

REVISITING THE CONCEPT OF PLANNED OBSOLESCENCE IN LIGHT OF THE RECENT REFORMS IN EUROPE AND AUSTRALIA: A NECESSARY STEP FOR THE CIRCULAR ECONOMY TRANSITION

MARGHERITA FELEPPA*

Once built to last, today's products live a few years at best. Their carbon footprint and discarded parts, instead, pollute the earth for years. Shortening products' lives, for example by making them difficult to repair, is a practice known as planned obsolescence. Europe has banned planned obsolescence to boost the circular economy transition. Australia is a long way behind, although debates and policy developments are advancing. However, regulatory efforts have not sufficiently engaged with the concept of planned obsolescence, which is a crucial step for curbing this phenomenon. To fill this gap, this article revisits this concept by retracing its history and scholarly debates in light of recent reforms. It argues that current approaches are based on a narrow and fragmented understanding of planned obsolescence, failing to capture its complex, contested and multifaceted nature. Therefore, this article proposes a wider understanding of planned obsolescence as part of circular economy-oriented regulation.

I INTRODUCTION

Planned obsolescence is generally understood as ‘the deliberate policy of making a product become rapidly out of date or unserviceable, as by changing minor characteristics of a model, in order to ensure continued sales of new goods’.¹ Obsolete yet functioning products are frequently discarded, fuelling growing waste generation.² Continuously producing and consuming products at an increasing

* Dr Margherita Feleppa, Lecturer at the University of Wollongong, joint PhD in Law (University of Technology Sydney and Roma Tre University). ORCID: 0009-0002-3739-9839. This article builds on my PhD research. It was submitted on 24 September 2025 and accepted on 22 December 2025.

1 *Macquarie Dictionary* (online at 17 February 2026) ‘planned obsolescence’.

2 See ‘Of 16 Billion Mobile Phones Possessed Worldwide, 5.3 Billion Will Become Waste in 2022’, *United Nations Institute for Training and Research* (Web Page, 14 October 2022) <<https://unitar.org/about/news-stories/news/16-billion-mobile-phones-possession-worldwide-53-billion-will-become-waste-2022>>. See also Cornelis P Baldé et al, *The Global E-waste Monitor 2024* (Report, 2 November 2024) 12 <ewastemonitor.info/the-global-e-waste-monitor-2024/>, reporting that a record 62 billion kilograms of

pace also contributes to carbon dioxide ('CO₂') emissions and, thereby, to global warming.³ Regulating planned obsolescence is therefore critical for reducing the environmental harm caused by short-lived products and is both necessary and urgent in the face of the rapidly closing window to act on climate change.⁴ This article argues that, despite recent attention to this issue, regulatory efforts have not sufficiently engaged with the concept of planned obsolescence, which is a crucial step for effectively curbing this phenomenon.

Planned obsolescence practices have been recognised at least since the 1920s, when United States ('US') antitrust authorities famously investigated the 'Phoebus cartel', whose members were suspected of colluding to shorten the lifespan of light bulbs to drive up sales.⁵ Yet, it is only in recent years that a regulatory response has begun to emerge, fuelled by growing environmental concerns. The European Union ('EU') recently passed legislation banning planned obsolescence practices and ensuring consumers can more easily request that their product be repaired.⁶ In Australia, similar rules have recently been considered, although little has been done to make repairing products easier for consumers.⁷ However, the debate is still very much ongoing on whether more stringent rules are necessary, such as a complete ban of planned obsolescence. Long-awaited circular economy developments, such as the first federal circular economy plan, the establishment of a 'Circular Economy Ministerial Advisory Group' and a Productivity Commission inquiry into Australia's opportunities in the circular economy suggest Australia is coming to terms with the need for more significant action.⁸

e-waste was generated globally in 2022, a rise in generation that outpaces the rise in formal recycling by almost five times. The Report also talks about the growth of e-waste in relation to the increase in the number of devices and computerisation of objects driven by the digital transformation, as well as limited repair options and short product lifecycles.

3 See European Environmental Bureau, *Coolproducts Don't Cost the Earth* (Report, 18 September 2019) <<https://eeb.org/en/library/coolproducts-report/>> ('Coolproducts').

4 Some experts warn that there may be as little as seven years left for acting on limiting global warming to the internationally agreed standards: Commonwealth Scientific and Industrial Research Organisation and Bureau of Meteorology, *State of the Climate 2024* (Report, 2024) 27 <<https://www.csiro.au/en/research/environmental-impacts/climate-change/state-of-the-climate>>.

5 Markus Krajewski, 'The Great Lightbulb Conspiracy' (2014) 51(10) *IEEE Spectrum* 56 <<https://doi.org/10.1109/MSPEC.2014.6905492>>.

6 *Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 Amending Directives 2005/29/EC and 2011/83/EU as Regards Empowering Consumers for the Green Transition through Better Protection against Unfair Practices and through Better Information* [2024] OJ L E/1 ('Empowering Consumers Directive'); *Directive (EU) 2024/1799 of the European Parliament and of the Council of 13 June 2024 on Common Rules Promoting the Repair of Goods and Amending Regulation (EU) 2017/2394 and Directives (EU) 2019/771 and (EU) 2020/1828* [2024] OJ L E/1 ('Right to Repair Directive'); *Regulation (EU) 2024/1781 of the European Parliament and of the Council of 13 June 2024 Establishing a Framework for the Setting of Ecodesign Requirements for Sustainable Products, Amending Directive (EU) 2020/1828 and Regulation (EU) 2023/1542 and Repealing Directive 2009/125/EC* [2024] OJ L E/1 ('Ecodesign for Sustainable Products Regulation').

7 See Productivity Commission, *Right to Repair* (Inquiry Report No 97, 29 October 2021) <<https://www.pc.gov.au/inquiries-and-research/repair/report/>> ('Right to Repair Report'), which considered law reform proposals for granting consumers a right to repair.

8 See Department of Climate Change, Energy, the Environment and Water, *Australia's Circular Economy Framework* (Report, 2024) <<https://www.dcccew.gov.au/environment/protection/circular-economy/framework>> ('Circular Economy Framework'); Circular Economy Ministerial Advisory Group, *The*

While recent regulatory developments evidence some agreement in intervening on the matter, at least to some extent, there is no agreement over what planned obsolescence means or encompasses.⁹ Does it exclusively concern intentionally shortening the lives of products? And if so, what evidence can reasonably prove this? Exactly what actions or omissions can be said to make products obsolete? Who is responsible for these harmful practices?¹⁰

The terminology is equally contested as different terms suggest different answers to these (very much open) questions. Views differ as to whether we should speak of ‘planned’, ‘premature’ or ‘early’ obsolescence, terms which imply different market actors may be responsible for short-lived products.¹¹ Laws and policy documents use different and contested terminology and too often remain at the periphery of the issue.¹² There is also a difficult relationship between planned obsolescence and other concepts, such as that of the ‘right to repair’, which refers to the right to repair existing products, for example by being able to access spare parts.¹³ The right to repair may appear a less contested concept yet is certainly connected with, and perhaps even overlaps with, planned obsolescence.¹⁴

Both planned obsolescence and the right to repair are intrinsically related to the concept of circular economy, which suggests that materials should be kept in use and which focuses on reusing, repairing, and recycling existing goods instead of disposing of and producing new goods, therefore leaving the ‘linear economy’ model behind.¹⁵ Generally, the circular economy transition has served as a catalyst for law reform addressing short-lived products, however a circular economy

Circular Advantage (Final Report, December 2024) <<https://www.dccew.gov.au/environment/protection/circular-economy/ministerial-advisory-group/>> (*‘Circular Advantage’*); Productivity Commission, *Australia’s Circular Economy: Unlocking the Opportunities* (Interim Report, 5 March 2025) <<https://www.pc.gov.au/inquiries-and-research/circular-economy/interim/>> (*‘Circular Economy Interim Report’*); Productivity Commission, *Australia’s Circular Economy: Unlocking the Opportunities* (Inquiry Report No 107, 22 August 2025) <<https://www.pc.gov.au/inquiries-and-research/circular-economy/report/>> (*‘Circular Economy Inquiry Report’*).

9 See Part II(A).

10 See Parts II(A) and II(B).

11 See, eg, Pierre-Emmanuel Moyse, ‘The Uneasy Case of Programmed Obsolescence’ (2020) 71 *University of New Brunswick Law Journal* 61. See also Anaïs Michel, ‘Est-il pertinent de définir légalement et de pénaliser les pratiques d’obsolescence prématurée? Analyse de la loi française au regard des récentes décisions italiennes contre Apple et Samsung’ [Is It Relevant to Legally Define and Penalise Practices of Premature Obsolescence? Analysis of French Law in Light of Recent Italian Decisions against Apple and Samsung] in Antoine Bailleur (ed), *Le droit en transition* [Law in Transition] (Presses universitaires Saint-Louis Bruxelles, 2020) 245 <<https://doi.org/10.4000/books.pu1.27160>>. For a discussion, see Part II(A).

12 See Part II(A).

13 See Parts II(C) and III(B).

14 See Part III(B).

15 See Jurgita Malinauskaite and Fatih Buğra Erdem, ‘Planned Obsolescence in the Context of a Holistic Legal Sphere and the Circular Economy’ (2021) 41(3) *Oxford Journal of Legal Studies* 719 <<https://doi.org/10.1093/ojls/gqaa061>>; Melanie Jaeger-Erben, ‘Bought Today, Gone Tomorrow? From Linear to Circular Consumption’ in Terry Tudor and Cleber JC Dutra (eds), *The Routledge Handbook of Waste, Resources and the Circular Economy* (Routledge, 2021) 78 <<https://doi.org/10.4324/9780429346347-10>>. For a discussion, see Part II(D).

perspective is yet to be adopted at large. Comparing the regulatory response in the EU and Australia provides insight into these differences and conceptualisations.¹⁶

The literature has long discussed what planned obsolescence should mean and how it should be addressed, including whether and how it should be regulated, amid different views.¹⁷ However, these questions have not been revisited following the recent regulatory wave for planned obsolescence. Yet, accounting for these developments is critically important. Recent years have witnessed great progress in the legislation, case law and overall debate on the regulation of planned obsolescence and a study of the conceptualisation of this phenomenon is needed to inform better regulation.¹⁸ This article seeks to fill this gap, by revisiting the concept of planned obsolescence in the light of recent developments, with concrete examples from EU and Australian debates and law reform processes.

This article is structured as follows. First, it explores the complex problem of planned obsolescence by discussing the history of the term, the contested terminology, as well as the scholarly debate (Part II). By discussing these aspects, this Part will show that planned obsolescence is not only a contested and complex matter, but also a multifaceted issue spanning several legal areas and encompassing multiple practices. Second, this article turns to recent regulatory developments, focusing on the emerging regulatory response to short-lived products under recent right to repair legislation and its connection to overarching circular economy transition plans (Part III). This Part provides a comparison of the EU and Australian regulatory developments, showing that, despite key differences between the two responses, both the EU and Australia are yet to fully capture the complex nature of planned obsolescence so that they fail to address the problem holistically. The proposal of developing a broader concept as a first step to a more effective regulatory response is then advanced (Part IV). Some final reflections on what can be learned from revisiting the concept of planned obsolescence conclude this article (Part V).

16 See Parts II(D) and III(A).

17 See Tim Cooper (ed), *Longer Lasting Products: Alternatives to the Throwaway Society* (Gower Publishing, 2010) ('*Longer Lasting Products*').

18 See above nn 6–8. See also Autorità Garante della Concorrenza e del Mercato [Italian Competition and Market Authority], 'PS11009: Samsung-Aggiornamento Software' [PS11009: Samsung-Update Software] (Bollettino Settimanale [Weekly Bulletin] No 40, 29 October 2018) 130 ('Samsung- Aggiornamento Software'); Autorità Garante della Concorrenza e del Mercato [Italian Competition and Market Authority], 'PS11039: Apple-Aggiornamento Software' [PS11039: Apple-Update Software] (Bollettino Settimanale [Weekly Bulletin] No 40, 29 October 2018) 176 ('Apple-Aggiornamento Software'); Alberto De Franceschi, 'Planned Obsolescence Challenging the Effectiveness of Consumer Law and the Achievement of a Sustainable Economy: The Apple and Samsung Cases' (2018) 7(6) *Journal of European Consumer and Market Law* 217; European Commission, 'Consumer Protection: Nintendo Agrees to Offer Free Repairs of Irresponsive Nintendo Switch Controllers' (Press Release, 4 April 2023) <https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2106>; *Australian Competition and Consumer Commission v Apple Pty Ltd* [No 4] [2018] FCA 953; Australian Competition and Consumer Commission, 'Apple Australia Gives Undertaking to ACCC to Improve Its Consumer Guarantees Policies and Practices' (Media Release, 18 December 2013) <<https://www.accc.gov.au/media-release/apple-australia-gives-undertaking-to-accc-to-improve-its-consumer-guarantees-policies-and-practices>>.

II REVISITING PLANNED OBSOLESCENCE: A CONTESTED, COMPLEX AND MULTIFACETED CONCEPT IN NEED OF A BROADER UNDERSTANDING

Regulators seeking to curb planned obsolescence are often confronted with the issue that planned obsolescence is a contested, but also complex, issue, which makes it difficult to capture and regulate effectively. An overview of the origins of the concept, the contested terminology and the complex practices that represent modern-day obsolescence provides the foundations for exploring this often-misunderstood concept and demonstrates the need for developing a broader understanding of the concept, which is a multifaceted one. The following sections also discuss the deep connection between planned obsolescence and the circular economy transition, further showing the multifaceted nature of the problem.

A From Origins to Terminology: A Contested and Complex Concept

Looking at the first known references to planned obsolescence, one can already find distinct ways of framing the simple, yet very nuanced, idea of shortening products' lifespans.

The term 'planned obsolescence' emerged at a time when environmental concerns were far from being at the forefront of law reform; rather this concept was initially proposed as a solution to the Great Depression. The term first appeared in a book by Bernard London titled *Ending the Depression through Planned Obsolescence*, dating back to 1932, suggesting that products be assigned a 'lease of life' so that they could be used by the consumer only within a predetermined timeframe, of which the consumer would be informed.¹⁹ According to London, planned obsolescence should be part of a government plan to boost the economy in the aftermath of the Great Depression, ensuring that consumer spending kept the 'wheels of industry' going and 'regularized and assured' employment.²⁰

As Pierre-Emmanuel Moyse observes, a distinct meaning of planned obsolescence emerged with the so-called 'Phoebus cartel', one where planned obsolescence became associated with a company strategy rather than a government policy, and which involved programming products to reach the end of their life prematurely to the benefit of participating firms, and certainly without informing consumers.²¹ Under the Phoebus cartel, in fact, light bulb manufacturers altering the durability of light bulbs in a way that reduced their lifespan and induced consumers to replace the product early. It is generally claimed that this case represents the origins of planned obsolescence or, better, the origins of the version of obsolescence that is currently 'on trial', the one that the new regulatory wave is addressing as it seeks to deliver more sustainable products.²² Today, planned

19 Bernard London, *Ending the Depression through Planned Obsolescence* (1932) 6.

20 Ibid.

21 Moyse (n 11) 64–5, 93.

22 See Lieselot Bisschop, Yogi Hendlin and Jelle Jaspers, 'Designed to Break: Planned Obsolescence as Corporate Environmental Crime' (2022) 78(3) *Crime, Law and Social Change* 271 <<https://doi.org/10.1007/s10611-022-10023-4>>; Larry A DiMatteo and Stefan Wrbka, 'Planned Obsolescence and Consumer

obsolescence is no longer a solution to a financial crisis, rather it has become most associated with the climate crisis, with scholars talking of sustainable products as a ‘climate issue’.²³

In addition to the origins of planned obsolescence being unclear, the terminology used to refer to the concept that products are built to have shorter lives is contested, showing yet another side of complexity.²⁴ There is no agreement on whether we should speak of ‘planned’, ‘programmed’ or, more recently, ‘premature’ obsolescence. Drawing on the difference between London’s planned obsolescence and the Phoebus cartel strategy, Moyse argues that the correct terminology is ‘programmed obsolescence’.²⁵ In this view, ‘planned obsolescence’ should be used only to describe government plans, like the one suggested by London.²⁶ Others, instead, argue that ‘planned’ and ‘programmed’ obsolescence can effectively be treated as synonyms referring to intentionally producing goods with poor durability.²⁷ This terminology implies that companies, or more generally the supply-side, are responsible for products failing sooner than necessary. Recent scholarship, instead, often uses neutral terminology, such as ‘premature’ or ‘early’ obsolescence.²⁸ Contrary to the ‘planned’ or ‘programmed’ terminology, more neutral

Protection: The Unregulated Extended Warranty and Service Contract Industry’ (2019) 28(3) *Cornell Journal of Law and Public Policy* 483. The case is also mentioned in the preamble of the legislative proposal aiming to regulate planned obsolescence in Italy: Modifiche al codice di cui al decreto legislativo 6 Settembre 2005, n 206, e altre disposizioni per il contrasto dell’obsolescenza programmata dei beni di consumo [Amendments to the Code Pursuant to Legislative Decree No 206 of 6 September 2005 and Other Provisions to Combat the Planned Obsolescence of Consumer Goods] Bill 2018 (Italy). In contrast, Moyse (n 11) 82, 89, argues that the case is ‘often presented, wrongly as it happens, as the poster child of planned obsolescence’, considering that the case did not examine the legality of planned obsolescence, which was not the main cause of action in the antitrust litigation that followed the light bulb affair. Rather, the case focused on light bulb manufacturers attempting to monopolise the market, ie, an antitrust violation, whereby planned obsolescence was ‘a part of a larger pattern of conduct’ to achieve this result.

23 See Alex Sims, ‘The Right to Repair: Good for Consumers and the Environment’, *University of Auckland* (Blog Post, 22 November 2021) <<https://www.auckland.ac.nz/en/news/2021/11/22/right-to-repair-consumers-and-environment.html>>, arguing that achieving repairable products results in less waste and lower CO₂ production and is therefore a ‘climate issue’.

24 Melanie Jaeger-Erben and Marina Proske, ‘What’s Hot What’s Not: The Social Construction of Product Obsolescence and Its Relevance for Strategies to Increase Functionality’ (Conference Paper, Product Lifetimes And The Environment Conference, 8–10 November 2017) <<https://doi.org/10.3233/978-1-61499-820-4-181>>.

25 Moyse (n 11) 64–5.

26 Ibid.

27 See Jana Valant, ‘Planned Obsolescence: Exploring the Issue’ (Briefing, European Parliamentary Research Service, May 2016) <[https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2016\)581999](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2016)581999)>. See also *European Parliament Resolution of 4 July 2017 on a Longer Lifetime for Products: Benefits for Consumers and Companies* (2016/2272(INI)) [2018] OJ C 334/60; Environmental Audit Committee, House of Commons (UK), *Electronic Waste and the Circular Economy* (2020) <<https://committees.parliament.uk/publications/3675/documents/35777/default/>>. It should also be noted that there is some indication that the use of this terminology is linked to linguistic differences: while the term ‘planned’ remains generally more widespread, the term ‘programmed’ prevails in non-English speaking contexts. For example, the French and Italian versions of the *Empowering Consumers Directive* (n 6) refer to *programmée* or *programmata* respectively. See also Moyse (n 11) 63–4 n 7 discussing a similar issue in Québec.

28 Tobias Brönneke, ‘Premature Obsolescence: Suggestions for Legislative Counter-Measures in German and European Sales and Consumer Law’ (2017) 14(3–4) *Journal for European Environmental and Planning Law* 361 <<https://doi.org/10.1163/18760104-01403006>>, reporting that the Consumer

terms imply that the product becomes obsolete before its time, ie, prematurely, but do not imply that the obsolescence is the result of a plan or program. Under this view, it is argued that to reduce obsolescence it suffices to identify ‘the necessary framework conditions for premature wear and tear, as well as those encouraging obsolescence’, so that finding the causes of its existence is not necessarily needed.²⁹ Moreover, according to Anaïs Michel, by not reducing obsolescence to a company strategy, the term reflects the concept of product obsolescence as a whole, which includes the potential role of consumers in discarding functioning products.³⁰

Likewise, recent policy documents and legislation on planned obsolescence embrace differing terminology. Recent EU documents, for example, use ‘premature’, ‘planned’ and ‘early’ obsolescence – but not ‘programmed’ – in a manner that seems *prima facie* interchangeable.³¹ At times, these documents also speak of ‘practices associated with’ planned obsolescence, evidencing the multiple possible practices resulting in obsolescence.³² In contrast, a recent Australian Productivity Commission inquiry on the right to repair distinguished the term ‘planned obsolescence’, used to refer to a deliberate shortening of products’ lifespan, from ‘premature obsolescence’, referring to concerns about products becoming increasingly short-lived, which is the most predominantly used concept in the Inquiry.³³ As discussed in Part III(B), Australian debates also conceptualise the concept of planned obsolescence as separate from the issue of the right to repair.

When understood in the narrow sense, planned obsolescence is a contested concept because of the scarce evidence that businesses are intentionally planning the early ‘death’ of their products. A study of a small claims court in Québec confirmed that finding evidence of planned obsolescence in the narrow sense, as an intentional strategy, remains problematic.³⁴ On the other hand, evidence is also

Commission of the German State of Baden-Württemberg uses the term ‘negligent’: at 363. Brönneke also discusses other alternative terms that embrace the same rationale, such as ‘negligent’ and ‘avoidable’ obsolescence: at 363–4.

29 Ibid 363. See also Jesse Adams Stein, ‘Conflicting Interpretations of “Design” and “Premature Product Obsolescence”’: Australia’s Right to Repair Inquiry 2020–2021’ in Eleni Kalantidou et al (eds), *Design/Repair: Place, Practice and Community* (Palgrave Macmillan, 2023) 13, 31 <https://doi.org/10.1007/978-3-031-46862-9_2>, making a similar point by quoting Robert Friedel’s argument that ‘we do not need to seek out conspiracies – real or imagined – to see its origins and perpetrators’: Robert Friedel, ‘Obsolescence: Origins and Outrages’ (2013) 54(1) *Technology and Culture* 167, 169.

30 Anaïs Michel, ‘Premature Obsolescence: In Search of an Improved Legal Framework’ (PHD Thesis, Université Catholique de Louvain, 2022) <<http://hdl.handle.net/2078.1/271326>>.

31 See *Empowering Consumers Directive* (n 6); *Right to Repair Directive* (n 6); *Ecodesign for Sustainable Products Regulation* (n 6); European Commission, ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: On Making Sustainable Products the Norm’ (Communication No COM(2022) 140 Final, 30 March 2022) (*‘Making Sustainable Products the Norm Communication’*); European Commission, ‘Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A New Circular Economy Action Plan for a Cleaner and More Competitive Europe’ (Communication No COM(2020) 98 Final, 11 March 2020) (*‘CEAP’*).

32 *Ecodesign for Sustainable Products Regulation* (n 6) recital 7. See also Part II(C).

33 *Right to Repair Report* (n 7) 198.

34 Pierre-Emmanuel Moyse, Billie Godbout and Katerine Beaulieu, ‘De la garantie de qualité à l’obsolescence programmée: Étude empirique sur les cas de bris de produits portés devant la Cour des petites créances’ [From Consumer Guarantees to Planned Obsolescence: An Empirical Study of Product

inherently difficult to gather. Specific evidence linking the practice to the result of causing product malfunction may require technical expertise.³⁵ Individual consumers certainly do not have the investigative power nor the resources to engage in fact-finding activities to substantiate such claims. In some jurisdictions, this means that the main recourse for consumers will be turning to a consumer association to start a class action.³⁶

The examples discussed in this section show diverse and overlapping understandings of obsolescence and help paint a more detailed picture of planned obsolescence as a complex and nuanced concept. For consistency, this article uses the term ‘planned obsolescence’. However, this term is understood in the broad sense, referring to planned obsolescence as a multidimensional concept, as the next sections explain.

B A Multifaceted Issue Spanning Supply and Demand

The debate on reducing planned obsolescence illustrates two key points that further support the argument that planned obsolescence is a multifaceted concept. The first is that planned obsolescence is more than a company strategy or a consumer issue, as the terminological analysis above anticipates. Rather, it concerns both the supply and demand side of the market, and it has to do with the current system of production and consumption more broadly. This, in turn, means that addressing planned obsolescence requires coordinated action from both the supply and demand front, following a holistic approach.³⁷ The second key point in support of viewing planned obsolescence as a multifaceted issue is that rather than one single action or omission resulting in early disposal, planned obsolescence is often a combination of interconnected practices, as discussed in Part II(C).

An analysis of the literature’s definitions and classifications of planned obsolescence shows that planned obsolescence is best described as a shared problem in need of a shared solution, rather than being reduced to a company strategy or consumer issue. A shift in this direction can be seen by comparing

Failure Cases Brought Before the Small Claims Court] (2023) 28(1) *Lex Electronica* 65 <<https://doi.org/10.7202/1108623ar>>.

- 35 See Francesco Machina Grifeo, ‘Samsung, non provata l’obsolescenza programmata: Il Consiglio di Stato annulla sanzioni Agcm’ [Samsung, Planned Obsolescence Not Proven: Council of State Overturns AGCM Sanctions], *Norme and Tributi Plus* (online, 27 June 2023) <

the early and more recent definitions of planned obsolescence. In 1960, Vance Packard stated that '[i]n some cases ... consumers have no choice but to be waste makers because of the way products are sold to them'.³⁸ Similarly, early works spoke of obsolescence as the strategy of 'instilling in the buyer the desire to own something a little newer, a little better, a little sooner than is necessary' or as 'the production of goods with uneconomically short useful lives so that customers will have to make repeat purchases'.³⁹ In other words, planned obsolescence was seen from the perspective of companies' policies aimed at inducing consumers to replace products early. Consumers, instead, were seen as passive actors and their perspective was generally overlooked.⁴⁰ However, more recent works have also investigated the consumer perspective, finding that it is possibly just as relevant as that of companies, forming the basis for viewing planned obsolescence as a shared problem in need of a shared solution.⁴¹ For example, Lise Magnier and Ruth Mugge define planned obsolescence as 'the phenomenon in which a consumer ceases to use a product and replaces it, although this replacement could have been avoided by a change in the design of the product (eg, reparability) or in the mindset of the consumer (eg, less appeal to new product features)'.⁴² A more radical view is that of Tim Cooper, who argues that '[c]learly consumers must accept some blame for the throwaway culture', suggesting a stronger role for consumers.⁴³

A similar shift in this direction can be seen in the classifications of different planned obsolescence 'types', which have progressively recognised a space for consumers. Indeed, the primary classification is that between 'absolute' and 'relative' obsolescence, a dichotomy that highlights product failure or consumers' decisions to replace a functional product as two opposing, yet not mutually exclusive, causes of obsolescence.⁴⁴ According to the European Topic Centre on Waste and Materials

38 Vance Packard, *The Waste Makers* (Penguin, 1963) 53.

39 'Brooks Stevens Archives', *Milwaukee Art Museum* (Web Page) <<https://mam.org/collection/archives/brooks-stevens/>>. See also, Giles Slade, *Made to Break: Technology and Obsolescence in America* (Harvard University Press, 1st ed, 2007) 153 <<https://doi.org/10.4159/9780674043756>>; Jeremy Bulow, 'An Economic Theory of Planned Obsolescence' (1986) 101(4) *Quarterly Journal of Economics* 729, 729 <<https://doi.org/10.2307/1884176>>.

40 See Tim Cooper, 'Which Way to Turn? Product Longevity and Business Dilemmas in the Circular Economy' in Jonathan Chapman (ed), *Routledge Handbook of Sustainable Product Design* (Routledge, 2017) 405 <<https://doi.org/10.4324/9781315693309-33>> ('Which Way to Turn?'), arguing that '[i]ndustry has historically been blamed for planned obsolescence': at 405. See also Volker G Kuppelwieser et al, 'Consumer Responses to Planned Obsolescence' (2019) 47 *Journal of Retailing and Consumer Services* 157 <<https://doi.org/10.1016/j.jretconser.2018.11.014>>, arguing that research on planned obsolescence has 'overwhelmingly focus[ed] on the company's perspective': at 159.

41 Laura Hennies and Rainer Stamminger, 'An Empirical Survey on the Obsolescence of Appliances in German Households' (2016) 112 *Resources, Conservation and Recycling* 73, 82 <<https://doi.org/10.1016/j.resconrec.2016.04.013>>.

42 Lise Magnier and Ruth Mugge, 'Replaced Too Soon? An Exploration of Western European Consumers' Replacement of Electronic Products' (2022) 185 *Resources, Conservation and Recycling* 106448:1–13, 1 <<https://doi.org/10.1016/j.resconrec.2022.106448>>.

43 Cooper, 'Which Way to Turn?' (n 40) 412.

44 Tim Cooper, 'Inadequate Life? Evidence of Consumer Attitudes to Product Obsolescence' (2004) 27(4) *Journal of Consumer Policy* 421, 423 <<https://doi.org/10.1007/s10603-004-2284-6>> ('Inadequate Life?'). These can also be considered as objective (absolute obsolescence) or subjective (relative obsolescence) causes for planned obsolescence: see European Topic Centre on Waste and Materials in a

in a Green Economy, in fact, absolute obsolescence refers to ‘the failure of a product to function ... mainly influenced by the product nature determined by design. In this case, the actual lifetime equals the designed lifetime’, thus highlighting the role of companies in designing short-lived goods.⁴⁵ Relative obsolescence, on the contrary, concerns ‘the disuse of a functional product’ whereby, as opposed to absolute obsolescence, the actual lifetime is less than the designed lifetime, meaning that consumers may be discarding functioning products that have not reached the end of their lifespan.⁴⁶ Marketing techniques promoting buying new and buying often, as well as other techniques, such as making repair increasingly more difficult than replacement, and continuous product improvement, are all practices that contribute to this outcome.⁴⁷ In practice, it is recognised that absolute and relative obsolescence may be occurring at the same time: consumers might replace a product because they may be influenced by marketing strategies, while at the same time changes in the product’s compatibility, occurring due to industry promoting the new model, may make the old product no longer fit for purpose.⁴⁸

Recognising the shifting discourse around planned obsolescence as a shared concern instead of a sectoral supply or demand problem means that the response to this problem must also be holistic in that it must not only address product standards but also facilitate consumer choice. This aligns with recent studies showing that consumers are increasingly environmentally aware and value product durability and reparability, evidencing support for steering consumption towards longer-lasting products.⁴⁹

C A Multifaceted Issue where Multiple Practices and Legal Areas Intersect

The second key point in support of viewing planned obsolescence as a multifaceted issue is that rather than one single action or omission resulting in early disposal, planned obsolescence is often a combination of interconnected practices, all of which contribute to products living shorter and shorter lives.

Green Economy, *Electronic Products and Obsolescence in a Circular Economy* (Report, 18 June 2020) (*‘Electronic Products and Obsolescence in a Circular Economy Report’*).

45 *Electronic Products and Obsolescence in a Circular Economy Report* (n 44) 14.

46 *Ibid* 15.

47 See Cooper, ‘Inadequate Life?’ (n 44), discussing the impact of psychological, economic and technological obsolescence on consumers’ replacement decisions.

48 See *Electronic Products and Obsolescence in a Circular Economy Report* (n 44), recognising that the line between the different practices may be blurred in practice: at 15.

49 See Directorate-General for Environment and Directorate-General for Communication, European Commission, *Special Eurobarometer 501: Attitudes of European Citizens towards the Environment* (Report, March 2020) <<https://europa.eu/eurobarometer/surveys/detail/2257>>, finding that two-thirds of consumers agreed that their consumption habits had negative effects on the environment, with changing consumption and production patterns being the most mentioned as the best way to tackle environmental problems (by more than 30% of respondents): at T15, T27. For similar trends in Australia: see Stephanie Atto, ‘Sustainability Attitudes and Behaviours of Australian Shoppers’, *Lens* (online, 16 August 2023) <<https://lens.monash.edu/sustainability-attitudes-and-behaviours-of-australian-shoppers>>; Leanne Wiseman, Kanchana Kariyawasam and Pamele Saleme Ruiz, ‘Australian Consumers’ Perceptions and Attitudes towards Repair of Digital Goods, Warranties and Product Lifespan’ (2022) 29(2) *Competition and Consumer Law Journal* 112.

Limiting repair options is a key practice, yet it is not the only one that deserves attention from regulators. Further, from a legal perspective, these practices do not involve consumer law exclusively, as it is often thought; rather, they call for the intervention of different areas of the law. A holistic and coordinated approach is therefore strongly necessary and aligns not only with the multifaceted nature of planned obsolescence, but also with an overarching circular economy approach, as discussed in Part II(D).

An analysis of known examples and practices that contribute to early disposal provides insight into the framing of obsolescence as a combination of practices. As a preliminary step, it should be noted that many authors define planned obsolescence by referring to the practices through which it is realised. According to Michel, planned obsolescence includes ‘all practices that reduce product lifetime so that the product does not reach its optimal lifetime (from an environmental point of view), without it being the result of normal wear and tear’.⁵⁰ Mariateresa Maggolino observes that ‘companies can resort to a wide variety of conducts to program the life span of their products and to impose their replacement prematurely. All these business practices serve to produce a strategy that falls under the term of “planned obsolescence”’.⁵¹ The reference to practices is also very common in the EU, as it reflects the language used in consumer legislation on unfair commercial practices, where ‘practice’ is a concept embracing both actions and omissions, reflecting the many nuances of planned obsolescence practices.⁵²

Against this background, it is useful to refer to the variety of practices that make up planned obsolescence strategies, showing that planned obsolescence can be construed as a broad concept. An analysis of the literature reveals several subcategories of practices. One often cited example is the practice of manufacturing

50 Michel (n 30) 52; See also Bureau Européen des Unions de Consommateurs [European Consumer Organisation], *Durable Goods: More Sustainable Products, Better Consumer Rights* (Report, 18 August 2015), which discerns the concept of planned obsolescence to be associated with ‘a wide range of techniques that certain manufacturers might use to shorten the functional lifespan of products and force consumers to make premature replacements in order to continue selling in saturated markets’: at 4. The idea of planned obsolescence as a concept that goes beyond durability alone can be traced back to the economics literature. For example, in Michael Waldman, ‘Durable Goods Theory for Real World Markets’ (2003) 17(1) *Journal of Economic Perspectives* 131 <<https://doi.org/10.1257/089533003321164985>>, Michael Waldman notes a shift in the use of the term: at 139 n 6. He explains that initially it was understood as ‘the behavior of a firm that underinvests in durability from a social welfare standpoint’ but that authors like Jeremy Bulow have started to recognise the width of the concept, stating that ‘planned obsolescence is much more than a matter of durability; it is also and perhaps primarily about how often a firm will introduce a new product, and how compatible the new product will be with older versions’: quoting Bulow (n 39) 747.

51 Mariateresa Maggolino, ‘Planned Obsolescence: A Strategy in Search of Legal Rules’ (2019) 50 *International Review of Intellectual Property and Competition Law* 405, 405 <<https://doi.org/10.1007/s40319-019-00812-1>>.

52 See *Right to Repair Directive* (n 6); *Empowering Consumers Directive* (n 6); *Ecodesign for Sustainable Products Regulation* (n 6). An example of planned obsolescence as a combination of practices can be found in *Ecodesign for Sustainable Products Regulation* (n 6) recital 7, stating:

Ecodesign requirements should also address practices associated with premature obsolescence. Such practices have an overall negative impact on the environment, in the form of increased waste and use of energy and materials, which can be reduced through ecodesign requirements while contributing to sustainable consumption.

products with poor durability, triggering early replacement.⁵³ While cheaper and less durable materials may deliver cost efficiency and accommodate sales volume as well as the need for affordable products, the environmental consequences of early disposal should not be neglected. Another emerging practice that is arguably even more problematic concerns reducing or deliberately designing out ‘reparability’, which refers to the ease with which products can be repaired, such as by gluing parts together or discontinuing maintenance services or spare parts.⁵⁴

Practices aimed at making repair difficult, thereby triggering a new purchase, often go hand in hand with practices making replacement easier than repair. Trade-in schemes, pricey repair services and practices that impede the use of non-original parts contribute to making buying new the easier, and often the only possible, option.⁵⁵ By limiting the availability of repair manuals and information, as well as parts, so that these are only available to the authorised network, original equipment manufacturers (‘OEMs’) can in fact gain control over repair markets, which can be used to ensure replacement appears the best option as well as to keep customers within the authorised network for repairs.⁵⁶ This practice increasingly affects small businesses, notably farmers, who face several barriers to repairing expensive agricultural machinery due to the difficulty in accessing spare parts as well as repair information, which is often restricted to the OEM network.⁵⁷ US farmers have struck a voluntary agreement with manufacturer John Deere aimed at balancing some of these repair barriers.⁵⁸ However, voluntary approaches have not been successful in other countries, such as Australia, where farmers are still facing barriers to repairing farm machinery so much so that a mandatory scheme has recently been announced.⁵⁹

53 Cooper, ‘Which Way to Turn?’ (n 40) 413. See also Koolhoven and Heerema (n 36).

54 See Julio L Rivera and Amrine Lallmahomed, ‘Environmental Implications of Planned Obsolescence and Product Lifetime: A Literature Review’ (2016) 9(2) *International Journal of Sustainable Engineering* 119, 120 <<https://doi.org/10.1080/19397038.2015.1099757>>.

55 See Aaron Perzanowski, ‘Consumer Perceptions of the Right to Repair’ (2021) 96(2) *Indiana Law Journal* 361 <<https://doi.org/10.31228/osf.io/v48zc>>, arguing that Apple further entices customers by offering discounts on new phones if they trade in their existing device instead of fixing it, and that this mechanism also helps manufacturers control secondary markets for used devices: at 362, 368.

56 See Aaron Perzanowski, *The Right to Repair: Reclaiming the Things We Own* (Cambridge University Press, 2022) 8–9 <<https://doi.org/10.1017/9781108946926>>. See also Maggiolino (n 51), explaining that ‘by acting on the price, characteristics, or technological compatibility of spare parts, a company can make it more convenient for consumers to replace the product rather than to repair it’: at 405.

57 See Australian Competition & Consumer Commission, *Agricultural Machinery Market Study* (Report, May 2021) <<https://www.accc.gov.au/by-industry/agriculture/agricultural-machinery-market-study-2021/final-report>>.

58 *Memorandum of Understanding*, American Farm Bureau Federation–John Deere, signed 8 January 2023 <https://www.fb.org/files/AFBF_John_Deere_MOU.pdf> (‘MOU between AFBF and John Deere’).

59 See Meg Fergusson, Annie Brown and Warwick Long, ‘Right to Repair Changes Floated as Frustrated Farmers Count Cost of Harvest Delays’, *ABC News* (online, 13 March 2023) <<https://www.abc.net.au/news/rural/2023-03-13/right-to-repair-on-horizon-as-government-promises-farmers-action/102078970>>. In this article, the Assistant Minister for Competition, Charities and Treasury, Andrew Leigh, is reported to have stated: ‘Let’s see whether we’re able to get something voluntary up in the first instance’, suggesting that a voluntary scheme was being considered at the time. In 2025, a mandatory scheme was announced by the Treasurer: Jim Chalmers, ‘Treasurers Agree Reforms to Increase Competition and

Another planned obsolescence practice is continuous product development, which relies on marketing strategies to promote newer and better products, or simply products whose aesthetics better fit current needs or fashion trends.⁶⁰ According to John Stewart, this occurs when companies '[hold] back product improvements from the market until sales of existing models decline, then employing just enough improvements in new models to induce consumers to turn in their old models'.⁶¹ Smart objects seem particularly prone to this practice, due to the rapid technological development in this industry.⁶² This practice may also concern accessories and their compatibility with the main product and can translate, for example, into developing new models with different charging ports requiring new cables or removing the audio jack to launch Bluetooth compatible accessories (as was the case with Apple AirPods).⁶³

Finally, a lack of transparency as to the durability and reparability of products is also associated with planned obsolescence practices, especially when manufacturers introduce a product feature affecting its functionality.⁶⁴ A similar issue came to the attention of the Italian antitrust authority in its Apple and Samsung decisions, which discussed the companies' alleged conduct of insistently inducing customers to install an update without informing them of the consequences it would have on the phone's functionality, such as reduced performance, as well as refusing to assist in restoring the previous functionality of the device.⁶⁵ As explained below in Part III, new EU rules addressing planned obsolescence now more clearly prohibit misleading consumers as to durability and reparability.⁶⁶

Consumer law is certainly involved in regulating practices like introducing features that limit the product's durability. For example, EU consumer law, as seen above, clearly prohibits misleading consumers as to products durability and reparability.⁶⁷ By imposing mandatory consumer guarantees, which ensure

Boost Productivity' (Media Release, 28 November 2025) <<https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/media-releases/treasurers-agree-reforms-increase-competition-and-boost>>.

60 Cooper, *Longer Lasting Products* (n 17) 4, 17. See also Joseph Guiltinan, 'Creative Destruction and Destructive Creations: Environmental Ethics and Planned Obsolescence' (2009) 89 (Supplement 1) *Journal of Business Ethics* 19 <<https://doi.org/10.1007/s10551-008-9907-9>>.

61 John B Stewart, 'Problems in Review: Planned Obsolescence' (1959) 37(5) *Harvard Business Review* 14, 15.

62 See Cooper, *Longer Lasting Products* (n 17), arguing that it is possible to exploit technological development to market constant new goods: at 4.

63 See Bisschop, Hendlin and Jaspers (n 22) 274.

64 See *Commission Notice: Guidance on the Interpretation and Application of Directive 2005/29/EC of the European Parliament and of the Council Concerning Unfair Business-to-Consumer Commercial Practices in the Internal Market* [2021] OJ C 526/1 ('UCPD Guidance').

65 See 'Apple-Aggiornamento Software' (n 18) and 'Samsung-Aggiornamento Software' (n 18), discussing the issue from the perspective of unfair commercial practices. See also Machina Grifeo (n 35) on the Council of State's decision to reverse the fine imposed against Samsung. A similar issue concerns the conduct of omitting information as to chips in printer cartridges signalling they were empty when in reality they still contained ink: Koolhoven and Heerema (n 36) 34; *UCPD Guidance* (n 64).

66 Under the *Empowering Consumers Directive* (n 6), reparability and durability are elements on which traders must not deceive (ie, the misleading actions) and have been added to the list of material information that must not be omitted (ie, misleading omissions).

67 Ibid.

consumers can have their products repaired within a given timeframe, consumer law has a central role in combating planned obsolescence.⁶⁸

However, many other practices associated with planned obsolescence do not concern consumer law exclusively. For example, the above-described practice of restricting access to repair information is one which shares a key connection with intellectual property law. Intellectual property law, in fact, grants exclusive rights over the knowledge necessary to perform repairs.⁶⁹ OEMs often assert their intellectual property rights, such as copyright, to prevent others from repairing the protected products ('IPRs'). This is done by starting, or threatening to start, costly and time-consuming infringement proceedings, which often discourage individuals from repairing.⁷⁰ Although intellectual property law offers mechanisms that could provide a response to these actions, such as exceptions, these are sometimes fragmented, as is the case in the EU, or do not clearly favour repair, as is the case in Australia where a specific repair exception for copyright law is yet to be developed.⁷¹ The words of Australian blogger Tim Hicks, who removed

68 EU consumers benefit from a legal guarantee for two years, during which they have a right to obtain a remedy at no cost, including a repair, for which they can express a preference. Providing a legal guarantee is mandatory, but under EU law, sellers can also provide for a commercial guarantee for a fee, under which the product quality is guaranteed as specified in each contract. See *Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on Certain Aspects Concerning Contracts for the Sale of Goods, Amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and Repealing Directive 1999/44/EC* [2019] OJ L 136/28 arts 10, 11, 13, 14, 17. Similarly, Australian consumers have a right to obtain a remedy, including a repair, for defective products. For products that fail to meet the guarantee as to acceptable quality, including durability, consumers can obtain a remedy if the durability does not cover a reasonable period. There is also the possibility for manufacturers to offer longer warranties against a price. See *Competition and Consumer Act 2010* (Cth) sch 2 ('*Australian Consumer Law*') ss 54, 59, 259.

69 This section addresses intellectual property rights ('IPRs') in general, while citing copyright as an example. For an overview of IPRs and the right to repair: see Leah Chan Grinvald and Ofer Tur-Sinai, 'Intellectual Property Law and the Right to Repair' (2019) 88(1) *Fordham Law Review* 63 <<https://doi.org/10.2139/ssrn.3317623>>. For a more detailed discussion of copyright and the right to repair, including on the issue of technological protection measures: see Anthony D Rosborough, Leanne Wiseman and Taina Pihlajarinne, 'Achieving a (Copy)Right to Repair for the EU's Green Economy' (2023) 18(5) *Journal of Intellectual Property Law and Practice* 344 <<https://doi.org/10.1093/jiplp/jpad034>>. See also Matthew Rimmer, 'Shane Rattenbury, the Productivity Commission, and the Right to Repair: Intellectual Property, Consumer Rights, and Sustainable Development in Australia' (2022) 37(3) *Berkeley Technology Law Journal* 989 <<https://doi.org/10.31219/osf.io/qp7kn>>.

70 See the discussion in Perzanowski (n 56) 116–7 concerning the cases of Toshiba repair manuals and information on medical devices that have been shared by the organisation iFixit. See also Kyle Wiens, 'Using Copyright to Keep Repair Manuals Secret Undermines Circular Economy', *The Guardian* (online, 21 December 2013) <<https://www.theguardian.com/sustainable-business/copyright-law-repair-manuals-circular-economy>>.

71 For example, in Australia, the *Copyright Act 1968* (Cth) does not contain a repair defence or exception but only provides some potentially relevant defences for computer programs, as discussed in the *Right to Repair Report* (n 7) at 168, which also discusses the issue that the 'fair dealing' provisions under the Act do not deal with repair: at 18–19, 186–93. In contrast, art 5(3)(l) of the *Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society* [2001] OJ L 167/10 ('*InfoSoc Directive*') provides for an explicit repair exception. However, implementing the repair exception is voluntary, and only a few Member States have adopted it: Anthony D Rosborough, 'The InfoSoc Directive and the Right to Repair: Exploring the Boundaries of a Lesser-Known Copyright Exception', *Kluwer Copyright*

laptop repair manuals from his freely accessible website after being threatened with litigation by Toshiba, exemplify this issue. In a post explaining the reasons for the removal, he stated:

There currently appears to be no [copyright] exception ... that would apply to repair manuals for computers ... I cannot afford the legal representation necessary to even question Toshiba in a court of law. I cannot personally risk taking this route myself, and so as a private citizen I am left with no alternatives.⁷²

In addition to consumer law and intellectual property law, practices associated with planned obsolescence can also relate to competition law. Confining repair services to an authorised repair network and excluding independent repairers, thereby limiting the availability of these services, which often become pricier, is a practice that falls under the competition law realm. As mentioned, this practice might affect individual consumers as well as farmers whose agricultural machinery can often only be repaired by the original manufacturer. Competition law prohibits such exclusionary practices, and also incentivises the sharing of repair information and, at times, spare parts needed for repair, although these initiatives are often sectoral in nature and therefore do not address the entirety of the market.⁷³ In recent years, for example, some jurisdictions have introduced laws mandating the sharing of repair information, however these are restricted to the motor vehicle sector and, at times, the agricultural machinery sector.⁷⁴ Competition law is rarely brought

Blog (Blog Post, 14 December 2022) <<https://copyrightblog.kluweriplaw.com/2022/12/14/the-infosoc-directive-and-the-right-to-repair-exploring-the-boundaries-of-a-lesser-known-copyright-exception/>>.

See also Anthony D Rosborough, 'Zen and the Art of Repair Manuals: Enabling a Participatory Right to Repair through an Autonomous Concept of EU Copyright Law' (2022) 13(2) *Journal of Intellectual Property, Information Technology, and Electronic Commerce Law* 113, 124–8 <<https://doi.org/10.2139/ssrn.4089949>>.

72 Tim Hicks, 'Toshiba Laptop Service Manuals and the Sorry State of Copyright Law', *Future Proof* (Blog Post, 10 November 2012) <<http://tim.id.au/blog/2012/11/10/toshiba-laptop-service-manuals-and-the-sorry-state-of-copyright-law>>. This section addresses IPRs in general, while citing copyright as an example.

73 For example, under EU competition rules, an agreement between OEMs aimed at eliminating competition from independent repairers could fall under the prohibition of anti-competitive agreements or collusion under art 101 of the *Treaty on the Functioning of the European Union*, opened for signature 7 February 1992, [2016] OJ C 202/47 (entered into force 1 November 1993) ('*TFEU*'). Further, a dominant manufacturer refusing to supply parts and other essential inputs to independent repairers could risk breaching art 102 of the *TFEU*, which prohibits the abuse of dominant positions. But see the outcome in *Confédération européenne des associations d'horlogers-réparateurs* [*European Confederation of Watch Repairers' Associations*] v *European Commission* (General Court of the European Union, T-712/14, ECLI:EU:T:2017:748, 23 October 2017) ('*CEAHR*'). In Australia, similar prohibitions are contained in ss 45, 46 and 47 of the *Competition and Consumer Act 2010* (Cth). For a more detailed discussion of the role of competition law: see Perzanowski (n 56) 167–98. See also Sahra Svensson-Hoglund et al, 'Barriers, Enablers and Market Governance: A Review of the Policy Landscape for Repair of Consumer Electronics in the EU and the US' (2021) 288 *Journal of Cleaner Production* 125488:1–18 <<https://doi.org/10.1016/j.jclepro.2020.125488>>, highlighting that the main contribution of competition law is addressing the conduct of OEMs limiting access to repair to the authorised network: at 7–8.

74 See, eg, 'Legislation (Manufacturing and Basic Industries)', *European Commission: Competition Policy* (Web Page) <https://competition-policy.ec.europa.eu/sectors/manufacturing-basic-industries/legislation_en>; 'Access to Vehicle Repair and Maintenance Information', *European Commission: Internal Market, Industry, Entrepreneurship and SMEs* (Web Page) <https://single-market-economy.ec.europa.eu/sectors/automotive-industry/technical-harmonisation/access-vehicle-repair-and-maintenance-information_en>; *Regulation (EU) No 167/2013 of the European Parliament and of the Council of 5 February 2013 on the Approval and Market Surveillance of Agricultural and Forestry Vehicles* [2013] OJ L 60/1 ('*Safe*

into the consumer law dominated planned obsolescence discussion and it presents important limitations that are yet to be addressed.⁷⁵ To name a few, competition law uses an ‘economic lens’, which can be too narrow to capture all the issues relating to repair and the circular economy, such as environmental harm, that pursuing a competition case is costly and time-consuming, and that competition provisions may set the bar too high.⁷⁶

Beyond these three legal areas, planned obsolescence practices increasingly implicate product design. For instance, the described practice above of designing out reparability, such as by making products whose parts are glued together and cannot be disassembled, faces new challenges with emerging EU eco-design rules providing that products on the EU market must be repairable by design.⁷⁷

Having seen that repair is only one among several practices associated with planned obsolescence, which engage multiple legal areas and therefore require a holistic approach, as discussed in Part IV, the next section discusses understanding planned obsolescence not only as a multifaceted issue, but also a circular economy issue.

D Combating Planned Obsolescence as Part of the Circular Economy Transition

There is a deep connection between the concept of planned obsolescence and that of the circular economy. The pressing need to transition to a circular economy increasingly recognises the need to legislate for longer-lasting products. This section aims to show that there is great potential in combating planned obsolescence as part of a circular economy plan. It starts by discussing the connection between planned obsolescence and the circular economy and then delves into the recent regulatory wave for planned obsolescence, discussing reasons for combating planned obsolescence under a circular economy plan and highlighting the legal foundations and environmental benefits of doing so. This discussion lays the foundation for the discussion in Part III(A), which considers the need for a stronger circular economy focus in planned obsolescence legislation.

Under the circular economy paradigm, the value of the product does not end at the end of its life, and there is a recognition of the value of ‘ecosystemic reproduction and recovery’.⁷⁸ In other words, this model promotes keeping resources in use, for example, by recycling, reusing and repairing, and represents fertile ground for

Agricultural and Forestry Vehicles Regulation). In Australia, repair rules for motor vehicles are found in the *Competition and Consumer Amendment (Motor Vehicle Service and Repair Information Sharing Scheme) Act 2021* (Cth), which is expected to be extended to agricultural machinery following a recent announcement: see Chalmers (n 59).

75 See Miriam Imarhiagbe, ‘The Right to Repair in EU Competition Law’ (2022) 5(1) *Nordic Journal of European Law* 166 <<https://doi.org/10.36969/njel.v5i1.24505>>.

76 See, eg, *CEAHR* (n 73), which exemplifies these points.

77 *Ecodesign for Sustainable Products Regulation* (n 6), further discussed in Part III(A).

78 Jaeger-Erben (n 15) 79.

developing sustainable consumption.⁷⁹ This is in deep contrast to the current ‘linear economy’ model, where value is created by turning natural resources into products, which are then sold and whose value is exploited at the use stage until the product itself is disposed of.⁸⁰ At the policy level, the circular economy can be understood as an umbrella concept under which we find policies, practices and alternative ways of thinking aimed at using resources responsibly and reusing what is already in place to minimise waste generation.⁸¹ Importantly, the circular economy is ‘a *systemic change* that affects the entire economy’, and progressing towards this change requires the involvement of many stakeholders.⁸² As the next paragraphs discuss, circular economy policies, often falling under one overarching circular economy plan, are a key way to combat planned obsolescence.

The pressing need to address the climate crisis and embrace a circular model has brought a new wave of interest in regulating planned obsolescence. Before this newfound interest in longer-lasting products emerged, however, planned obsolescence practices were long tolerated as planned obsolescence was seen as a form of ‘business freedom’ that was needed for technological progress and innovation.⁸³ Under this view, longer-lasting products lead to slower innovation due to reduced incentives for investing in new technology, ultimately leading to stagnation.⁸⁴ Economist Roland Strausz has also argued that obsolescence may benefit consumers because by increasing ‘the frequency of repurchases’ consumers are able ‘to punish producers faster for a lack of overall quality’, thereby strengthening ‘the producers’ incentives to provide adequate levels of quality’.⁸⁵ For example, Strausz argues that owners of Apple iPods with irreplaceable batteries would need to repurchase the iPod once the battery ran out, something which, under this view, incentivised Apple to produce iPods with newer and better design, ease of operation and other features.⁸⁶ This illustrates an inherent tension between the traditional view of a business as economically sustainable – therefore needing

79 Ibid.

80 Ibid.

81 Terry Tudor and Cleber JC Dutra, ‘Introduction: Examining the Concept of the Circular Economy’ in Terry Tudor and Cleber JC Dutra (eds), *The Routledge Handbook of Waste, Resources and the Circular Economy* (Routledge, 2021) 2 <<https://doi.org/10.4324/9780429346347>>. See also Organisation for Economic Co-operation and Development, *Monitoring Progress towards a Resource-Efficient and Circular Economy* (Report, 2024) (‘*Monitoring Progress*’), recognising that a universal definition of circular economy is lacking, but the many existing definitions have several common traits, including the principle of circularity underpinned by the focus on closing the resource loops, slowing down the flow of materials and using existing resources sustainably to prevent waste: at 14–15.

82 *Monitoring Progress* (n 81) 14 (emphasis in original).

83 See Emanuele La Rosa, ‘Planned Obsolescence and Criminal Law: A Problematic Relationship?’ in Volker Mauerhofer, Daniela Rupo and Lara Tarquinio (eds), *Sustainability and Law: General and Specific Aspects* (Springer, 2020) 221, 223 <https://doi.org/10.1007/978-3-030-42630-9_12>. See also Cooper, ‘Inadequate Life?’ (n 44), explaining that ‘planned obsolescence, though often disparaged, has long been tolerated’: at 421.

84 Arthur Fishman, Neil Gandal and Oz Shy, ‘Planned Obsolescence as an Engine of Technological Progress’ (1993) 41(4) *Journal of Industrial Economics* 361 <<https://doi.org/10.2307/2950597>>.

85 Roland Strausz, ‘Planned Obsolescence as an Incentive Device for Unobservable Quality’ (2009) 119(540) *Economic Journal* 1405, 1405 <<https://doi.org/10.1111/j.1468-0297.2009.02290.x>>.

86 Ibid 1418.

to make a profit, including by pushing consumers to replace products often – and the more modern view of a business as environmentally sustainable, under which a business is also responsible for its environmental impact and should contribute to broader sustainability goals.⁸⁷

Today, there is increasing support for transitioning to a sustainable economy, with a majority of people in the world demanding climate action.⁸⁸ Whether these arguments against regulation can be justified in the face of the negative environmental consequences of planned obsolescence is questionable. Put simply, there is no place for planned obsolescence in the circular economy. As Jurgita Malinauskaite and Fatih Buğra Erdem explain, ‘[p]lanned obsolescence directly contradicts the concept of a [circular economy] due to its promotion of a culture of wastefulness by perpetuating a “buy new and buy often” mentality, leading to harmful effects on the environment’.⁸⁹ There has been an important shift towards recognising the environmental impacts of short-lived products, including from an economics perspective. For example, Tim Jackson challenges the assumption that prosperity (understood not as a synonym of material wealth, but rather as the ability to flourish physically, psychologically and socially, and participate meaningfully in society) can only be achieved by continually expanding.⁹⁰ Instead, Jackson proposes a plan that includes intervening to counter consumerism by, inter alia, creating longer-lasting, durable and serviceable products.⁹¹

There are also important established and emerging legal foundations to ground the regulation of planned obsolescence, many of which also provide the foundations for accelerating circularity efforts. At the international level, for example, many states are under international obligations to act to reverse or mitigate the effects of climate change, under both the *United Nations Framework Convention on Climate Change* and the *Paris Agreement*.⁹² Under the *Paris Agreement*, signatory states have committed to limit the global temperature rise to well below 2 degrees Celsius above pre-industrial levels, while pursuing efforts to limit the increase to 1.5 degrees.⁹³ As explained in the next paragraphs, acting to regulate planned obsolescence has the potential to contribute towards this goal by reducing the CO₂ emissions caused by

87 This is underscored by the literature on the concept of corporate social responsibility. For a discussion of this concept: see Kunnawee Thirarungueang, ‘Rethinking CSR in Australia: Time for Binding Regulation?’ (2013) 55(3) *International Journal of Law and Management* 173 <<https://doi.org/10.1108/17542431311327628>>.

88 Mark Hertsgaard and Kylie Pope, ‘A Silent Majority of the World’s People Wants Stronger Climate Action. It’s Time to Wake Up’, *The Guardian* (online, 23 April 2025) <<https://www.theguardian.com/environment/commentisfree/2025/apr/23/climate-action-public-support>>. See also United Nations Development Programme, *Peoples’ Climate Vote 2024* (Report, 20 June 2024) <<https://peoplesclimate.vote/download>>.

89 Malinauskaite and Erdem (n 15) 720.

90 Tim Jackson, *Prosperity Without Growth: Foundations for the Economy of Tomorrow* (Routledge, 2nd ed, 2017) 121.

91 Ibid 202–5.

92 *United Nations Framework Convention on Climate Change*, opened for signature 9 May 1992, 1771 UNTS 107 (entered into force 21 March 1994); *Paris Agreement to the United Nations Framework Convention on Climate Change*, opened for signature 22 April 2016, 3156 UNTS 79 (entered into force 4 November 2016) (‘*Paris Agreement*’).

93 *Paris Agreement* (n 92) art 2(1)(a).

continuously manufacturing (and transporting) new products, which is known to cause global warming.⁹⁴ The international human rights framework also provides a potential legal basis for regulating planned obsolescence.⁹⁵ Specifically, the emerging right to a healthy environment is a promising foundation for establishing an obligation to regulate practices that contribute to climate change. As Elena Izyumenko observes, the right to a healthy environment is a ‘human right in the making’ as it is yet to be recognised as a stand-alone right in an international convention, although it has received recognition in national constitutions and sub-national legal frameworks.⁹⁶ There have nonetheless been important steps taken in this direction, such as resolutions from the United Nations (‘UN’) Human Rights Council and UN General Assembly on formally recognising the right to a healthy environment as a universal human right.⁹⁷ Similarly, climate litigation increasingly recognises the link between human rights and climate change, including in reference to other established human rights whose functioning depends on the right to a healthy environment, such as the right to life.⁹⁸ Important cases have also recently contributed to establishing states’ positive obligations to combat climate change, grounded in human rights. For example, a landmark case decided by the European Court of Human Rights Grand Chamber in April 2024, referring to article 8 of the *European Convention on Human Rights* on the right to respect for private and family life, established that under this provision, Member States have a positive obligation to implement sufficient measures to combat climate change.⁹⁹ Similarly, in a historic Advisory Opinion in 2025, the International Court

94 See Intergovernmental Panel on Climate Change, *Climate Change 2023 Synthesis Report: Summary for Policymakers* (Report, 20 March 2023) 8 <<https://www.ipcc.ch/report/ar6/syr/>>, stating that

[h]uman activities, principally through emissions of greenhouse gases, have unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850–1900 in 2011–2020. Global greenhouse gas emissions have continued to increase, with unequal historical and ongoing contributions arising from unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and production across regions, between and within countries, and among individuals.

95 Other works advocating for law reform in the name of sustainability refer to the human rights framework, specifically the right to a healthy environment, as a legal entitlement. See, eg, Elena Izyumenko, ‘Intellectual Property in the Age of the Environmental Crisis: How Trademarks and Copyright Challenge the Human Right to a Healthy Environment’ (2024) 55(6) *International Review of Intellectual Property and Competition Law* 864 <<https://doi.org/10.1007/s40319-024-01478-0>>.

96 Ibid 880. See also Revel Pointon and Justine Bell-James, ‘The Right to a Healthy Environment in Australia’ (2019) 7(2) *Griffith Journal of Law and Human Dignity* 75 <<https://doi.org/10.69970/gjlhd.v7i2.1185>>; John H Knox, ‘Constructing the Human Right to a Healthy Environment’ (2020) 16 *Annual Review of Law and Social Science* 79, 83 <<https://doi.org/10.1146/annurev-lawsocsci-031720-074856>>.

97 See Human Rights Council, *The Human Right to a Clean, Healthy and Sustainable Environment*, GA Res 48/13, UN Doc A/HRC/RES/48/13 (18 October 2021); *The Human Right to a Clean, Healthy and Sustainable Environment*, GA Res 76/300, UN Doc A/RES/76/300 (1 August 2022).

98 See Pointon and Bell-James (n 96) 83 ff; *Verein KlimaSeniorinnen Schweiz v Switzerland* (2024) 79 EHRR 1 (‘*Verein KlimaSeniorinnen Schweiz*’); *Waratah Coal Pty Ltd v Youth Verdict Ltd* [No 6] [2022] QLC 21. For a detailed overview of climate litigation: see Pau de Vilchez and Annalisa Savaresi, ‘The Right to a Healthy Environment and Climate Litigation: A Game Changer?’ (2021) 32(1) *Yearbook of International Environmental Law* 3 <<https://doi.org/10.1093/yiel/yvac064>>.

99 *Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953); *Verein KlimaSeniorinnen Schweiz* (n 98).

of Justice concluded that states are under obligations to ensure the protection of the climate under a number of treaties, including the *Paris Agreement*, as well as under customary international law and international human rights law.¹⁰⁰

In addition to legal foundations for regulating planned obsolescence, there are also key environmental reasons for doing so, which further highlight the potential of combating planned obsolescence as part of the circular economy transition. Put simply, a circular economy approach recognises that legislating sustainable products contributes to the urgent need to reduce emissions and waste. Slowing down production and consumption, and ultimately keeping goods for longer, contributes to reducing the CO₂ emissions produced by manufacturing and transporting new products. For some products, such as smartphones, the production stage accounts for between 85% and 95% of the device's lifecycle annual footprint.¹⁰¹ The European Environmental Bureau estimates that extending the life of the EU's smartphones, notebooks, washing machines and vacuum cleaners by five years could save about 10 million tonnes of CO₂ annually by 2030, with an effect similar to taking 5 million cars off the roads for a year.¹⁰² Further, some products, such as electronics, are composed of numerous rare earth materials, which represent finite resources and whose extraction produces waste and emits greenhouse gasses.¹⁰³ In terms of waste, discarded products, including electronics containing rare earth materials, increasingly end up in landfill, fuelling the soaring e-waste mountain.¹⁰⁴ E-waste is currently the fastest growing solid waste stream in the world, with the 2024 Global E-Waste Monitor reporting that a record 62 billion kilograms of e-waste was generated globally in the last year, a rise in generation that outpaces the rise in recycling by almost five times.¹⁰⁵ Discarded products also spread hazardous materials in landfill, especially e-waste, which is composed of hazardous and valuable materials, and is reportedly 'responsible for 70% of the toxic chemicals such as lead, cadmium and mercury found in landfill'.¹⁰⁶

Finally, a circular economy approach serves to articulate not just environmental but also social and economic reasons for legislating longer-lasting products. Cooper argues that longer-lasting products could provide social and economic

100 *Obligations of States in Respect of Climate Change (Advisory Opinion)* (International Court of Justice, General List No 187, 23 July 2025). Importantly, the Court added that breaching such obligations constitutes an internationally wrongful act and has a number of legal consequences, such as the obligation to put a stop to the act or omission or ensure reparation is provided.

101 See *Electronic Products and Obsolescence in a Circular Economy Report* (n 44) 19–20, stating that impeding continuous manufacturing also reduces the use of chemicals and hazardous components that are frequently used at the manufacturing and packaging stage.

102 Mauro Anastasio, 'Revealed: The Climate Cost of 'Disposable Smartphones'', *Climate and Energy* (Web Page, 18 September 2019) <eeb.org/en/revealed-the-climate-cost-of-disposable-smartphones/>; *Coolproducts* (n 3) 5.

103 *Electronic Products and Obsolescence in a Circular Economy Report* (n 44) 16–17.

104 See Baldé et al (n 2), finding that only 22.3% was documented as formally collected and recycled in 2024: at 12.

105 Ibid.

106 'The Issue with E-waste', *Clean Up* (Web Page) <<https://www.cleanup.org.au/e-waste/>>, citing Ankit et al, 'Electronic Waste and Their Leachates Impact on Human Health and Environment: Global Ecological Threat and Management' (2021) 24 *Environmental Technology and Innovation* 102049:1–28, 2 <<https://doi.org/10.1016/j.eti.2021.102049>>.

benefits through consumers receiving better value for money and an increase in jobs in repair and maintenance.¹⁰⁷ Furthermore, better value for money could be seen as the effect of improved competition within the market for repairing goods, which law reform could achieve by carving a legitimate space for independent businesses to provide repair services and manufacture spare parts.¹⁰⁸ Ensuring that consumers have access to affordable repair services, as well as improving access to durability and reparability information, could also contribute to social goals. As the recently adopted *Empowering Consumers Directive* explains, this means defining a clear role for consumers in the green transition: if consumers are empowered to ‘make informed purchasing decisions’, for example because clear reparability information is made available, they can ‘contribute to more sustainable consumption patterns’.¹⁰⁹ Ensuring that all consumers are empowered in the green transition challenges the understanding that only privileged consumers with economic power can contribute to the green transition.

In short, there are many reasons for combating planned obsolescence as a circular economy concern. However, the next sections argue that a closer analysis of emerging regulatory efforts reveals that the circular economy lens is still (slowly) emerging.

III EXPLORING RECENT REGULATORY DEVELOPMENTS IN THE EU AND AUSTRALIA

Recent years have witnessed great progress in the legislation, case law and overall debate on the regulation of planned obsolescence. Revisiting the planned obsolescence concept in light of recent developments is critically important to inform better regulation. The following sections analyse current EU and Australian regulatory efforts, showing that these fail to capture the multifaceted nature of planned obsolescence and, as a result, are fragmented. Moreover, recent reforms only partially embrace a circular economy perspective. These sections also focus on comparing the similarities and differences in the conceptualisation of planned obsolescence between the EU and Australia, highlighting how differing concepts lead to different regulatory approaches.

During the last few years, the EU has been enacting a plan to transition to a more circular economy.¹¹⁰ This plan relies on turning current production and consumption models into sustainable ones.¹¹¹ Fighting planned obsolescence has been a key part of this plan, such that recent rules have been amended to explicitly ban planned obsolescence practices EU-wide.¹¹² This has been coupled with granting consumers new rights and imposing new obligations on businesses. In Australia, a first wave

107 Cooper, *Longer Lasting Products* (n 17) 19.

108 See the discussion of competition law and planned obsolescence in Part II(C).

109 *Empowering Consumers Directive* (n 6) recital 1.

110 See *CEAP* (n 31).

111 See *Making Sustainable Products the Norm Communication* (n 31).

112 See Part III(A).

of attention commenced in 2021 with a national inquiry into the right to repair, the recommendations of which did not go so far as to ban planned obsolescence practices but delivered some small wins for consumers and, most importantly, contributed to bringing attention to the need for regulatory intervention on the matter.¹¹³ The recent establishment of the Circular Economy Ministerial Advisory Group ('CEMAG'), along with the work it has produced, signals a possible change in perspective.¹¹⁴ The recent announcement of an emissions target for 2035, committing to reducing emissions to between 62% and 70% below 2005 levels, exacerbates the need for reform.¹¹⁵ The status quo, however, remains unchanged.

A Current Regulatory Efforts are Disconnected from the Complexity and Multifaceted Nature of Planned Obsolescence and a Circular Economy Lens Is Still Emerging

Current regulatory efforts certainly represent a much-needed first step towards curbing planned obsolescence, yet they fail to recognise its complex and multifaceted nature, an oversight that is leading to an increasingly fragmented regulatory approach. A circular economy lens is slowly emerging, and more is needed to ensure overarching circular economy plans bring together the fragmented response to planned obsolescence under one holistic and coherent approach.

Regulatory efforts have overall failed to recognise the multifaceted nature of planned obsolescence. A comparison of EU and Australian efforts provides insight into this. EU efforts have generally tended to focus on consumer law, failing to recognise the importance of a holistic approach considering other areas of law and resulting in fragmented regulation. The exception, which it is hoped will illuminate the way forward, is the adoption of the *Ecodesign for Sustainable Products Regulation*, an overarching framework that sets eco-design requirements and is meant to address the designing of longer-lasting products.¹¹⁶

In 2020, the EU announced its new 'Circular Economy Action Plan' ('CEAP'), a key building block of the EU Green Deal that defines the EU's plan to transition to a circular economy.¹¹⁷ As part of the plan, the European Commission announced that it would put in place a range of reforms to ensure that sustainable products become the norm, including by regulating planned obsolescence. Three key interlinked, and complementing, pieces of legislation stand out: the *Empowering Consumers*

113 *Right to Repair Report* (n 7). See also Leanne Wiseman, 'The Right to Repair in Australia' in Ole-Andreas Rognstad, Taina Pihlajarinne and Jukka Mähönen (eds), *Promoting Sustainable Innovation and the Circular Economy: Legal and Economic Aspects* (Routledge, 2025) 156, 182 <<https://doi.org/10.4324/9781003309093-9>>.

114 See *Circular Economy Framework* (n 8). See also *Circular Advantage* (n 8); *Circular Economy Interim Report* (n 8); *Circular Economy Inquiry Report* (n 8).

115 Department of Climate Change, Energy, the Environment and Water, *Australia's Net Zero Plan* (Report, 2025) 37 <<https://www.dcccew.gov.au/climate-change/publications/net-zero-plan>>.

116 *Ecodesign for Sustainable Products Regulation* (n 6), which relies on delegated acts that specify how the Regulation's requirements should be applied to selected product categories: 'Ecodesign Requirements for Sustainable Products', *EUR-Lex: Summaries of EU Legislation* (Web Page, 15 October 2024) <<https://eur-lex.europa.eu/EN/legal-content/summary/ecodesign-requirements-for-sustainable-products.html>>.

117 *CEAP* (n 31).

Directive, the *Right to Repair Directive* and the *Ecodesign for Sustainable Products Regulation*, all of which were passed in 2024 although some provisions will enter into force in mid-2026 and delegated legislation is expected to follow the *Ecodesign for Sustainable Products Regulation*.¹¹⁸ These instruments mark a turning point in the regulation of planned obsolescence as they have, for the first time, directly prohibited it. The *Empowering Consumers Directive* has blacklisted seven practices ‘associated with’ planned obsolescence, which are considered unfair in all circumstances, lowering the evidentiary threshold and ensuring that the most harmful practices can more easily be brought to justice.¹¹⁹ Examples include ‘[i]nducing the consumer to replace or replenish the consumables of a good earlier than necessary for technical reasons’ and ‘[p]resenting a software update as necessary when it only enhances functionality features’.¹²⁰ The general prohibition of unfair commercial practices, which instead requires assessing whether the practice is likely to distort the average consumer’s economic behaviour and is contrary to professional diligence, has also been modified so that it now directly adds durability and reparability information to the list of elements on which traders must not deceive (ie, misleading actions) and to the list of material information that must not be omitted (ie, misleading omissions).¹²¹ Planned obsolescence is now not just prohibited but also more strongly disincentivised. The *Right to Repair Directive* strengthened the right to repair by improving access to repair both within the two-year legal guarantee period (during which consumers choosing repair are rewarded with an additional 12-month guarantee), and beyond this period, (after which manufacturers must, for the first time, offer repair services, ensuring that products live longer than two years).¹²² The *Right to Repair Directive* also

-
- 118 *Empowering Consumers Directive* (n 6); *Right to Repair Directive* (n 6); *Ecodesign for Sustainable Products Regulation* (n 6). The *Empowering Consumers Directive* states that Member States will apply measures necessary to comply with the Directive from September 2026: at art 4. See also the *Right to Repair Directive*, which establishes 31 July 2026 as the date when Member States will apply measures transposing the Directive: at art 22. In April 2025, the European Commission adopted the ‘Ecodesign for Sustainable Products and Energy Labelling Working Plan 2025–2030’ and additional delegated acts are expected: ‘Ecodesign for Sustainable Products Regulation’, *European Commission: Environment* (Web Page) <https://commission.europa.eu/energy-climate-change-environment/standards-tools-and-labels/products-labelling-rules-and-requirements/ecodesign-sustainable-products-regulation_en>.
- 119 *Empowering Consumers Directive* (n 6) annex, 4, recitals 16–24, inserting *Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 Concerning Unfair Business-to-Consumer Commercial Practices in the Internal Market and Amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council* [2005] OJ L 149/22 annex I 23(d)–(e) (‘*Unfair Commercial Practices Directive*’). See also the discussion in Part II(A).
- 120 *Empowering Consumers Directive* (n 6) annex, 4, inserting *Unfair Commercial Practices Directive* (n 119) annex I 23(e), (i).
- 121 *Empowering Consumers Directive* (n 6) arts 1(2)(a), 1(3), amending *Unfair Commercial Practices Directive* (n 119) art 6(1)(b) and inserting *Unfair Commercial Practices Directive* (n 119) art 7(7).
- 122 See *Right to Repair Directive* (n 6) art 16(2)(a), improving repair as a remedy. Sellers must inform the consumer of the right to choose between repair and replacement and of the additional 12 months of guarantee: at art 16(3). Other ‘rewards’ include accessing temporary replacement good, including a refurbished one, during the time of repair: at art 16(4). The obligation to provide repair services after the two-year period requires repair to be offered free of charge or for a reasonable price, allowing manufacturers to account for the cost of labour and spare parts: at recital 16, art 5.

establishes a number of positive obligations that accompany the obligation to repair beyond the legal guarantee period. These are the obligation to set a price that is reasonable for spare parts or tools, and the obligation to make information on the price available online.¹²³ Crucially, there are also two new prohibitions that are meant to ‘complement’ the positive obligations, which essentially provide that manufacturers cannot use any contractual clauses, hardware or software techniques that impede repair, nor refuse to repair goods merely because they were previously repaired by a third party.¹²⁴ There are, however, two crucial limitations that weaken the new rules on repairing outside the two-year period. First, the obligation to provide a repair beyond the two-year period only applies to some product categories listed in the Directive’s annex II, embracing a sectoral approach.¹²⁵ Second, the new prohibition of using contractual clauses and other tools to prevent repair excludes ‘legitimate and objective factors including the protection of intellectual property’ and the language of this provision seems to suggest that the protection of intellectual property prevails over the right to repair.¹²⁶ As seen in Part II(C), asserting IPRs is a common way to prevent individuals from repairing or sharing repair information, something which this provision does not seem to recognise. On a more positive note, the *Ecodesign for Sustainable Products Regulation* contributes to disincentivising planned obsolescence as it essentially provides that all products entering the EU market must be designed to be durable and repairable. Here, reparability is a product requirement for which specific information requirements apply.¹²⁷ The *Ecodesign for Sustainable Products Regulation* also puts into place the ‘Digital Product Passport’, a tool storing products’ sustainability information, with rules banning the destruction of unsold consumer goods.¹²⁸ Building on the described reforms, it is worth noting that the European Commission has recently proposed a Circular Economy Act, which, inter alia, aims to boost the use of recycled materials.¹²⁹

Although the EU measures described above are an unprecedented step forward, they are limited because they are mostly focused on consumer law and fall short of embracing a holistic approach that recognises the significance of intervening across several legal areas, such as intellectual property law and competition law. As explained in Part II(C), planned obsolescence practices do not easily fit within one legal area and often defy these categories. For example, obsolescence can be achieved by restricting access to repair information, a technique that relies on copyright protection.¹³⁰ EU developments have not addressed copyright, nor

123 Ibid arts 5(4)–(5).

124 Ibid recital 18, arts 5(6)–(7).

125 Ibid annex II.

126 Ibid art 5(6), specifically the last sentence, which adds: ‘This paragraph is ... without prejudice to Union and national law providing for the protection of intellectual property rights.’

127 See *Ecodesign for Sustainable Products Regulation* (n 6) arts 5(1)(e), 5(2), 7.

128 Ibid ch III.

129 Directorate-General for Environment, ‘Commission Launches Consultation and Call for Evidence for Upcoming Circular Economy Act’, *European Commission* (online, 1 August 2025) <https://environment.ec.europa.eu/news/commission-launches-consultation-upcoming-circular-economy-act-2025-08-01_en>.

130 See Part II(C).

other legal areas that are often weaponised to keep consumers in a constant loop of consumption.¹³¹ To the contrary, as seen, intellectual property protection has been carved out of one of the key consumers rights rules in the *Right to Repair Directive*, which now provides that the protection of intellectual property prevails over the prohibition of using certain techniques to impede repair. Although the *Ecodesign for Sustainable Products Regulation* illuminates the way forward in that it takes a market-wide approach, setting requirements for the whole EU market, this powerful framework is still developing, and, at this stage, little is known about the delegated legislation it is expected to inspire.

Australian developments have also taken a piecemeal approach to regulating planned obsolescence. The only repair law – the *Motor Vehicle Service and Repair Information Sharing Scheme* – deals exclusively with motor vehicles by mandating the sharing of repair information with independent repairers for a fair market price.¹³² A slightly broader approach seemed to follow the commissioning of an inquiry into the right to repair, which culminated in the 2021 *Right to Repair Report*, prepared by the national economic think tank, the Productivity Commission.¹³³ While the *Report* found that there are ‘significant and unnecessary barriers to repair for some products’¹³⁴ and certainly recommended some useful changes, such as introducing a guarantee for software updates, it fell short of recommending ‘a clear general “right to repair”’.¹³⁵ A more direct and clear-cut prohibition of planned obsolescence was not recommended, nor did the Productivity Commission recommend introducing a prohibition of unfair practices more generally.¹³⁶ Some of the recommendations also took a product-specific approach and remained piecemeal. For example some recommendations were limited to certain goods or markets (eg, the recommendation to facilitate repair for agricultural machinery building on the motor vehicle scheme) and a broader circular economy perspective was not adopted.¹³⁷ Furthermore, only a few of the Productivity Commission’s suggestions

131 As argued in Part II(C), competition law is another legal area that is relevant yet remains unaddressed. The silence on intellectual property law reform has also been captured by Bureau Européen des Unions de Consommateurs [European Consumer Organisation], ‘An EU Repair Clause: A Missing Piece of the Right to Repair’ (Position Paper, 9 June 2023) <<https://www.beuc.eu/position-papers/eu-repair-clause-missing-piece-right-repair>>.

132 *Competition and Consumer Amendment (Motor Vehicle Service and Repair Information Sharing Scheme) Act 2021* (Cth).

133 *Right to Repair Report* (n 7).

134 *Ibid* 2.

135 Kayleen Manwaring et al, ‘What Does a Right to Repair Tell Us About Our Relationship with Technology?’ (2022) 47(3) *Alternative Law Journal* 179, 182 <<https://doi.org/10.1177/1037969X221108557>>.

136 *Right to Repair Report* (n 7) 228.

137 For example, the findings and recommendations of the *Right to Repair Report* (n 7) include Finding 4.3 ‘Limits on Repair Supplies for Agricultural Machinery are Causing Harm’: at 138; Recommendation 8.2 ‘Introduce a Repair Supplies Obligation on Agricultural Machinery’: at 301; Recommendation 4.3 ‘Further Investigate Conduct in Watch Repair Markets’: at 152; Recommendation 6.1 ‘Develop and Introduce a Product Labelling Scheme’: at 242. In relation to the ‘Product Labelling Scheme’, the Productivity Commission indicated that white goods and consumer electronics are the products where the benefits are likely to be greatest. A targeted approach was recommended, with the aim of collecting evidence on the benefits and cost of labelling (which would inform future decisions on broader interventions): at 241–2.

have so far been implemented, such as the recently introduced designated complaint mechanism allowing designated consumer organisations to lodge complaints on significant or systemic market issues, which can potentially include repair.¹³⁸ The Productivity Commission's subsequent inquiry into Australia's opportunity into the circular economy reiterated all its recommendations from the *Right to Repair Report*.¹³⁹ However, compared to EU developments, the Australian debate on the right to repair has been remarkable in that it has highlighted key changes needed in areas of the law other than consumer law: the Productivity Commission, in fact, recommended some changes to intellectual property laws and it suggested more studies be undertaken from a competition law perspective, although these were sectoral and did not consider the significance of repair markets.¹⁴⁰

Moreover, regulatory developments did not properly address the complexity of planned obsolescence. The *Right to Repair Report* spoke of the confusion between the different terms used to refer to planned obsolescence, however it then seemed to use the complexity argument to dismiss any regulatory action on the matter.¹⁴¹ As Jesse Adams Stein has convincingly argued, the *Right to Repair Report* used the complexity of the concept of planned obsolescence and related contested terminology as a 'smokescreen' to justify the fact that no significant regulatory intervention was suggested.¹⁴² The *Right to Repair Report* also seemed to interpret obsolescence as something for which consumers may also be responsible.¹⁴³ While this certainly aligns with the view that planned obsolescence is a multifaceted issue that spans across supply and demand, its framing in the Report is problematic. Arguably, casting consumers as part of the problem only makes sense if other strategies for addressing consumer behaviour that may contribute to obsolescence are proposed. Instead, the *Right to Repair Report* did not engage with this aspect and seemed to use it as an excuse to conclude that a direct ban of planned obsolescence is not needed as other measures might best assist consumers repair what they own.¹⁴⁴ The Report therefore did not consider that mandating sustainable

138 See Australian Competition and Consumer Commission, 'Designated Complaints Guidance: A Guide for Entities who have been Approved as Designated Complainants' (Guidance, July 2024). The *Right to Repair Report* (n 7) had recommended introducing a similar tool: see Recommendation 3.2 'Enable a Super Complaints Process': at 101; Recommendation 3.3 'Enhance Alternative Dispute Resolution Powers': at 107. See also Leanne Wiseman and Kanchana Kariyawasam, 'The Proposed "Designated" Complaint Function under the ACL: More Strength to a Consumer's Bow' (2024) 32(1) *Australian Journal of Competition and Consumer Law* 12. Repair laws for agricultural machinery were also recommended by the Productivity Commission. As mentioned, a law actioning this recommendation has been announced, although its actual implementation is still pending: see Chalmers (n 59).

139 See Recommendation 8.1 'Implement the Suite of Recommendations from the PC's Right to Repair Inquiry': *Circular Economy Inquiry Report* (n 8) 107.

140 See Recommendation 5.1 'Amend the Technological Protection Measures Regime', Recommendation 5.2 'Introduce a New "Use" Exception in the Copyright Act' and Recommendation 5.3 'Prohibit Contracting Out of Copyright Exceptions': *Right to Repair Report* (n 7) 184, 193, 196. See also Recommendation 4.1 'Undertake Mobile Phone and Tablet Market Study': at 142.

141 *Right to Repair Report* (n 7) 197 ff.

142 Stein (n 29) 15 ff.

143 *Right to Repair Report* (n 7) 216.

144 *Ibid* 228.

designs or providing a clear prohibition of these practices would be necessary.¹⁴⁵ As argued in Part III(B), there is an argument that perhaps one of the reasons that the *Right to Repair Report* dismissed the significance of planned obsolescence is linked to a unique conceptualisation of obsolescence and repair.

On the one hand, at first glance, as shown by the examples in Part II(A), the complex and contested nature and terminology for obsolescence seems to be lost in translation in EU efforts. Different policy documents and regulations use different terminology and the different versions of these documents using the different EU official languages often do not translate the same terminology in the same way. On the other hand, upon closer analysis, the use of the ‘planned obsolescence practices’ concept in new EU rules banning obsolescence suggests that there has been recognition of the fact that planned obsolescence is indeed made up of many different practices.¹⁴⁶ Likewise, the ban of specific examples of such practices confirms that: the mix of seven examples that are now blacklisted in the *Empowering Consumers Directive*.¹⁴⁷ This is not in a vacuum: the Directive also modified the general prohibitions to ensure these can cover other planned obsolescence practices more broadly.¹⁴⁸ Overall, the use of the ‘practices associated with ... obsolescence’ terminology suggests that there is an understanding that these are complex issues that often involve both supply and demand.¹⁴⁹ This is also confirmed by the fact that the recent EU efforts not only look at product design, with the *Ecodesign for Sustainable Products Regulation* ensuring that products are designed and built to be longer lasting in the first place, but also combine that with the new rules granting consumer more rights as to repairing their products.¹⁵⁰ This showcases that there is an understanding that both the supply and demand must be addressed for effectively reducing planned obsolescence.

On a final note, a circular economy lens is still largely emerging. EU regulatory efforts have been at the front and centre of the circular economy transition, having been announced as part of the CEAP.¹⁵¹ While the CEAP has certainly been the catalyst for stronger rules addressing planned obsolescence, the opportunity to use this lens to capture other areas of the law has been largely missed. As mentioned above, there is an argument for a more holistic regulatory effort that is not exclusively focused on consumer law and instead includes other legal areas such as intellectual property law and competition law. Such an ‘all hands on deck’ or

145 Ibid 228–32. See also Finding 6.2 ‘Interventionist Responses to Premature Obsolescence Are Not Needed’: at 241.

146 *Empowering Consumers Directive* (n 6) recital 16.

147 See above n 119.

148 *Empowering Consumers Directive* (n 6) arts 1(2) and 1(3) amending, inter alia, *Unfair Commercial Practices Directive* (n 119) arts 6 and 7 (prohibition of misleading actions and omissions).

149 *Empowering Consumers Directive* (n 6) recitals 1, 16; *Ecodesign for Sustainable Products Regulation* (n 6) recital 7.

150 *Ecodesign for Sustainable Products Regulation* (n 6); *Right to Repair Directive* (n 6).

151 CEAP (n 31).

holistic approach fits well with the circular economy lens, which is a systemic transition requiring cooperation from all areas and stakeholders.¹⁵²

Nor has a circular economy lens fully informed the Australian debate. For example, the Right to Repair Report did not embrace this perspective and instead focused on a cost–benefit analysis of regulation versus other forms of intervention.¹⁵³ However, more recent developments suggest that Australian debates are slowly shifting towards embracing a circular economy lens. The establishment of the CEMAG, which followed from the landmark agreement of all Australian environment ministers to work towards a circular economy transition, and the recent Productivity Commission inquiry into Australia’s opportunities in the circular economy, may signal that the urgency and significance of the circular economy transition is being recognised.¹⁵⁴ A long-overdue national framework for the circular economy transition was also recently published and it is hoped that it will inform new and stronger rules for sustainable products.¹⁵⁵ The framework not only promised doubling Australia’s circularity and committed to a reduction in material footprint, but also indicated areas that will be prioritised in the transition, including that of delivering more sustainable products.¹⁵⁶ The recommendations endorsed by the CEMAG gave impulse to a review of Australia’s key national waste and recycling legislation, aimed at considering whether an approach mirroring the EU’s *Ecodesign for Sustainable Products Regulation* framework might be needed to ensure products are designed to last longer.¹⁵⁷ The developments described above discussed consumers’ role in the circular economy transition and recommended strengthening the visibility of reparability and durability information, yet they made no mention of concretely advancing consumer rights relating to repair.¹⁵⁸ A right to repair, to access spare parts and to be informed about software updates are still missing from the *Australian Consumer Law*.¹⁵⁹ Yet, advancing repair rights fits well with the government’s newly announced 2035 plan to reduce emissions to between 62% and 70% below 2005 levels.¹⁶⁰

152 See *Monitoring Progress* (n 81) explaining that the circular economy is ‘a systemic change that affects the entire economy’, and progressing towards this change requires the involvement of many stakeholders: at 14. See also Jurgita Malinauskaite and Fatih Buğra Erdem, ‘Competition Law and Sustainability in the EU: Modelling the Perspectives of National Competition Authorities’ (2023) 61(5) *Journal of Common Market Studies* 1211 <<https://doi.org/10.1111/jcms.13458>>, suggesting that sustainability-related matters require an ‘all hands-on deck’ approach, where all actors in the economy and all areas of the law contribute to tackling the climate emergency: at 1212.

153 *Right to Repair Report* (n 7) 4.

154 See *Circular Advantage* (n 8); Based on this, the Productivity Commission has recently completed a review of Australia’s opportunities into the circular economy: see *Circular Economy Interim Report* (n 8).

155 *Circular Economy Framework* (n 8).

156 *Ibid* 6.

157 See ‘Review of the Recycling and Waste Reduction Act’, *Department of Climate Change, Energy, the Environment and Water* (Web Page, 18 November 2025) <<https://www.dcccew.gov.au/environment/protection/waste/review-recycling-waste-reduction-act>>; *Circular Advantage* (n 8) 35.

158 See *Circular Advantage* (n 8) ch 10.

159 As mentioned above, many of the changes recommended by the *Right to Repair Report* (n 7) are yet to be implemented and a general right to repair was not recommended.

160 See above n 114 and accompanying text.

B Difference Conceptualisations of Planned Obsolescence (and Its Relationship with the Right to Repair) Result in Differing Regulatory Approaches across the EU and Australia

Another key point in the exploration of recent regulatory developments that speaks to the need to revisit the concept of planned obsolescence is the way that this concept has been understood in recent EU and Australian regulatory efforts. This section discusses how a broad interpretation of planned obsolescence, which includes, but is not limited to, repair rights, better fits the holistic approach to regulation that the multifaceted nature of planned obsolescence practices, and the circular economy transition as a systemic transition, require.

Conceptually, advancing the right to repair can be understood as part of the response to planned obsolescence. Under the broad understanding of planned obsolescence discussed in Parts II(B) and II(C), designing products that cannot be repaired, or employing other techniques to make repair difficult so that replacement becomes the default option, is one of the many combined practices that planned obsolescence embodies. Practices that restrict repair require special attention from policymakers due to the greater effect they may have on consumers compared to other practices. For example, while only some consumers may fall victim to marketing strategies associated with style or psychological obsolescence, most consumers will replace a product if they cannot repair it, due to its parts becoming discontinued, or repair becoming considerably more expensive and more difficult than replacement. Similarly, vital industries, such as farming, are also affected by barriers to repair and there certainly is a need to craft an adequate response to ensure that farmers have a right to repair expensive and much-needed agricultural machinery.¹⁶¹ In Australia, regulatory intervention on this point is crucially important and has remained as the only option, seeing as agreements between machinery manufacturers and farmers that could facilitate repair have not been reached, although this has happened in the US.¹⁶² The Australian government has indeed recently announced a mandatory scheme for this sector.¹⁶³ In the EU, the right to repair discussion has focused more on individual consumers rather than farmers, perhaps partly because existing laws have for some time addressed some of the problems associated with agricultural machinery servicing.¹⁶⁴

While introducing a right to repair is an important part of the response to regulating planned obsolescence, regulatory efforts should not be limited to addressing repair rights. Instead, these should form part of wider efforts to regulate planned obsolescence practices. One way to do so is by conceptualising the regulation of planned obsolescence as part of the transition to the circular economy, a concept which is deeply connected to planned obsolescence, as explained in Part II(D).

There are important differences between how the right to repair, the response to planned obsolescence and the circular economy transition have been

161 See Part II(C).

162 See Part II(C), discussing *MOU between AFBF and John Deere* (n 58) and the recent announcement to introduce repair laws for farmers in Australia: Chalmers (n 59).

163 See Chalmers (n 59).

164 See *Safe Agricultural and Forestry Vehicles Regulation* (n 74) and the discussion in Part II(C).

conceptualised in Europe and Australia. As mentioned in Part III(A), in the EU, policies addressing planned obsolescence practices and the right to repair fall under the same overarching circular economy reform package announced with the CEAP, following the EU Green Deal.¹⁶⁵ Conversely, in Australia, the *Right to Repair Report* dealt with the right to repair and planned obsolescence as two separate concepts. A key difference here is that while the *Right to Repair Report* proposed important recommendations to improve the right to repair, planned obsolescence was discussed in a separate section of the Report.¹⁶⁶ In this section, the *Right to Repair Report* presented planned obsolescence as a matter of growing concern, but one lacking sufficient evidence to necessitate government intervention.¹⁶⁷ From this perspective, the measures that the *Right to Repair Report* recommended to ensure Australian consumers have a stronger right to repair could go some way towards addressing some of the concerns associated with planned obsolescence, so that other measures, such as tax incentives, are not necessary. Arguably, this conclusion was premised on a narrow understanding of planned obsolescence and the contention that there are simply too many factors contributing to obsolescence, such as consumers' wasteful behaviour. In short, the *Right to Repair Report* and the government response to it suggest that in Australia, there might be consensus on intervening to regulate repair but not on intervening to address the broader significance of planned obsolescence practices.

A regulatory approach to planned obsolescence that sits within the circular economy transition, which is still in the process of being developed in Australia, would suggest that a broader understanding and regulation of planned obsolescence practices is necessary. However, as discussed above in Part III(A), this lens is still emerging.

IV DEVELOPING A WIDER UNDERSTANDING OF PLANNED OBSOLESCENCE: A NECESSARY FIRST STEP TOWARDS BETTER REGULATION

Crafting a response to the multitude of practices that contribute to planned obsolescence requires a well-thought plan that is tailored to the multifaceted nature of the issue. This means, first of all, that the response cannot be limited to addressing repair issues under a 'right to repair' approach. While a right to repair is key to combating planned obsolescence, and limiting repair options or designing out repair completely is a known form of obsolescence, a narrow focus on these practices clashes with the multifaceted nature of planned obsolescence.¹⁶⁸ The relationship between the right to repair and planned obsolescence is often blurry and there seems to be agreement on intervening on the right to repair yet not so

¹⁶⁵ CEAP (n 31).

¹⁶⁶ *Right to Repair Report* (n 7) 197 ff, 242.

¹⁶⁷ *Ibid.*

¹⁶⁸ See Part II(C).

much on combating planned obsolescence.¹⁶⁹ Arguably, this is connected to the fact that planned obsolescence is a contested concept. However, holistic intervention should focus on as many practices as possible, such as the ones described in Part II(C), as these contribute to shorter-lived products and feed the waste mountain. That said, whilst maintaining a focus on the most harmful practices such as those involving repair is beneficial, it should not mean that other practices are overlooked.

Second, this multitude of practices does not exclusively involve consumers or consumer law, as it is often thought, but rather it calls for the intervention of different areas of the law.¹⁷⁰ For example, the practices of using marketing strategies and continuous product improvement calls for the intervention of areas of law that govern marketing and product design. Product design is an emerging area of intervention, with the EU developing advanced eco-design rules.¹⁷¹ However, this approach has so far been mostly confined to the EU and is yet to gain international traction. Moreover, practices involving gaining control over repair markets call for the intervention of intellectual property law and competition law.¹⁷² Intellectual property law, as mentioned, plays a fundamental role in enabling planned obsolescence practices as it grants exclusive rights over the knowledge and tools necessary to perform repairs. Asserting these rights can effectively prevent others from lawfully repairing a product so that, once again, the only feasible option is buying new. Competition law should also form part of the response to planned obsolescence because it can be used to ensure repair markets are fair and accessible for consumers. Excluding independent repairers from the market, which, as seen, also contributes to obsolescence, is a practice that competition law can more strongly address. Likewise, mandating the sharing of repair and maintenance information is another piece of the competition law arsenal that can be deployed against planned obsolescence.

Thirdly, curbing planned obsolescence should be seen as a necessary step in the transition to the circular economy.¹⁷³ Delivering sustainable products and reducing waste can drastically reduce global CO₂ emissions and save millions of devices from polluting landfill. Reusing, repairing and slowing down consumption boosts circularity because it ensures that existing products can be kept for longer or transformed into new products, thus keeping value in use. Curbing planned obsolescence is also a way to help states meet international obligations to reduce global warming as well as ‘net zero pledges’. Yet, as argued in Part III(A), the connection between planned obsolescence and the circular economy risks being neglected, or being fragmented by the unclear relationship between planned obsolescence and the right to repair. A circular approach should recognise the undeniable connection between delivering sustainable products and accelerating the urgent circular economy transition. In other words, regulating planned

169 See Part III(B).

170 See Part II(C).

171 *Ecodesign for Sustainable Products Regulation* (n 6), discussed in Parts II(C) and III(A).

172 See Part II(C).

173 See Part II(D).

obsolescence as a circular economy concern is a way to prioritise and accelerate sustainable production and consumption.

V CONCLUSION

Revisiting the concept of planned obsolescence is necessary for crafting a better response to short-lived products. To do so, this article has interrogated the concept of planned obsolescence in light of new regulatory developments in the EU and Australia.

By retracing the history, literature and current debates around planned obsolescence, this article has shown that planned obsolescence is a contested and complex concept.¹⁷⁴ There is little agreement over the meaning and terminology of planned obsolescence, centring on its causes such as whether early disposal is the result of a ‘company plan’ or whether consumers also contribute to this issue. Planned obsolescence, as shown in Part II(B), is also a multifaceted concept spanning supply and demand and sitting at the intersection of multiple practices and legal areas. Further, this article has focused on the deep connection between planned obsolescence and the circular economy transition, identifying the key circular economy-related reasons for government intervention, such as meeting emission goals under international treaties and complying with international human rights law.¹⁷⁵

Against this background, this article has examined recent regulatory developments in the EU and Australia.¹⁷⁶ It has argued that current efforts do not recognise the complex and multifaceted nature of planned obsolescence. New rules have been implemented only in some legal areas, such as consumer law, and a holistic approach covering other relevant legal areas, such as intellectual property law and competition law, is yet to be developed.¹⁷⁷ Moreover, recent efforts only partially use a circular economy lens, especially in Australia.¹⁷⁸ The contested and complex nature of planned obsolescence is also recognised only to a limited extent. Neither EU nor Australian efforts have clearly articulated the relationship between planned obsolescence and the right to repair, with Australian debates suggesting some agreement over regulating repair but not over banning planned obsolescence practices.¹⁷⁹

Therefore, this article has proposed developing a broader notion of planned obsolescence which enables better regulation and helps deliver sustainable products.¹⁸⁰ This entails understanding planned obsolescence as a concept that encompasses the right to repair, clarifying the relationship between these two

¹⁷⁴ See Part II(A).

¹⁷⁵ See Part II(D).

¹⁷⁶ See Parts III and IV.

¹⁷⁷ See Part III(A).

¹⁷⁸ *Ibid.*

¹⁷⁹ See Part III(B).

¹⁸⁰ See Part IV.

concepts and ensuring that regulation tackles both effectively. This broader view of the issue ensures that regulatory intervention can adopt a more holistic view and better address the multitude of practices that make up planned obsolescence, while developing a policy mix that acts on the different legal areas involved in the regulation of planned obsolescence. Finally, this article has suggested strengthening the connection between planned obsolescence and the circular economy transition. Regulating planned obsolescence as a circular economy concern accelerates the green transition and helps clearly prohibit harmful practices while encouraging the development of sustainable products.