

1 May 2024

Hon Judith Collins KC, Attorney-General

## **Consistency with the New Zealand Bill of Rights Act 1990: Consumer Guarantees (Right to Repair) Amendment Bill**

### **Purpose**

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1. We have considered whether the Consumer Guarantees (Right to Repair) Amendment Bill (the Bill), a member's Bill in the name of Hon Marama Davidson MP, is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).
2. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion, we have considered the consistency of the Bill with section 14 (freedom of expression). Our analysis is set out below.

### **The Bill**

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3. The Bill amends the Consumer Guarantees Act 1993 (the principal Act) to require manufacturers to make repair parts and information available to consumers. The intention of the Bill is to support a circular economy by extending the lifetime of products.
4. The Bill repeals section 42 of the principal Act, which provides that repair facilities and parts do not have to be made available if the consumer is notified at the time the product is supplied that these will not be available.
5. The Bill replaces section 12 of the principal Act to expand consumers' guarantees regarding information, repairs, and spare parts. It requires a manufacturer to provide, upon the consumers' request, the information, spare parts, and tools used by the manufacturer to diagnose, maintain, or repair goods supplied to the consumer. The Bill also inserts a new section 19A that empowers consumers to request that suppliers repair goods rather than replace them.

### **Consistency of the Bill with the Bill of Rights Act**

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#### **Section 14 – Freedom of expression**

6. Section 14 of the Bill of Rights Act affirms that everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind and in any form. The right to freedom of expression has also been interpreted as including the right not to be compelled to say certain things or to provide certain information.<sup>1</sup>

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<sup>1</sup> See, for example, *Slaight Communications v Davidson* 59 DLR (4th) 416; *Wooley v Maynard* 430 US 705 (1977).

7. The Bill requires a manufacturer to provide the consumer, at the consumer's request and within 20 working days, with the most recent version of any information used to diagnose, maintain or repair the goods. This prima facie limits the right to freedom of expression. The category 'manufacturer' is defined broadly in section 2 of the principal Act.
8. Ordinarily a provision found to limit a particular right or freedom may nevertheless be consistent with the Bill of Rights Act if it can be considered reasonably justified in terms of section 5 of that Act. The section 5 inquiry asks whether the objective of the provision is sufficiently important to justify some limitation on the freedom of expression; and if so, whether the limitation is rationally connected and proportionate to that objective and limits the freedom of expression no more than reasonably necessary to achieve that objective.<sup>2</sup>
9. The objective of the Bill is to extend the lifetime of products, keeping resources in circulation and waste out of landfills to work towards building a circular resource economy to mitigate climate change and protect biodiversity as well as lower costs for consumers. We consider this is a sufficiently important objective to justify some limit on the right.
10. The requirements imposed on manufacturers to provide certain information in specific circumstances are rationally connected to this objective. Ensuring that relevant information is provided in the prescribed manner to all necessary parties is fundamental for achieving the Bill's objectives and appears to limit the right no more than reasonably necessary to achieve them. The Bill allows manufacturers to charge for a reasonable estimate of the cost of providing paper copies of information if these are requested by the consumer.

## **Conclusion**

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11. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.



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<sup>2</sup> Hansen v R [2007] NZSC 7, [2007] 3 NZLR 1.