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Committee Secretariat
Economic Development, Science and Innovation Committee
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Retail NZ submission: Consumer Guarantees (Right to Repair) Amendment Bill

Overview

1. Retail NZ is a membership organisation that represents the views and interests of New Zealand's retail sector. We are the peak body representing retailers across Aotearoa, with our membership accounting for nearly 70% of all domestic retail turnover. New Zealand's retail sector comprises approximately 30,000 businesses and employs around 227,000 Kiwis.
2. Retail NZ consulted our membership in the preparation of this submission.
3. Retail NZ supports waste reduction but has concerns regarding the practicalities of enacting the Consumer Guarantees (Right to Repair) Amendment Bill. The Bill, as written, is so broad that it would be unworkable in practice.
4. The Bill is an amendment to the Consumer Guarantees Act (CGA), and that Act defines manufacturers as:
 - a. The manufacturer means a person that carries out the business of assembling, producing, or processing goods, and includes—
 - i. any person that holds itself out to the public as the manufacturer of the goods;
 - ii. any person that attaches its brand or mark or causes or permits its brand or mark to be attached, to the goods;
 - iii. where goods are manufactured outside New Zealand and the foreign manufacturer of the goods does not have an ordinary place of business in New Zealand, a person that imports or distributes those goods.
5. Therefore, under the CGA, and so this Bill, importers, wholesalers, and suppliers can be considered the equivalent of manufacturers.
6. Where a wholesaler, importer, or supplier buys items from a manufacturer, that is a commercial sale, and so not covered by the CGA. The manufacturer role is now taken by the wholesaler, importer or supplier. However, the relationship the consumer has is with the retailer. When a complaint about an item or a product return is made, the consumer will often contact the retailer.
7. Bearing that in mind, the Bill, although it specifies manufacturers, will actually apply to retailers in many situations. The retailer is the party who will be called upon to provide satisfaction to the customer.
8. Enactment of the CGA often falls on retailers at present, and so would the Right to Repair Bill. If a supplier offering a warranty goes out of business, the retailer that sold the item with the warranty is responsible for the repair or replacement, but without recourse for reimbursement from the supplier. The retailer's ability to repair or replace the item would likely be limited and the retailer would be responsible for any refund, repair or replacement, yet they have not produced the product.

Scope

9. Retail NZ is concerned that this Bill has no limitations on the products it covers. As written, the Bill will apply to all consumer products, including repairing small or low-cost products. We recommend that the scope of this legislation is narrowed, for example, to apply only to certain electronics as in the UK and California. In the UK, the right to repair rules only apply to household washing machines/washer driers, dishwashers, refrigerators and electronic displays¹.
10. Another option to ensure that the scope is manageable is to introduce a minimum price, as in California. Their Right to Repair Act applies to goods that have a wholesale price to the retailer, or to others outside of direct retail sale, of \$US50²³ or more. Additionally, scope is limited to any electronic or appliance product.
11. Retail NZ also wants the Bill to be clear that it does not apply to second-hand goods. If they are included, it would put undue responsibility on second-hand shops, including charity shops. Inclusion may lead to a reduction in second-hand goods sales, increasing the waste sent to landfill.

Transition time

12. Retail NZ believes a minimum 12-18 month transition period is needed for manufacturers and other parties including retailers, as defined under the CGA, to comply with the Bill.

Section 42 removal

13. Retail NZ is concerned about the removal of section 42 from the CGA and how that affects the selling of 'faulty/damaged' goods. Removing section 42 would mean that if a retailer sells an item with a scratch or cosmetic damage, or something where one small part that does not affect overall function is not working, that the consumer can then get the item repaired under the Consumer Guarantees (Right to Repair) Amendment Bill even though they were aware of the fault before purchase and may have received a discount as a result of the imperfection. This may have the unintended consequence of increasing waste, as imperfect items would be sent to landfill rather than risk uneconomical repair requirements.

Compliance

14. Retail NZ's view is that a system must be put in place to ensure compliance by manufacturers with any right to repair legislation. At present, when a manufacturer does not uphold their side of the CGA, it falls to the retailer to satisfy the customer. This feels like an imbalance in responsibility for the onus to be on the retailer.

¹ Page 7, <https://researchbriefings.files.parliament.uk/documents/CBP-9302/CBP-9302.pdf>

² https://custom.statenet.com/public/resources.cgi?id=ID:Bill:CA2023000S244&cuiq=37d6e53d-38b7-5884-91fc-fe24c5a47af0&client_md=32bdcec768d6086b3ba8848cd44b0d95&mode=current_text

³ <https://perkinscoie.com/insights/update/californias-digital-fair-repair-act-sb-244#:~:text=Key%20Provisions%20of%20the%20Right%20to%20Repair%20Act&text=with%20minimum%20retail%20or%20direct,Requirements%20for%20documentation.>

Spare parts

15. The Consumer Guarantees (Right to Repair) Amendment Bill does not address who should be responsible for having spare parts available and how long the spare parts should be available for. This raises several issues.
16. As the Bill stands, every consumer item is covered. As mentioned, under the CGA importers, wholesalers, suppliers, and retailers often have the role and responsibility of ‘manufacturer’. They supply thousands of items and models, with more each year. One large retailer informed Retail NZ that they have well over 100,000 SKUs⁴.
17. Many other products are taken off the market or go out of production each year. It would be challenging for manufacturers and retailers to keep spare parts in stock for an extended period of time.
18. In California, where electronics or appliances are sold for \$US50 to \$US99.99, the manufacturer's obligations last for three years from the date the last model or type was manufactured. If the electronics or appliances are sold for more than \$US100, the manufacturer's obligation lasts for seven years from the date the last model or type was manufactured.
19. An unintended consequence of the Right to Repair Bill having such a broad scope, coupled with limitless timeframes, could be an increase in cost to consumers as manufacturers (as defined under the CGA), will need more space for storage. For example, if an importer must have spare parts, such as fridge drawers, then with more models being sold each year, they may need to extend their existing storage space. These costs would ultimately be passed on to consumers.
20. Retailers may need to have spare parts on hand for popular items. They would also have to find space to store these spare parts, with costs passed on to consumers.

Who spare parts are provided to

21. Section 12 (1) (b)⁵ of the Consumer Guarantees (Right to Repair) Amendment Bill states that manufacturers must “provide the consumer, upon the request of the consumer, with the most recent version of any information, spare parts, software, and other tools that the manufacturer uses for diagnosing, maintaining, or repairing the goods”⁶.
22. Retail NZ says this should be expanded to clarify that section 12 (1) (b) applies to people undertaking repairs, such as repair agents, as well as consumers. In the UK, the legal obligation is to make spare parts available to professional repairers and/or end-users.

Safety

23. Further to our points above, the Bill does not address who would carry out repairs on products, how to ensure that repairs are carried out safely or how to confirm that repaired products are safe to use.

⁴ <https://www.dhl.com/nz-en/microsites/supply-chain/fulfillment-network/knowledge-hub/what-is-a-sku.html>

⁵ <https://www.legislation.govt.nz/Bill/member/2024/0039/3.0/LMS952545.html>

⁶ <https://www.legislation.govt.nz/Bill/member/2024/0039/3.0/LMS952545.html>

24. Retail NZ is concerned for the safety of non-professionals who might attempt to do electrical repair work where they may not be suitably knowledgeable to undertake it safely.
25. Under ‘Doing your own electrical work⁷’, WorkSafe states that the work of repairing your own appliances must be carried out in accordance with the requirements of ECP 50⁸.
26. We would like to see further research on the potential for consumers to harm themselves or others while repairing items before this Bill progresses further.

Impact on New Zealand market’s attractiveness to manufacturers

27. Compared to other countries, New Zealand is a very remote, small country with a spread-out population roughly the same size as Sydney.
28. Manufacturers and suppliers may decide that the compliance requirements and costs are too high for such a small market, especially if our requirements are not the same as those of Australia.
29. This may have the unintended consequence of manufacturers and suppliers deprioritising New Zealand retailers, leading to a reduction in available products and choice for consumers.
30. Additionally, a lack of options may push consumers into buying more items online. It is difficult for regulators to police items bought on international platforms, to ensure they meet New Zealand standards and protections. The difficulties of ensuring that items bought online are also subject to right to repair requirements must be considered.
31. Domestic retailers are already faced with additional costs and compliance compared to their international online competitors. This Bill risks increasing the disparity between buying online and buying from domestic suppliers.

Conclusion

Thank you for the opportunity to make a submission. Retail NZ supports the intent of the Bill, but significant work is needed to make the Bill workable in practice.

In summary, we recommend that the Bill does not proceed as it is unworkable in practice, due to the following points:

- The scope of the Bill is too broad. It must be reviewed to cover only specified categories of products and/or price points as happens in other jurisdictions. A time limit on how long spare parts should have to be available for is also recommended.
- A carve-out is needed for goods being sold second-hand, and also for goods currently sold as faulty or damaged under section 42 of the Consumer Guarantees Act.
- The safety of repairs, particularly to electrical goods, must be considered.

⁷ <https://www.worksafe.govt.nz/managing-health-and-safety/consumers/safe-living-with-electricity/getting-electrical-work-done/doing-your-own-electrical-work/>

⁸ ECP 50 - New Zealand Electrical Code of Practice for Repair and Maintenance of Domestic Electrical Appliances by the Owner of the Appliance (NZECP 50:2004)

Retail NZ is happy to discuss any aspect of this submission further. Retail NZ would like the opportunity to make an oral submission to the committee.

No part of this submission should be withheld under the OIA.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Carolyn Young'.

Carolyn Young
Chief Executive
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