lead to serious problems once a product has been returned to the user. And on top of that, there's very poorly documented, or even no documented quality
15 management systems amongst repairers, so that they can produce a quality repair job every time. Those are the sorts of things that we face, and which is why industry suppliers, manufacturers wish to accredit and evaluate third-party repairers before they bring them on board in a partnership with the
20 suppliers.

Now, if we're finding those kinds of issues in a partnership situation, we can only extrapolate that out to the general third-party repair industry, because
25 this is what we see when people come to us for those kinds of partnerships. So, I talked about lacking awareness of regulatory matters. There are mandatory government approval safety requirements for labelling and approval of electrical and electronic equipment.

There's the Electrical Equipment Safety Scheme, or EESS, which is a national based scheme, but managed by a range of state governments. Not every state government is on board with that, such as, New South Wales has their own scheme, and always have. But in order to products onto the
30 market, suppliers have to go through a rigorous process of testing the products, getting electrical safety certifications, particularly for products that connect to the mains, and then getting electrical approval from these
35 regulatory bodies for certain classes of electrical equipment.

But they're for classes of equipment that don't need mandatory approval. They are required to comply with the safety standards in Australia. And the
40 Australian Communications and Media Authority also have safety and functional standards as a mandatory requirement, for things like mobile telephones and all telecommunications equipment.

And for all these regulations, there is the regulatory compliance mark in Australia. It looks like a triangle with a tick in the middle of it. So there's
45 one label right there, for pretty much all electronic equipment. If you modify

any equipment, it basically potentially invalidates all those certifications. And if that equipment is what you call a declared article, or a level 3 electrical appliance under the EESS, then that invalidates the right to connect that article to the electricity supply mains in Australia.

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If you modify a product that complies with the Australian Communications and Media Authority – ACMA – standards, which basically is the same technical standards, you can invalidate the right to connect to a public telecommunications network. So violations of compliance is pretty serious business. Many suppliers aren't aware of that. Now, I've given an example in the paper that I submitted, the slides, about a specific case that I had not too long ago, from a supplier who - when I said you can't just substitute parts in a product, especially if it's a safety critical part - and they said, 'well, what if it's just a fuse? Surely we can replace a fuse with any reasonable sort of similar-performing fuse'. And I put my safety engineering hat on and I said, 'well, look, fuses are there to prevent fire in the equipment, and if they don't do that job you can have a building burn down, literally. If there are - the fuses are certified components in a test report, so if you swap it for an uncertified component you don't know what that component is going to do.'

20

You don't know what the performance parameters are, so if you replace a one-amp certified fuse with a one-amp uncertified fuse, you don't know what the operating range for the uncertified fuse is going to be. Will it operate in time; will it operate too soon. If it doesn't operate in time, then you've got a fire risk. If it operates too soon, you've got a serviceability risk because then people are going to keep bringing these parts back to the supplier and saying, 'Please fix.' So the certification for the fuse guarantees its safety parameters for all of production. Now - so then the question was what if we replaced the fuse with the same current rating; maybe use a certified fuse, but the same current rating.

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Well, there's still a bunch of issues that come out of that. If you replace a fast-blow fuse with a slow-blow fuse, the same current rating, then you're still exposed to a fire risk because it will take longer to blow the fuse. If you replace a slow-blow fuse with a fast-blow fuse, again, you're going to end up with a fuse blowing more quickly than it's intended and the product will come back to repairs more often or you'll get nuisance fusing. And if you replace a high break capacity fuse with a low break capacity fuse you're going to end up with molten volatilised metal being spread throughout the insides of the equipment which could lead to the risk of electric shock by bypassing the insulation within the equipment.

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And if you replace the fuse with a different voltage rating, you also have a risk of electric shock. So even in something as simple as replacing a fuse, it's not so simple from a product safety perspective, and if you use an uncertified part and it's invalidating the safety certificate for that product and essentially disallowing that product from being connected to the electrical mains or in

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5 the case of other things like your mobile phones, if you invalidate the safety certificate by replacing the battery with a non-certified battery, like a battery from a third-party supplier that hasn't been through a rigorous testing process under the safety standard, then that could invalidate the certificate you use for ACMA compliance.

COMMISSIONER ABRAMSON: Can I just ask you something about that, Paul.

10 MR P ROBINSON: Yes.

15 COMMISSIONER ABRAMSON: And it's not that I doubt your evidence, but I just want to understand this. Where is the evidence base for the idea that independent repairers are a risk because some of the evidence that we've been given - of course some people would be; I accept that - is that a lot of independent repairers, especially in white goods, have actually come out of the industry itself. That's how they set them up. And wouldn't they have their own reputations to manage?

20 MR P ROBINSON: They have reputations to manage, but I would have to ask where are their process documents; where's their accreditation; where's their training and quality assistance manuals. If they don't have those, then my attitude for that will be that they're a risk because they don't know - they can't show an auditor, for example, that they're repairing a product to a safe
25 level every time. They can't show an auditor that they have the appropriate skills. They might've come out of industry, but product safety training is a highly specialised skill, and as I said, I've worked with repairers many times and I've helped the repairers that we've gone into partnerships with to develop repair procedures and quality management systems to cover those
30 kinds of issues. So I'm finding in our experience that the repairers - there are some exceptions. There are some that are set up obviously, but when we come across the repairers - and it can even be larger ones - unless they have even a quality management system that shows what they're going to do in the repair process, I have to question whether or not they're able to do that job
35 reliably well.

40 COMMISSIONER LINDWALL: Paul, which types of products are you most concerned about because I would have thought that most computers now - laptop computers and televisions - are DC low voltage, 12 volts or something like that. 24 volts sometimes. Certainly not mains voltage.

45 MR P ROBINSON: Well, the mobile phones and the laptops have power supplies that are rated at 240 volts that plug into the mains. Those power supplies are electrical articles that are required to be approved by the electrical regulators, and the laptops themselves are electrical devices, as are the mobile phones, and they're covered by electrical safety regulations in all states. Like in Victoria, they say even if you don't have to have an electrical

safety approval from a government regulator, you must still comply with Australia New Zealand standard 3260 which is the safety of electrical equipment.

5 So non-compliance with that standard basically means that the electrical
authorities would regard that equipment as unsuitable for use in Australia
even if it's battery operated and low voltage. Victoria has told me point blank
- the regulator there, ESV, has told me that even - anything that uses
10 electricity - doesn't matter what the low voltage is down to zero volts, it's still
covered by their regulations. I'm happy for you to talk to the electrical
regulators as well on that one and the ACMA. So in addition to the safety
standards - the technical standards - we've got other Australian standards that
manage the quality of the repair in testing and inspection of the repair process
15 as well, and this is - again I'm finding many Australian repairers are unaware
of this.

In particular, Australia and New Zealand standard 5762 which is in-service
safety inspection and testing for repaired electrical equipment. And there's
20 another standard that's very similar to that, and it's based on that which
covers second-hand equipment prior to sale, and both of those standards
reference a primary standard of ANZS 3760 which is in-service safety
inspection and testing of electrical equipment. 3760 is implemented in a lot
of occupational health and safety regulations for employers to test and tag.
25 You might know of it as a test and tag standard for electrical equipment in
the workplace. But for repaired electrical equipment, if there's safety
involved - and there usually is - they should be using ANZS 5762 as the basis
for checking and inspecting equipment after it's been repaired. And it doesn't
stop with the fuse.

30 Safety standards do have hundreds of pages of technical requirements. The
safety standard for mobile phones and computers, laptop computers, and even
all the way up to mainframe computers is AS/NZS 62368.1. It's 291 pages in
that standard. So the issues I've talked about with fuses is only a few
35 paragraphs out of that. We've talked about batteries. There's sections on
batteries. There's sections on button batteries which is a big issue for the
ACCC at the moment, and Standards Australia has instituted a new
committee, CS118, for writing a horizontal standard for button battery safety
and products that contain button batteries, and there's a mandatory
40 government standard on that.

And yet, out in the marketplace we're still finding on productsafety.gov.au
that there's regular recalls on products containing button batteries that are not
safe and don't mean the requirements of even the industry code. So there's
45 products getting out there due to a lack of awareness and knowledge of the
safety standards and we basically need to ensure that if third party repairers
are given rights to repair products. They also need to be associated with
obligations and responsibilities to repair the matter well, and we mentioned

5 that in our original submissions to the Productivity Commission where we said that consumer products must be repaired by competent and profession repair technicians. Repair mandates must not unduly restrict technology innovations, because we've heard earlier about technology innovations, a previous speaker was saying if we used off the shelf parts and common components or common assemblies then we'll be well and good with the repair industry.

10 But when you're dealing with leading edge technology products it's not necessarily possible to have common assemblies because you're developing something that's completely new, and you just can't get off the shelf components, and it costs billions of dollars to develop microchips to roll out these new products. New products are getting smaller, and smarter, and faster, lighter. Janet talked about the NTCRS because products are getting
15 lighter, like we've now taken the cathode ray tube TVs off the market place, so the replacement are obviously LED [light-emitting diode] TVs. And the weight of LED TVS is much lower for the same sort of screen size as CRT TVs. So, when you're measuring recycling waste by weight it's starting to get skewed by technology innovations that are making things smaller and lighter.

20 So, we need to be aware that the technology innovations are still happening, and they will continue to happen, chip sizes are doubling every few years - I think it's 3 years according to what they call Moore's law. And when products get repaired, the liability for that repair has to rest on the third-party
25 repairer, it can't be passed back to the original manufacturer or the original importer because we don't know what's been done to that repair. And any consequential forces as a result of a third-party repair also really need to be put back onto the repairer who caused those issues.

30 COMMISSIONER LINDWALL: Well, if they caused the issues, yes.

MR P ROBINSON: If they caused that issue, I'm just saying in that case, where the issues are caused by them.

35 COMMISSIONER LINDWALL: What do you say, Paul, about the US FTC which said there is scant evidence to support manufacturer's claim that there should be restrictions in repair?

40 MR P ROBINSON: Could you repeat that? You're a little bit soft sorry.

COMMISSIONER LINDWALL: Sorry, the US Federal Trade Commission has put out a document recently that said there was scant evidence that manufacturer's complaints about independent repair being dangerous, there was scant evidence for that is what the FTC said anyway.

45 MR P ROBINSON: Well, as I said, this is my experience in Australia with repairers who have wanted to come onboard in partnership with suppliers in

5 Australia. When you do an in-depth, detailed evaluation of those repairers - because the Australian suppliers of course have their own brand names on the line when they bring in a partnership like that - want to make sure that they can repair them to the supplier's expectations. And when you find that there are gaps in their knowledge, and gaps in their skills, and gaps in their processes that might expose our products to problems like that, and expose consumer's to risk, and may even expose our own staff to safety risks, like if you try to pull a battery out of a product and you do it less than carefully that battery may explode and catch fire in that process.

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So, their own staff are exposed as well, and we're finding that they don't have those processes and procedures in place, and certainly we won't engage with a supplier that can't do it safely and reliably. And this is our experience in Australia.

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20 COMMISSIONER LINDWALL: I'm sure there's a normal distribution of repairers - both authorised repair and third-party repair - like there is with everything else in society. So, there'll be good repairers and bad repairers, but surely to authorise repairers - I mean, you'd have to - where is the evidence that authorised repairers are systematically better than third-party repairers? I'm sure we could cite examples of poor repairers, but if you can show us examples where they're systematically better that would be a different thing, and I'm not sure - I haven't seen any evidence that it's systematically better. It would justify profoundly changing rules to make it quite expensive for consumers and reduce competition in the repair market.

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30 MR P ROBINSON: Well, either way is making things difficult, more expensive for consumers, if the responsibility for that is put back on suppliers. Because if suppliers have to recertify repairability of products that's going to involve a cost, and we talked about labelling, that's going to flow down to the consumer price for the product. And so, one way or another the consumer pays, but I prefer the consumer doesn't pay in terms of accidents and injury.

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COMMISSIONER LINDWALL: Of course, yes. None of us want that, that's quite right. Julie did you have any questions?

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COMMISSIONER ABRAMSON: No, all good thanks Paul, I asked my question before.

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COMMISSIONER LINDWALL: I think we've done - Paul did you have any final point you wanted to make or Janet for that matter?

MR P ROBINSON: No, I think time is a problem, so I'll have to leave it there, but thank you very much.

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COMMISSIONER LINDWALL: Thank you very much Paul.

COMMISSIONER ABRAMSON: Thank you, and Janet.

COMMISSIONER LINDWALL: And Janet did you have anything?

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MS LESLIE: No, I think just I guess to Paul's point - and this must be covering the whole inquiry - it's horses for courses with different products, isn't it.

10 COMMISSIONER LINDWALL: Exactly.

MS LESLIE: Yes.

15 COMMISSIONER LINDWALL: Alright, well thank you very much for both appearing today.

COMMISSIONER ABRAMSON: Thank you.

20 MS LESLIE: Thank you for inviting us.

COMMISSIONER LINDWALL: That was the last scheduled appearance for today, but as always, we always provide an opportunity if anyone wants to have a short statement or say something that they've agreed with or disagreed with during the day, you can do so now if you wish to.

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COMMISSIONER ABRAMSON: I think they're gone, it's a bit different from our normal.

30 MR R ROBINSON: Hello, Paul?

COMMISSIONER LINDWALL: Yes?

MR R ROBINSON: It's Ross Robinson.

35 COMMISSIONER LINDWALL: Hello Ross.

MR R ROBINSON: Of the Watch and Clockmakers of Australia.

40 COMMISSIONER LINDWALL: Right, hello Ross, how are you?

MR R ROBINSON: I'm well thanks. I wondered whether just - my video can't work because it's been stopped.

45 COMMISSIONER LINDWALL: Well perhaps if someone could turn Ross' on. There we are.

MR R ROBINSON: I've just been listening with interest, and I thank all the people who have contributed to the preparation of the whole report, it's very comprehensive. And of course, for us we're a bit of a minnow in this area but we've got a serious international problem that reflects on our trade in that the watch industry basically is made up of four or five conglomerates in
5 Switzerland, this apart from Seiko in Japan - it's innocent in Japan. But you know, really, it's all the high-end watches are made by these companies in Switzerland. They simply don't supply spare parts at all for any of their brands, and that's something like 50 or 60 brands that we're all familiar with.

10 And I heard someone earlier today say that they couldn't get a brand of battery, and that's a Swatch group product, no surprises to us. So, they won't supply us spare parts for any part of their products. But the issue is one that we feel a bit powerless about because they simply threaten to say, 'Look, you know, we won't supply spare parts anymore to the trade at all in Australia,
15 and we might withdraw from the market.' You know, it represents about 1 per cent of their turnover, so they just threaten us with that sort of thing. And it's the fact that they control everything, they manufacture the watch, they distribute the watch in Australia through their own - you know the brand is represented here by themselves - they have retail shops, not even sellers of
20 watches can market their products anymore.

And then they've set up brand service centres, so the watches go back to the brand service centre and they have everything to do with it, and there's
25 nothing that anybody else can do, but them.

COMMISSIONER ABRAMSON: We did read through carefully the submissions that you made. What would your solution to the issue be? Would it be something around a positive obligation? What would you see as
30 the response?

MR R ROBINSON: Well, we would – obviously for us, we would like to see spare parts just distributed. There used to be a spare parts network all around the world. As a matter of fact, we're putting all of our hopes on the
35 fact that in England, one of the major distributors – Cousins – he has gone to court in Switzerland.

COMMISSIONER LINDWALL: That's right, yes.

40 COMMISSIONER ABRAMSON: Yes. We're interested in that court case. Any details you could send us on that would be great.

MR R ROBINSON: Well, I've checked today, and as of today, Tony Cousins has told us that there's a delay in the findings. I think it's all related
45 to what's happening with COVID and things like that. But the decision was due to be handed in March.

COMMISSIONER ABRAMSON: Would your expectation be, then, if that decision said that these OEMs had to hand to over spare parts, that's going to apply internationally?

5 MR R ROBINSON: Well, in some ways, we wouldn't care, because we got all our bits off Tony Cousins.

COMMISSIONER ABRAMSON: Yes.

10 COMMISSIONER LINDWALL: Yes.

MR R ROBINSON: So we don't really mind how we get to the solution, but it would be much better if we could go straight to Swatch Group in Melbourne, or one of the other groups, and just get the parts here. But that's just not seeing like it's going to be a likelihood. That's the trouble. It's been 15 a situation for a long time, and it really started over a bit of a copyright issue with Rolex.

Rolex were selling spare parts. All during the time of my apprenticeship, I 20 worked on Rolex watches. I was working for Fairfax & Roberts in Sydney. I was servicing all those products. We had not long given up the agency for Omega watches, and how we can't get parts for Omega watches. We were the importers and distributors of the watches. And when it went to Precision Watches, they were bought out by Swatch Group, finally. So we not only 25 can't get what we had before, but they're saying, 'We're not confident.'

COMMISSIONER LINDWALL: I know. This is absurd, given I know watchmakers are very skilled people.

30 COMMISSIONER ABRAMSON: Yes, they're artisans. Yes, I understand that.

MR R ROBINSON: Yes. And that's where I see somewhere – perhaps our case is different to a lot of the other ones that are being spoken of here, where 35 you've got people that – the argument seems to be in favour of individuals being able to source parts for their own products. And that's pretty hard with watches. I mean, I'm not saying it's impossible, and I've got a friend that has nothing to do with the trade – he's a computer person – but he can do anything. 40

And I've seen him repair automatic chronograph wristwatches, and they're very complex. And this bloke can do it. But the average person (indistinct) – I was involved in training for a long time at Sydney college, and a lot of it – at the end of the three years of training, you're still coaxing them along a bit 45 on really complicated watches. They do need to have some level of skills, just to be able to handle fine mechanisms and make adjustments and thing like that.

5 COMMISSIONER LINDWALL: Thank you, Ross. I think we well understand and sympathise with the issue. The court case will be critical, obviously, but we will reflect upon it in terms of our final report.

MR R ROBINSON: All right. Thanks, Paul. Thanks for the opportunity to say a few words.

10 COMMISSIONER ABRAMSON: Thanks, Ross.

MR R ROBINSON: I think you've got a couple of my colleagues tomorrow.

15 COMMISSIONER LINDWALL: That's good. I'm looking forward to hearing from them. Anyone else wants to have a say just before we close today?

MR ELLIS: Yes, hello.

20 COMMISSIONER LINDWALL: Hello.

MR ELLIS: It's Danny Ellis from MendIt Australia.

COMMISSIONER LINDWALL: Hello, Danny.

25 COMMISSIONER ABRAMSON: We're hearing from you tomorrow, I think, Danny.

30 MR ELLIS: That's it, Julie, yes. I just want to touch on the competency. I trained as a (indistinct) mechanic at The Age newspaper back in the 70s, and they're a very mechanical machine. And I've developed skills in my life – I'm retired now – and I think from that previous gentleman – not Ross, sorry; the gentleman who was talking about Australian standards and all that sort of stuff: well, I can't access that, unless I want to spend a lot of money on buying the Australian standards.

35 But I really do believe that when we tinker or deal with servicing, whatever you're repairing, that competency is your confidence. And I think we get removed from – we deal with everyone working on this one component, whereas the person who actually got their hands on it, they're the person that

40 deems himself confident to do it. And in our experience with repair cafés and other repair events, there's a lot of people out there that, having got a piece of paper to say they can do whatever, but they are very talented, and got exceptional skills at fixing things.

45 COMMISSIONER ABRAMSON: Danny, we – as you might have followed from the line of questioning, we do have a view that in some cases, a number of these claims about safety and ability are overstated.

MR ELLIS: Yes.

5 COMMISSIONER ABRAMSON: It's just not a case – especially when we were talking to Ross about watches; so we were quite clear about that in the report. We do understand that in some areas that that would be quite true, but there are – I think you're a motor vehicle mechanic. There's a whole lot of certifications that go with that if you want to be reputable.

10 MR ELLIS: Of course.

COMMISSIONER ABRAMSON: So, yes, we understand that point.

15 MR ELLIS: And in our submission, Julie, we actually mention about electrical repair.

COMMISSIONER LINDWALL: Yes.

20 MR ELLIS: And there's a quote – the Monash data; in the five years, there had been no one electrocuted in the state of Victoria.

25 COMMISSIONER ABRAMSON: No, I definitely saw that data, because I had the team go back and check something for me. We're very interested to hear from you tomorrow, Danny, and I would welcome if you want to expand on any of the points that you make now.

30 MR ELLIS: Not a problem. But I thought I had to mention about – he was talking about Australian schemes and all that. And that's not something common for the single repairer to go and find out about those standards.

COMMISSIONER ABRAMSON: No, I understand.

MR ELLIS: All right. Thanks, guys.

35 COMMISSIONER ABRAMSON: Thank you.

COMMISSIONER LINDWALL: Thank you, Danny. See you tomorrow.

40 MR ELLIS: See you tomorrow.

COMMISSIONER LINDWALL: Anyone else, before we finish up?

45 MS LESLIE: It's Janet again. I think Australian Standards are available through most libraries. So I mean, I think they are available without having to buy them.

COMMISSIONER LINDWALL: All right, thank you. I think, if there's no one else, we might adjourn today, and we'll commence again, supposedly virtually again, in Melbourne tomorrow, at 9.30 am. So, thank you, everyone, and thanks for our transcriber today, Max, and to the team.

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COMMISSIONER ABRAMSON: And to the team. Thank you. Thanks very much, everyone.

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**MATTER ADJOURNED AT 4.48 pm
UNTIL TUESDAY, 20 JULY 2021 AT 9.30 am**