

Submission on the Consumer Guarantees Act (Right to Repair) Amendment Bill 2024

“Efforts by households to reduce pollution and waste, and to consume with prudence, are creating a new culture. The mere fact that personal, family and community habits are changing is contributing to greater concern about the unfulfilled responsibilities of the political sectors and indignation at the lack of interest shown by the powerful. Let us realize, then, that even though this does not immediately produce a notable effect from the quantitative standpoint, we are helping to bring about large processes of transformation rising from deep within society.” (Apostolic Exhortation *Laudate Deum* Pope Francis to All People Of Good Will on the Climate Crisis, paragraph 71).

Introduction

1. The Wellington Catholic Archdiocese Commission for Ecology, Justice and Peace is established to:

contribute to and participate in work for justice and peace inspired and informed by Catholic Social Teaching. The Commission’s key responsibilities are:

- Supporting the communities of the Archdiocese and wider community to hear and actively respond to the cry of the earth and the cry of the poor;
- Scrutinising all issues and institutions in society and in the Archdiocese in the light of Catholic social teaching.

We hope that these Catholic social teaching principles will be broadly shared by many others, regardless of religious background.

Position on the Consumer Guarantees Act (Right to Repair) Amendment Bill 2024

2. The Ecology, Justice and Peace Commission of the Archdiocese of Wellington is supportive of the Bill, particularly the amendment of the current Consumer Guarantees Act 1993 (CGA) that the consumer has the right to access information, repair services or spare parts to consumer goods covered under the CGA (s5, proposed change to s 12 (1)(b)). In addition, the Commission is supportive of repealing s 42 of the CGA, as this clause allows manufacturers and sellers of consumer goods to take exception and refuse responsibility to provide repair services or parts for a reasonable period of time after the sale of their consumer item, through the provisions of s 12 of the CGA, if the manufacturer/seller notifies the consumer through reasonable action before the sale of the consumer item.

3. The Commission is also supportive of the consumer’s right to repair rather than replacement (s 6 of Bill) through the addition of an amended s 14, proposed clause 4, where consumers who hold an expressed guarantee in the terms and conditions provided may seek the services other than authorised repair services or parts, providing the services are rendered with reasonable skill subject to the CGA, without fear that their expressed guarantee from the original manufacturer/seller is rendered null and void. The consumer can then claim for the cost of the repair from the original manufacturer or seller. While under the CGA the opportunities for refund or replacement, as well as repair for a consumer item unsuitable for purpose in the reasonable lifespan of the item under s 19 may be equivocal, the consumer may not necessarily be able to exercise the right of choosing the type of remedy exercised. The proposed s 19A additions to the CGA brought upon by the Bill will ensure that manufacturers must repair the item within a reasonable timeframe, if the consumer pursues such a remedy.

4. The exercise of allowing consumers to have a right to repair fulfils the Catholic Social Teaching concept of Participation (Nāu te rourou, nāku te rourou). The Bill prevents manufacturers, who are unable to repair what could be a ‘simple fix’ for other manufacturers, to hold onto their monopoly of the consumer even when they have no ability to provide for the repair services concerned,

especially if they apply these aspects under the auspices of warranties or express guarantees. In the past, the manufacturer may have remedied such circumstances with a replacement, which nonetheless sentences what could be repairable goods to the landfill and ultimately contributing to landfill mass needlessly discarded. This becomes a Stewardship (Kaitiakitanga) problem – manufacturers are placing their want to charge for services or monopolise customers before addressing the levels of wastage they might be producing from offering full replacements. There is often an assumption in a mass-produced society that full replacement is more cost-effective than replacement of single-parts. However, such an assumption, in their quest to cut costs under such a model, dis-incentivize manufacturers to stock spare parts or have many branches of the brand/company who may be able to repair consumer goods, and thus spare parts or repair shops have never been locally accessible or available for the perusal of consumers. Potentially, the wider availability of repair shops may have initial startup or increased upfront costs for the manufacturer, but given a number of years from which repair shops operate and spare/repair parts are made more widely available, the costs for a manufacturer to replace a part rather than an entire consumer item under the CGA may in fact be more cost effective in the long run.

5. Consumer goods are often assembled from a myriad of non-renewable resources, such as rare earth metals, whereby once mined, cannot be easily repleted in the earth. For example, forecasts suggest that if there were no recycling of rare earth metals used for the production of electronic devices, the known reserves of rare earths around the world will become depleted by the middle of the 21st century. Therefore, the reuse of consumer goods that can be reasonably fixed and extending their operational lifetime will mean that mining levels can be operated at both economically and environmentally-sustainable levels, whereby the mining of virgin (new) materials to satisfy consumer demands can be reduced. In Catholic Social Teaching, creating a circular economy for materials allows proper stewardship of the finite levels of natural resources present in the earth.

6. The right to access of information, repair services or spare parts for consumer goods also prevents such items from being prematurely discarded in the landfill. Globally, hundreds of millions of tons of waste are generated each year. Not only is the earth “beginning to look like an immense pile of filth” (Encyclical *Laudato Si’*, Pope Francis, paragraph 21), but the wider environmental impacts from industrial chemicals generated from landfill leachate poses additional concerns for human and ecosystem health. One person’s former consumer item is another person’s trash. A consumer item has multiple components which, when exposed to the natural environment of the landfill, may contribute to toxins and contaminants which negatively affect the livelihoods or survival of those dependent on the ecosystem surrounding the landfill. As such, it can only be a reasonable conclusion that the reuse and recycling of consumer goods, whether it be computers, smartphones and other electronic devices, would extend their operational lifetimes and reduce the net volume of consumer waste that is destined for the landfill each year, which in turn, reduces the potential amounts of leachate that any particular ecosystem will be exposed to. Therefore, any incentive to reuse and recycle consumer goods contributes to the overall Common Good (He Painga mā te katoa).

7. The Commission recommends in the Bill under the proposed s 12 (6), which states that “the provision of information, spare parts, software, and other tools under this section does not limit or affect any intellectual property rights in the information, spare parts, software, and other tools.” be clarified, as to what conditions manufacturers cannot claim intellectual property rights as a defence to refusing provision (i.e. when information about certain types of repair are clearly in the public domain, which must be transparently disclosed) and what amounts to tampering with intellectual property through a reconstruction of a patented product or part, in contrast to a repair of an existing replicate item (see ["Intellectual Property Law and the Right to Repair" by Leah Chan Grinvald and Ofer Tur-Sinai](#)). An argument from manufacturers against the right to repair may be that a freedom and autonomy for other manufacturers to have a right to repair consumer items constitutes

infringement of trademarks and copyrights, and that information they consider that pertains to these trademarks and copyrights are confidential. Potentially, the clause may create a loophole whereby manufacturers refuse to release information, spare parts, software or other tools to the consumer, at the defence of protecting their own patents. When could the release of trade secrets or intellectual property be actually beneficial for both manufacturers and consumers? From a moral and Catholic Social Distributive Justice point of view (Te Tika ka Tohaina), it is vital that any rewards that are deserved from patents who own intellectual property are respected justly; however such rewards and profits must also not infringe on consumer rights, especially when an old product may be stamped with a new trademark by a manufacturer with no underlying 'scientific' or 'technological' innovation and is rather generic, and be classified as 'new', and a barrier is placed on the ordinary consumer not allowed to access information or repair processes which is in essence still basically in the public domain.

9. The Bill is broad-based to the nature of the Consumer products concerned, and does not differentiate or distinguish the right to repair specifications of work equipment, such as a computer or electronic device, consumables such as ball-point pens as opposed to necessary medical equipment that sustains life (i.e. oxygen machine). Clarifications concerning whether exceptions to intellectual property rights that direct a manufacturer to release product and part information so that a local manufacturer, under good manufacturing processes, may be able to cost-effectively repair essential medical equipment, should be included in the Bill.

10. The Bill suggests that if information is provided to the consumer as to the repair processes and parts, that it be provided free of charge unless paper copies are requested (proposed s 12(4)). The Commission questions why information that is not subject to intellectual property and deemed confidential by manufacturers cannot be released onto an accessible source online, such as a corporate or company website, for diffusion and wide dissemination of right to repair information.

11. The Bill suggests that a reasonable price that a manufacturer charges for parts, tools and software involved in the repair of the consumer good but must not exceed the price of the diagnostic, maintenance or repair service itself (proposed s 12(5)). The Commission believes this to be a fair incentive to allow consumers to take advantage of repair services rather than be economically impeded to do so. There is however a consideration that if repair services were more expensive than the purchase of a new and original consumer good itself, would that dis-incentivise consumers to choose a repair option? Perhaps an additional clause which states that the charge for repair parts and tools as well as the repair services must not exceed the cost of purchase of a new and original consumer good of the same make and model.

Summary and Recommendations

Overall, the Commission supports with modification to the Bill and suggests modification to the Bill on the following aspects:

a) A greater clarification around the way in which current intellectual property legislation and frameworks can work with the Right to Repair Amendment, particularly around the realm of repair information dissemination.

b) Specifying the conditions when it would be vital for manufacturers, even when intellectual property and patents are current, to release information on moral obligations for the local but sound repair of an essential piece of medical equipment, and differentiating such items from other consumer items. Such guarantees will need to ensure that stringent good manufacturing and repair practices for essential medical equipment continue to apply for outsourced independent manufacturers/repairers as they have for original manufacturer.

c) Repair information can be freely available on websites/online, if there is no hindrance from an intellectual property point of view.

d) To incentivise consumers to repair rather than replace, a clause to limit the costs of the repair and parts to a specific fraction of the cost to buy an item of the same make and model brand new.

Conclusion

“Every effort to protect and improve our world entails profound changes in “lifestyles, models of production and consumption, and the established structures of power which today govern societies”. Authentic human development has a moral character. It presumes full respect for the human person, but it must also be concerned for the world around us and “take into account the nature of each being and of its mutual connection in an ordered system”. Accordingly, our human ability to transform reality must proceed in line with God’s original gift of all that is.” (Encyclical *Laudato Si’*, Pope Francis, paragraph 5).