



6 August 2021

Right to Repair Inquiry
Productivity Commission
Locked Bag 2
Collins Street East
Melbourne VIC 8003

Via email: repair@pc.gov.au

Dear Commissioners,

Submission to the Productivity Commission draft report on the “Right to Repair.”

Thank you for the opportunity to provide a follow up submission on the Right to Repair Inquiry. The National Farmers’ Federation (NFF) continues to seek a proactive right to repair for agricultural machinery through either:

- The expansion of the consumer guarantee under the Australian Consumer Law (ACL) to cover such machinery; or
- A right to repair regime similar to the motor vehicle regime, with amendments to account for the differences between

Ignoring the need for a right to repair will be a significant missed opportunity by the Productivity Commission, particularly noting the creation of this right in other international jurisdictions. Inaction will not only continue to impose significant costs on farmers but deteriorate our international competitiveness in agricultural markets.

The National Farmers’ Federation (NFF) initial submission raised four major barriers to the repair of agricultural machinery in Australia. These were:

1. Manufacturers voiding the machine’s warranty if purchasers conduct repairs themselves or use an independent repairer.
2. Manufacturers restricting the supply of genuine parts, technical information and diagnostic software tools.
3. Insufficient recourse being provided by either the product warranty or the ACL in the event of an issue.
4. Dealership agreements which contain terms that unduly place the risk of providing repairs on local dealers or prevent dealers competing to provide repair services.

To address these barriers, the NFF recommends that:

1. A broad and proactive “right to repair” be created to make illegal any barriers which prevent the owner of a product making repairs to that product themselves or using a contractor of their choice; and
2. The consumer guarantee under Australian Consumer Law be extended to all purchases of farm machinery, or a regime similar to that of motor vehicles be established for farm machinery.

A right to repair regime that is modeled on the motor vehicle framework must consider some key distinctions between the repair market for motor vehicles and farm machinery. In the farm machinery market, the ability to self-repair is much higher, and issues of access to affordable spare parts more pertinent. These need to be accounted for if the right to repair regime for farm machinery uses the motor vehicle framework as its basis.

The Productivity Commission’s draft report notes barriers raised in the NFF submission and has sought further information on access to repairs for agricultural machinery. This is welcome by the NFF, if further information leads to a broad right to repair for agricultural machinery.

The NFF is concerned that the Productivity Commission may rule out the need for a proactive obligation that guarantees the right to repair, based on undefined and unquantified ‘considerable compliance costs’ and ‘unintended consequences, particularly if restriction to access to repair information and supplies are necessary to protect public safety or cyber security’.

The NFF is further concerned that the Productivity Commission feels that it is ‘not clear that the benefits of such a regulatory intervention would outweigh the costs’ (though we do note that agricultural machinery was earmarked for further information gathering). The actual on-the-ground costs for farmers stemming from inaction on a right to repair far outweighs the unquantified and potential costs the Productivity Commission has highlighted.

The NFF commends the Productivity Commission for seeking further information on agricultural machinery and welcomes the opportunity to work collaboratively to further quantify the considerable costs associated with the lack of a proactive right to repair.

The cost of inaction

The NFF has highlighted the cost of inaction with respect to repairs relating to agricultural machinery, including:

- higher cost for repairs;
- inability to use preferred repairer outside of the authorized dealer network, who is often more experienced and qualified;
- inability to undertake simple repairs on farm for fear of voiding warranties;
- having to travel long distances to access authorized repairs, as use of local repairers would void warranties; and
- significant delays in having repairs undertaken due to the supply restriction of authorized repairers.

Beyond the direct cost of repairs, delays in repairs can be fatal for a farm business. Having a header out of commission during a harvest, is the difference between a profitable year or running at a loss for a grain grower.

The NFF would welcome the opportunity to work with the Productivity Commission to gather evidence and quantify these costs, and commends the Commission for reaching out to industry for this very purpose.

Existing protections inadequate

The NFF initial submission to this Inquiry highlights why existing protections are inadequate with respect to a right to repair for agricultural machinery. Any protections afforded, such as those in Part IV of the *Competition and Consumer Act 2010*, are incidental and only provide a remedy where right to repair issues are also anti-competitive. This leaves a myriad of right to repair harms outside of the scope of such protections.

The inadequacy of current provisions should be clear noting the lack of any compliance or enforcement action by either machinery owners, third-party repairers, or regulators.

Australia a laggard nation on the right to repair.

Proactive right to repair regimes are being introduced across most advanced economies around the world, including specific protections for agricultural machinery. The recent Executive Order by the President of the United States on the right to repair is one such example. It is incumbent on the Productivity Commission to demonstrate why the Australian context is so different from other comparable advanced liberal democratic economies, that the introduction of such a right is not warranted.

The international context will amplify existing costs associated for farmers with respect to inadequate repair arrangements for farm machinery. These costs will be borne by Australian farmers, but not farmers in competing nations (such as the United States) further deteriorating our international competitiveness.

Potential compliance costs can be mitigated.

The NFF was disappointed that the Productivity Commission has generally dismissed the need for a proactive right to repair based on unquantified and hypothetical 'considerable compliance costs' and 'unintended consequences'. Most disappointingly, the draft report fails to engage with the notion that many of these costs and consequences can be mitigated with a measured and robust right to repair regime.

The draft report's views on access to repair data absolutely disempowers consumers and runs counter to the consumer data right movement. Any right to repair regime would not entail an open access data regime, where there is a free-for-all with respect to consumers' repair data. A properly defined right-to-repair regime would put consumers in the driving seat in providing access to their data, where they see benefit, and the use of data would be governed by the development of codes on the use and dissemination of data.

The claims that access to data for the purposes of effecting a right to repair would harm 'public safety or cyber security' is unfounded. Consumer data access regimes are being created in highly sensitive sectors, such as banking and finance and electricity markets. The data in question under these regimes are of a much more sensitive nature than those that might impact machinery, yet public safety and cyber security fears have not stopped the introduction of the consumer data right in these sectors.

Similarly, safety concerns cannot be used to justify inaction on the right to repair. Again, a measured right-to-repair regime would and should be limited by genuine safety issues and concerns. This should be a key aspect in the creation and implementation of this right.

Should you have any questions regarding this submission please contact [Ash](#) Salardini, Chief Economist and GM Trade, at asalardini@nff.org.au or 0490785390.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Tony Mahar". The signature is fluid and cursive, with a large initial "T" and "M".

TONY MAHAR
Chief Executive Officer