

Consumer Affairs Australia
c/o online submission

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8 December 2016

Dear Minister

RE: Feedback concerning the review of the ACL - Samsung Washing Machine Recall

1. In April 2013 around 144,500 faulty Samsung top loader washing machines were recalled due to a major safety defect. The design defect means that water can enter the connectors within the machine causing an electrical tracking which can lead to ignition of the connectors and a fire. To date this water proofing issue has led to more 316 fires around the country and has caused tens of millions of dollars of damage. Many of the fires have caused the total destruction of houses and significant trauma to families. It is reported to be the biggest electrical recall in Australian history in terms of the damage that a faulty product has caused. The statistics relating to the recall can be obtained from the Samsung Australia website. The recall also extends to New Zealand where a significant number of fires have also occurred. Despite the fact that the recall has been ongoing for three and a half years only 74,899 units have been refunded or replaced. This presents only 51% of the recalled machines.
2. I am one of the founders of the "Samsung washing machine recall support group" set up on social media to assist Samsung customers to exercise their consumer rights to obtain a repair, replacement or refund of their recalled washing machine. Our group currently consists of more than 4,000 members and was set up by a group of mothers who lost their homes when their recalled Samsung washing machine caught fire. This group recognised the extreme danger these faulty washing machines pose to 144,500 families around the country and set up the consumer group with the intention of preventing the loss of life. Our group has received considerable media attention including numerous articles in the Sydney Morning Herald, Daily Telegraph, A Current Affair and most recently the New York Times and Wall Street Journal.
3. I write today to provide you with feedback concerning the newly published interim report and the proposed changes to the regulation of recalls.

Plastic Bag Repair

4. Under Australian Consumer Law, a consumer who has purchased a product containing a "major" fault is entitled to their choice of a refund, replacement or repair. At the time the recall was announced, Samsung devised a repair remedy for the faulty machines consisting of a polyurethane plastic bag

wrapped around the connectors inside the machine secured by electrical tape. The remedy was approved by Fair Trading NSW who is coordinating the recall on behalf of all regulators nationally.



During the recall period, Samsung continued to install the plastic bag remedy to machines remaining in the factory prior to shipping them out for sale.

There are currently **43,000** recalled Samsung washing machines around the country which have been fitted with this plastic bag remedy.

- Despite the fact that Australian Consumer Law clearly states that a consumer is entitled to a refund or replacement, Samsung refused to offer this option to consumers and instead offered the repair as the only available remedy. This interpretation of the law was supported by Fair Trading NSW. NSW Fair Trading released a media statement dated 21 May 2015 in which Minister Victor Dominello stated:

“Affected consumers can contact Samsung’s Product Safety Hotline on 1800 239 655 to arrange for a qualified technician to provide a free in-home service. In the interim, if your machine has not undergone repairs, it should not be left unattended during operation.”

- The statement by NSW Fair trading omits the alternative remedies of a refund or replacement. _____ is the senior manager within NSW Fair Trading who confirmed in a telephone conversation around this time that Samsung was entitled to only offer a repair option.
- On 25 August 2015 our group member, _____, contacted Fair Trading NSW for assistance. _____ had been told by Samsung that the only remedy available to her in respect to her recalled machine was the plastic bag repair. Upon discovering her consumers rights _____ again contacted Samsung requesting a refund and was advised that this option was not available to her. _____ from Fair Trading NSW responded to _____ confirming that Samsung’s advise was within the law:

“As discussed in our telephone conversation on 25 August 2015, your concerns were brought to the attention of _____, Liaison Officer, Samsung Electronics.

_____ advised as the machine has been reworked and a repair has been carried out, Samsung

will be unable to look into further options at this stage. If you wish to pursue the matter further, you have the option of lodging a claim with the NSW Civil and Administrative Tribunal. “

We received hundreds of similar complaints within our group suggesting that Samsung refused to offer a refund or replacement when requested.

8. On 14th August 2015 the _____ from Newcastle lost their home when their Samsung washing machine allegedly caught fire. The machine had been “repaired” by Samsung six weeks prior to the fire. It was fortunate that no family members were injured in the blaze which devastated their home. Please find below photos of the home following the fire:



9. Following this significant fire incident relating to a repaired machine, our group complained to the ACCC who subsequently issued the below statement on 28 August 2015”

“The Australian Competition and Consumer Commission has recently become aware of reports that some consumers with recalled Samsung washing machines have been offered a repair for their recalled machine, but not a replacement or refund.

“The ACCC is investigating these reports. If consumers purchased an affected Samsung washing machine, they have the right under the Australian Consumer Law to choose their remedy, which includes a refund, replacement or repair,” ACCC Deputy Chair Delia Rickard said.”

10. The ACCC frequently exercises its power to enforce consumer law by pursuing legal action and issuing hefty fines against manufacturers and retailers who infringe consumer law. This year the ACCC fined Harvey Norman nearly \$300,000 due to the fact that only a handful of employees had incorrectly told their customers that they had no recourse to the repair of a faulty item once the manufacturer’s warranty had expired.
11. Despite the fact that Samsung had flagrantly breached consumer law for two years the company has never been fined.

First Expert Forensic Report

12. Between June and August 2015, members within our group had reported a disturbing numbers of incidents of smoking and burning relating to repaired machines. Our group was concerned that Samsung were continuing to fix potentially deadly washing machines with a flawed plastic bag remedy.
13. We requested a copy of the expert report used by Fair Trading NSW to determine that the plastic bag remedy met with Australian Standards. Fair Trading NSW indicated that Samsung provided their own report which remained the property of Samsung and could not be released to us. A copy of the report was eventually obtained through a Freedom of Information request. We had expected to see that the plastic bag repair had been tested on a number of faulty machines which had been run through hundreds of cycles to demonstrate that the plastic bag remedy would adequately protect the machine from water leaking into the connectors. In fact, the report consists only of a basic “glo wire test” on the polyurethane plastic bag. A glo wire test is used to demonstrate non-flammability of materials in declared articles and involves simply touching the plastic bag with a hot wire. Samsung did not test the plastic bag on a machine at all. NSW Fair Trading claims that this test satisfies the requirements under Australian Standards and is acceptable. The Australian Standards relating to washing machines are only general terms and there is therefore no specific requirement at all concerning an appropriate “fix” to a waterproofing issue given that there has been no precedent within Australia so far. It should, however, be common sense that the plastic bag repair should have been tested on a significant number of affected machines before being deployed to 90,000 homes around the country.
14. Our group was forced to undertake a crowd funding exercise to raise the funds to commission an independent forensic expert report concerning the plastic bag remedy. The report was written by [redacted] from QEC Electrical Services, an expert forensic electrical engineer with 26 years of experience in the industry and a member of the Australian Electrical Standards Committee. The report concludes that the plastic bag repair is unsafe and not fit for purpose (Appendix 3).
15. The overriding reason that the rework was determined by [redacted] to be a failure was that Samsung only carried out basic testing on the electrical grade plastic bag to determine if it would ignite. Samsung’s report did not include testing of the plastic bag on an actual washing machine and does not demonstrate that the plastic bag remedy protects the machine from moisture ingress causing combustion. In other words, only the plastic bag was tested and not the affected washing machine. [redacted] report states in clause 6.3:
- “No other tests were carried-out, in particular no tests to demonstrate the effectiveness of the bag and the assembly to prevent moisture ingress were performed”.*
16. [redacted] forensic report concludes that the rework currently being deployed by Samsung is putting 97,000 Australian families in danger for the following reasons:
- 1) The tests carried out by a Samsung appointed company did not include testing the PE-bag on a machine. The test did not consider whether the PE-bag would protect the machine from moisture egress into the electrical components.

- 2) The PE-bag is being installed on top of connectors that have already corroded and sustained damage caused by years of exposure to moisture.
- 3) The electrical tape used to secure the PE-bag will not last for the lifetime of the machine therefore exposing the connectors to the electrical tracking error and combustion.

17. A copy of our forensic report was sent to Commissioner for Fair Trading NSW, Mr Rod Stowe on 11 November 2015. Victor Dominello, Minister for Better Regulation, responded to our letter disputing the accuracy of the forensic report. In a letter dated 6 January 2015, Mr Dominello confirmed that:

“Fair Trading recognises the rework methodology is suitable when correctly applied...”

18. Neither the Minister or an employee of NSW Fair Trading have supplied any further evidence concerning the safety of the plastic bag repair. There are only around five forensic electrical fire scientists in the country. The report produced by _____ is therefore significant evidence which should have been considered in depth. Another forensic electrical fire scientist, _____, supported _____ view in an article in the Korean Observer dated 4 May 216:

“The problem with that [the plastic bag] is that there is still a gap where the wires go into the plastic bag and so it is an ineffective way of keeping water out of the connector, as there is no seal around the wire. It is not rated to keep water out at all. There is washing water getting into the wires, running along them and getting into the connection point. The washing water is causing electrical leakage and that causes heating at that point. The heating, over time, can be such that the plastic can catch fire.”

19. On 5 May 2016 (several months after the release of _____ forensic report) the _____, also from Newcastle, suffered a major fire when their repaired Samsung washing machine caught fire. _____ live on a rural property and there was a delay in the fire service reaching the property. _____ used a hose to protect the family home from total devastation. _____ explains that there is only one entrance to his older style home which is near the laundry. He fears what may have happened to his sleeping wife if he had not been home at the time. Fire investigators have since confirmed that the recalled machine was the cause of the fire.

20. According to data released by Samsung, there have been over thirty fires post repair. Samsung have blamed all of these fires on the incorrect installation of the plastic bag by technicians. However, _____ states in his report that following a fire there is no evidence of the plastic bag within the machine. The plastic bag is combustible and easily destroyed by fire. There is no evidence left to indicate whether the bag had been installed correctly or not.

Second Expert Report

21. Following Fair trading NSW’s dismissal of the first forensic expert report, we contacted another expert forensic electrical engineer _____ of _____. On 6th September 2016 _____ submitted a further forensic report concerning the plastic bag repair (Appendix 4). _____ has thirty eight years of experience in forensic electrical fire investigation and has forensically examined a repaired machine which caught fire.

22. _____ report concludes that;

- 1) The plastic bag remedy is “ineffective” and does not necessarily prevent moisture penetration of the connectors;
 - 2) The approval certificate used to approve the repair is void since the glo wire test did not in fact test for moisture.
23. Both experts, _____, agree that the plastic bag repair does not protect the machine from water ingress. The glo wire test conducted by Samsung only tested the plastic bag for fire retardation. In fact, the test did not even involved the use of water which would be required to prove that the plastic bag prevents moisture ingress.
24. _____ also states that the plastic bag may not prevent a tracking fault from occurring if there was already moisture in the connectors before the bag was fitted; and which may then lead to a fire. The bag will not prevent a smouldering fire at the connectors from spreading out into the surrounding area of the machine.
25. Further, both experts agree that since the recalled machines contain a major fire safety defect, they can not possibly carry a safety certification. The safety certification for the plastic bag repair says that the plastic bag is safe to use in the machines in the original state that they entered the market without the fault. This safety certification **does not** say that the plastic bag is safe to use in faulty machines. _____, who is a member of the Electrical Safety Committee and was once the Queensland Electrical Safety Office Regulator, has confirmed that there is no technical basis for approval of the repair under Australian Standards since the original safety approval for the machines became void when the major fault was discovered.
26. Despite significant evidence from two of the top forensic electrical experts in the country, Minister Dominello responded on 19th September 2016;

“The recalled Samsung washing machine models were certified as meeting the required standard, and the certification remains in force. Fair Trading is satisfied that the rework method use by Samsung on unsafe machines is effective when applied correctly.”

27. On 13th October 2016 Minister Dominello dismissed the findings of _____ without providing any further evidence that the plastic bag repair was safe;

“...Fair Trading believes the report’s conclusions to be flawed.”

New Machine Safety Concerns

28. Over the last nine months a considerable number of members within our group have reported malfunctions within **new** models of washing machines that have been sent by Samsung to replace their recalled model. These machines have malfunctioned causing burning and melting to internal components within the machine. There have been five incidents of exploding machines. Our forensic expert suggests that any fault causing the machine to heat to the extent that causes melting is a significant safety risk to the public.
29. On 5th November 2016 Samsung officially recalled over 2.8 million faulty washing machines in the U.S. following a number of injuries including a broken jaw, injured shoulder, and other impact or fall-related

injuries. The faults reported in the US appear to be identical to the faults reported in Australia which includes the machine spinning out of control and subsequently exploding.

30. In one particular incident in the US, a consumer was standing in front of her machine when it exploded causing bruising to her ribs. The consumer was propelled backwards by the force of the explosion hitting her jaw on surrounding furniture. According to the consumer's attorney and the Consumer Product Safety Commission, the consumer suffered a broken jaw and required jaw reconstruction surgery following the incident. It is particularly concerning what might have happened if a child had been standing in front of the machine at the time it exploded.
31. The machine involved in this serious US incident appears to be identical to the machine involved in a serious fire in Colyton, Sydney. We have also had one further explosion incident relating to this model within our group.



(Colyton Fire)

WA70F5G4DJW



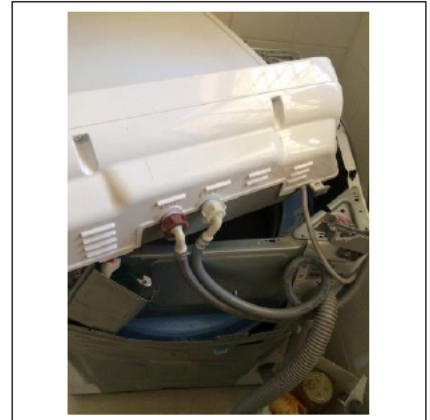
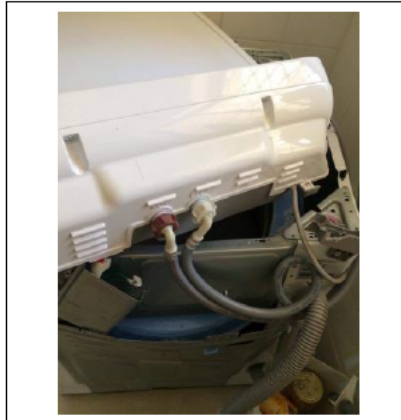
US Injury

WA50F9A6DSW

32. Samsung insist that the two machines are entirely different. Our experts suggest that although the machines carry a different voltage and size, the internal components and design of the machine could be essentially the same. The internal components may have the same design and could be manufactured in the same factory. It is reasonable to assume that if the external components are the same then the internal components may also be the same.
33. You will note that model number WA456DRHDWR appears on the list of the 2.8 million models recalled in the US. The exact same model number WA455DRHDWR was sold in Australia and has been reported within our group as being faulty. Model number WA406DJHDWR has also been reported within our group relating to an explosion incident. The model in the US and the two models in Australia are identical. In fact Samsung published one user manual listing all three models. There can be no doubt that these three machines at least are the same.
34. I also used a spare parts manual published by Samsung to compare each of the parts contained within the US model WA456DRHDWR and Australian models WA455DRHDWR and WA406DJHDWR. Out of 173 parts only 17 were different. The differences related to insignificant parts of the machines such as a

few screws and a hose. (Appendix 5) It is important to note that the drum, support rods, motor, control board and all other key operating parts are exactly the same. The fault in the US machines relate to the support rods snapping allowing the machines to spin out of control.

35. In January 2016 [redacted] from Brisbane put a small load of under garments in her washing machine. [redacted] model was WA406DJHDWR. Moments after the machine entered the spin cycle the machine exploded sending metal shards and debris all over the room and knocking a hole in the wall. Below is a picture of the damage to her machine.



36. The faulty machines sold in the US and in Australia look the same, they have the same model numbers and they are all malfunctioning by spinning out of control and exploding. We have asked Fair Trading to investigate this issue however we received a response dismissing our concerns.

Colyton Fire

37. On the morning of 18 March 2016, [redacted] was at home with her baby grand daughter when she put a load of washing on. [redacted] had a new model Samsung washing machine WA406DJHDWR. Our group has reported one previous incidence of explosion concerning this particular model and many more incidents of malfunction including smoking and spinning out of control. [redacted] model appears to look identical to the model which caused the significant injury in the US. Ten minutes later, [redacted] reports that she heard the fire alarm and saw flames coming from the machine. She ran to safety with her family and called Fire and Rescue NSW. The fire caused significant damage to nearly fifty percent of the property and [redacted] lost most of her possessions which were uninsured. The landlord of the property was insured for the building.

38. [redacted] says that later that afternoon two unidentified men attended the property unannounced and "threw" the machine in the back of a truck and took it away. They did not ask for permission to remove the washing machine and did not identify who they were. [redacted] assumed that the men were fire investigators from Fire and Rescue NSW. In fact, the unidentified men were hired by Samsung to remove the machine and take it to Samsung head office. The report by Fire and Rescue NSW confirms that the machine was taken by Samsung on the day of the fire and the real estate agent has confirmed that the machine had been removed from the property within 48 hours. The machine was held by Samsung for eleven days before an investigator from Fire and Rescue NSW could gain access to the machine. During this time Samsung had conducted their own investigation and had tampered with and removed parts of the machine.

39. The fire report from Fire and Rescue NSW rules out any other ignition source for the fire and concludes that the only possible source was the washing machine. However the report, written by a fire investigator who was not an electrical engineer, then rules out the washing machine due to the absence of a particular pattern of “arcing”.
40. Fair Trading NSW commissioned a report written by an electrical engineer which draws the same conclusions. It is important to note that the electrical engineer mentions within the report that he was surrounded by no less than six Samsung technicians and numerous legal staff during his assessment which was carried out at Samsung head office.
41. It is perplexing that Fair Trading NSW were able to find an expert forensic report which costs around \$10,000 however they have not found the resources to effectively test the plastic bag remedy in spite of the fact that numerous post repair fires have occurred.
42. The Colyton incident is important because it is evidence, along with the data of new faulty machines generated by our group, that there are potentially hundreds of thousands of Australian families at risk from new model Samsung washing machines as well as the recalled models.
43. Some weeks after the Colyton incident, the [redacted] from Newcastle suffered a fire caused by a repaired recall machine. The [redacted] reported that Samsung also contacted them immediately asking for possession of the machine before the fire investigator arrived. It is concerning that Samsung appears to have adopted a policy of extracting evidence before it can be assessed by an electrical forensic expert.
44. This information has been provided to Minister Dominello who has dismissed our concerns.

Fair Trading

45. Our group is concerned that a number of failures on the part of Fair Trading NSW have put the lives of innocent Australian families at risk. I have already described above the fact that Fair Trading NSW enabled Samsung to only offer a repair remedy leading to 93,000 being installed with a plastic bag. Fair Trading NSW also ignored substantial evidence relating to the safety of the plastic bag remedy. Fair Trading NSW have also rejected our concerns relating to the new models of Samsung washing machine and have instead put the blame on consumers for overloading their machines.
46. It is a cause for concern that Fair Trading NSW officers appear to have assisted Samsung in taking [redacted] destroyed machine without permission. There have been over 270 fires since the recall began and Fair Trading NSW are well aware that the normal procedure is that burnt machines are carefully removed by an electrical engineer appointed by the building insurer and taken to a laboratory for detailed analysis. In respect to the Colyton case, this could not happen due to the intervention by Samsung and Fair Trading.
47. In 2015, an internal report into the conduct of Fair Trading NSW concerning its recall procedures was written by Deloitte. According to an article written by the Sydney Morning Herald (Appendix 7), the report “identified flaws causing delays, confusion and cases to fall between the cracks”. The report also criticised Fair Trading NSW’s organisation structure which briefly led to the dismissal of Commissioner Rod Stowe who was subsequently reinstated.

48. We believe that Fair Trading NSW are the gate keepers of the safety of all families within the state. As parents, we rely on them to do their job competently to protect our children from harm. We are normally not aware of a failure within the system until a death arises. Any one of the three hundred fires caused by faulty Samsung washing machines could have caused a fatality.
49. It is a considerable cause for concern that homes are still being destroyed by these faulty machines some three years after the recall began. In January 2016 a recalled Samsung washing machine caught fire at a childcare centre at Coogee forcing nearly one hundred staff and children to be evacuated from the centre. This incident demonstrates how serious the recall situation really is. Last week in Queensland a child and an elderly man (in separate incidents) have died after being trapped inside their homes when a fire broke out. These fires were not related to the Samsung recall however it demonstrates how easily a fire can claim a life.
50. The Electrical Regulatory Advisory Council is the oversight committee responsible for the coordination of all regulators around the country. The Council advise that it is standard procedure that the lead regulator is responsible for recalls nationally and in this case all other states rely upon Fair Trading NSW to manage the recall. I wrote to every state regulator in the country concerning the recall and received a response from every single one of them stating that Fair Trading NSW is administering the recall on behalf of every state. NSW did not fully understand their responsibilities in this respect. On 17 September 2015 The Daily Telegraph reports that Fair Trading Minister Victor Dominello believed that the responsibility for the recall rested with the ACCC:

‘The ACCC is in the best position to administer a national recall. The ACCC should step up to the plate and take steps to coordinate a national response. I’m very upset that they haven’t come to the game.’

51. The chairman of the ACCC, Rod Sims, disagreed with Mr Dominello’s position”

“As agreed by all state electrical safety regulators, the NSW regulator is administering this (recall) on behalf of all states meaning Samsung customers across Australia are entitled to the same remedy.”

52. According to another article in the Daily Telegraph on 23 March 2016,

“NSW Fair Trading said it did not know how many fires and other incidents there had been nationally.”

53. Minister Dominello is advised directly by Commissioner Rod Stowe and it seems incredulous that more than two years after the recall began, Fair Trading NSW were unaware of their responsibilities and were not in control of the recall procedure. They did not possess accurate data concerning the number of fire incidents nationally which should have been easily obtainable. Meanwhile, the lives of hundreds of thousands of Australians were at risk from the ticking timebombs they were not aware they had in their homes. Fair Trading NSW appears to be relying solely on data provided by Samsung.

54. In a statement to one of our members only last week of on Tuesday 6th December 2016,
, senior manager at Fair Trading NSW stated;

“The Australian Competition and Consumer Commission (ACCC) has been responsible for monitoring the result of the national recall and as a state based regulator, we have supported the ACCC with its work.”

55. The issues concerning the 2013 recall in Australia and the safety issues associated with the new machines are closely linked. The way that the initial recall has been administered by Samsung, Fair Trading NSW and the ACCC directly affects the way that concerns over new faulty models have been addressed. Samsung has been allowed to devise a flawed repair remedy associated with the recalled machines which was not subjected to robust testing. Fair Trading NSW promoted false information concerning consumer rights under Australian Consumer Law for a period of over two years. These mistakes could be applied to any future recalls unless a transparent and effective investigation is undertaken.
56. In July this year I wrote to [redacted] from the ACCC in respect to a number of serious incidents concerning new models of Samsung washing machines which had caught fire. In a number of cases Samsung had refused to replace or refund the product which obviously contained a major fault causing it to catch fire. Instead, Samsung has sent technicians to simply cut out the affected part and replace them instead of identifying the cause of the fire. This dangerous repair strategy if allowed to continue, could cause serious harm to the lives of consumers. There have been a significant number of deaths caused by house fires this year around the country including a number of young children.
57. [redacted] responded to my concerns;
- “The ACCC cannot pursue all the complaints it receives or issues that come to its attention about the conduct of retailers or businesses and the ACCC rarely becomes involved in resolving individual consumer of business related disputes.”*
58. I pointed out to [redacted] that the enforcement policy of the ACCC clearly states that “the ACCC will always prioritise the assessment of product safety issues which have the potential to cause serious harm to consumers”. The policy also states that it will give priority to issues concerning significant public interest, unconscionable conduct particularly involving large companies and conduct involving the blatant disregard for the law.
59. I have subsequently been involved with a number of discussions with [redacted], Managing Director of the ACCC. Whilst [redacted] has been sympathetic to our concerns, his is of the opinion that the ACCC can not step on the toes of Fair Trading NSW and indeed, does not have the resources to do the job that they should be doing.
60. So where does that leave consumers? Our consumer group has spent the last eighteen months trying to communicate with key regulators concerning the recall. It appears to be the case that Fair Trading NSW are content to stick their heads in the sand, unwilling to admit to an error of judgement in approving a dangerous plastic bag repair and pointing the finger of responsibility at the ACCC. Meanwhile the ACCC have washed their hands of any responsibility and have even avoided prosecuting one of the largest manufacturers in the country over their blatant disregard for consumer law. Whilst every regulator in the country has avoided any responsibility, hundreds of Australian families have lost their homes. I invite you to speak to one of these families to gain an understanding of what it feels like to lose everything you own. The current regulatory model concern “one law, multiple regulators” in Australia is inherently flawed, impractical and can not reasonable be implemented. To this end, the ACL is failing to protect hundreds of thousands of Australian families involved in the recall.

61. There are currently 43,016 faulty Samsung washing machines sitting in family homes around the country that have been repaired with an unsafe plastic bag. There are a further 26,536 units around the country that have not yet been surrendered more than three years after the recall began. The faulty recalled machines are now ageing rapidly and are becoming more unstable due to exposure to moisture and corrosion. Last month (September 2016) there were eight fires relating to recalled Samsung washing machines.
62. There is presumably a similar quantity of faulty new Samsung washing machines in family homes which need to be investigated. The risk to the public is therefore sufficient to warrant a thorough investigation and I would be grateful if you would facilitate this.
63. I can confirm that all of the information contained in this submission has been provided to Fair Trading NSW and the ACCC. I would be happy to provide you with copies of their responses.
64. I would be also happy to provide you with further details and supporting documentation if you require it..
65. I can be contacted on 0421 377 579 or tarnallen@hotmail.com and would be happy to discuss the issue further with you.

I look forward to hearing from you.

Yours Sincerely,

Tarnya Allen

Administrator – Samsung Washing Machine Consumer Support Group

LIST OF APPENDICES

Appendix 1	Samsung recall progress update	23 September 2016
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