

19 September 2024

Economic Development, Science and Innovation Committee
Parliament Buildings
Wellington

By email: EconomicDevelopment.Science.Innovation@parliament.govt.nz

Tēnā koutou

Supplementary submission: Customer and Product Data Bill

1. The Select Committee has asked Te Kāhui Ture o Aotearoa New Zealand Law Society (**Law Society**) to provide further information clarifying a question raised at the hearing of the Law Society's submission on the Customer and Product Data Bill (**Bill**).¹ The question relates to the interface between the Bill and the Privacy Act 2020 (**Privacy Act**), whether there is any difference for the purposes of the Bill between authorisation and consent and, if so, how the distinction may be understood.

The relationship between authorisation and consent

2. The Law Society's view is that in a general sense, there is no legal distinction between authorisation and consent. However, in the context of the Bill and in a privacy context:
 - 2.1. *authorisation* is an umbrella term referring to when something is authorised;
 - 2.2. *individual consent* is a form of authorisation, where an individual provides their authorisation by way of giving their consent (see IPPs 2(2)(c), 10(1)(c), and 11(1)(c) of the Privacy Act);² and
 - 2.3. there are other forms of authorisation that occur not by the individual, e.g. authorisation by law (Privacy Act, IPP3(1)(e)).
3. Individual consent is not a key aspect of privacy law in New Zealand, but authorisation (whether by the individual concerned or other means) is.

Authorisation requirements

4. In terms of authorisation by an individual, the Law Society considers that there are some key considerations crucial to assuring customers that their rights are being protected:

¹ For the Law Society's submission, see: https://www.lawsociety.org.nz/assets/Law-Reform-Submissions/NZ-Law-Society-GHIC-AISA_17.9.24.pdf and proceedings of Thursday, 12 September 2024, Economic Development, Science and Innovation Committee.

² Privacy Act 2020, s 22.

- 4.1. The individual's consent (i.e. authorisation) must be informed, specific, intentional, and freely given, without controlling influence.
- 4.2. A request for authorisation must clearly state why the authorisation is sought, how long it will last, and how to end the authorisation. IPP3 of the Privacy Act may be considered, to illustrate the premise of what an individual should know to offset the impact on their privacy rights.
- 4.3. There needs to be a clear option for the customer to expressly confirm their authorisation, not just assume it under general terms and conditions.
5. How such requirements may be implemented in practice in the Bill in the context of a consumer data right is a policy and drafting matter for the Committee to address with officials.
6. The Law Society welcomes the opportunity to provide these brief further comments and trusts that they will assist the Committee.

Nāku noa, nā

A handwritten signature in blue ink that reads "David Campbell". The signature is written in a cursive, slightly slanted style.

David Campbell
Vice President