

24 April 2018

Hon David Parker, Attorney-General

## **Consistency with the New Zealand Bill of Rights Act 1990: Patents (Advancement Patents) Amendment Bill**

### **Purpose**

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1. We have considered whether the Patents (Advancement Patents) Amendment Bill ('the Bill'), a member's Bill in the name of Dr Parmjeet Parmar 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 s 14 (freedom of expression) and s 27(1) (right to justice). Our analysis is set out below.

### **The Bill**

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3. The Bill makes amendments to the Patents Act 2013. The purpose of the Bill is to provide intellectual property protection rights in respect of advancements that may or may not qualify as an invention for the purposes of a standard patent. The amendments introduce a second-tier patent system that applies to advancements that are novel, useful and non-obvious.

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

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

4. 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.
5. We note that the Bill imposes information disclosure requirements and requires the Commissioner of Patents ('the Commissioner') to produce and provide reports. We consider that any limits these provisions impose on the freedom of expression are reasonable in the regulatory context of patent law, and are justified under the Bill of Rights Act to achieve the objectives of the advancement patents scheme.

### **Section 27(1) – Right to justice**

6. Section 27(1) of the Bill of Rights Act provides that every person whose interests are affected by a decision of a public authority has the right to the observance of the principles of natural justice. Section 27 is concerned with procedural fairness and what will be procedurally fair depends on the facts of each case. Natural justice includes the right to a fair hearing.

7. Clauses 14 and 22 provide that an appeal against the Commissioner's decision must be made within 28 days of the date of the decision. This may be considered to engage s 27(1) on the basis that the time limits may, in some circumstances, affect a claimant's right to be heard. However, we consider the Bill achieves an appropriate balance between the right to be heard and the practical considerations such a scheme must take into account. We also note that the 28-day timeframe to appeal falls within the standard range for appeals of this kind. To the extent that the timeframe constitutes a limit on s 27(1), we consider that limit is justified.

## **Conclusion**

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

Jeff Orr  
**Chief Legal Counsel**  
**Office of Legal Counsel**