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The Parliament of the  
Commonwealth of Australia

THE SENATE

*Presented and read a first time*

**Competition and Consumer Amendment  
(Prevention of Exploitation of Indigenous  
Cultural Expressions) Bill 2019**

**No.     , 2019**

*(Senator Hanson-Young)*

**A Bill for an Act to amend the *Competition and  
Consumer Act 2010* to prevent unfair practices in  
the supply of goods that exhibit Indigenous cultural  
expressions, and for related purposes**



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1 **A Bill for an Act to amend the *Competition and***  
2 ***Consumer Act 2010* to prevent unfair practices in**  
3 **the supply of goods that exhibit Indigenous cultural**  
4 **expressions, and for related purposes**

5 The Parliament of Australia enacts:

6 **1 Short title**

7 This Act is the *Competition and Consumer Amendment*  
8 *(Prevention of Exploitation of Indigenous Cultural Expressions)*  
9 *Act 2019*.

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1 **2 Commencement**

2 (1) Each provision of this Act specified in column 1 of the table  
3 commences, or is taken to have commenced, in accordance with  
4 column 2 of the table. Any other statement in column 2 has effect  
5 according to its terms.  
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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	The day after the day this Act receives the Royal Assent.	

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7 Note: This table relates only to the provisions of this Act as originally  
8 enacted. It will not be amended to deal with any later amendments of  
9 this Act.

10 (2) Any information in column 3 of the table is not part of this Act.  
11 Information may be inserted in this column, or information in it  
12 may be edited, in any published version of this Act.

13 **3 Schedules**

14 Legislation that is specified in a Schedule to this Act is amended or  
15 repealed as set out in the applicable items in the Schedule  
16 concerned, and any other item in a Schedule to this Act has effect  
17 according to its terms.

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# Schedule 1—Amendments

## *Competition and Consumer Act 2010*

### **1 Subsection 2(1) of Schedule 2**

Insert:

***Indigenous artist*** means an artist who:

- (a) is a member of the Aboriginal race of Australia or a descendant of the Indigenous inhabitants of the Torres Strait Islands; and
- (b) identifies as Aboriginal or Torres Strait Islander; and
- (b) is recognised as Aboriginal or Torres Strait Islander by the community with which the artist identifies.

***Indigenous ceremonial or sacred artefact*** means an item, being or containing an Indigenous cultural expression, which is used or held in safe keeping by an Indigenous community for ceremonial or sacred purposes.

***Indigenous community***: see section 14A.

***Indigenous cultural artefact*** means a good which is of archaeological, anthropological, historical, scientific, social or spiritual significance to an Indigenous community and includes the following:

- (a) paintings on bark;
- (b) Yidaki or didgeridoo;
- (c) boomerang;
- (d) clapsticks;
- (e) traditional weavings;
- (f) dillybags;
- (g) grass mats;
- (h) carvings.

***Indigenous cultural expression*** means an expression of Indigenous culture (whether through images, form or any other medium) that:

- 1 (a) has archaeological, anthropological, contemporary, historical,  
2 scientific, social or spiritual significance to an Indigenous  
3 community; or  
4 (b) has its origins in an Indigenous community; or  
5 (c) is made by an Indigenous artist; or  
6 (d) is derived from, or has a likeness or resemblance to, one or  
7 more Indigenous cultural expressions mentioned in  
8 paragraphs (a), (b) or (c).

9 *Indigenous cultural expression contract*: see subsection 23(6).

10 **2 Subsection 2(1) of Schedule 2 (definition of *rely on*)**

11 Omit “or small business contract”, substitute “, small business contract  
12 or Indigenous cultural expression contract”.

13 **3 Subsection 2(1) of Schedule 2 (paragraph (b) of the  
14 definition of *transparent*)**

15 Omit “or small business contract”, substitute “, small business contract  
16 or Indigenous cultural expression contract”.

17 **4 Subsection 2(1) of Schedule 2 (definition of *unfair*)**

18 Omit “or small business contract”, substitute “, small business contract  
19 or Indigenous cultural expression contract”.

20 **5 After section 14 of Schedule 2**

21 Insert:

22 **14A Meaning of Indigenous community**

- 23 (1) An Indigenous community is a community of people that identifies  
24 itself as Aboriginal or Torres Strait Islander.
- 25 (2) To avoid doubt, an Indigenous community includes:
- 26 (a) a community that identifies itself as Aboriginal or Torres  
27 Strait Islander through a connection with a particular region  
28 of Australia; or  
29 (b) a group of people within a wider community of the kind  
30 mentioned in paragraph (a), that identify themselves as a



- 1 group through shared goals or activities, such as shared  
2 involvement in the arts; or  
3 (c) the community of Aboriginal and Torres Strait Islanders of  
4 Australia, taken as a whole.

5 **6 Section 23 of Schedule 2 (heading)**

6 Repeal the heading, substitute:

7 **23 Unfair terms of consumer contracts, small business contracts and**  
8 **Indigenous cultural expression contracts**

9 **7 After subsection 23(1)**

10 Insert:

- 11 (1A) A term of an Indigenous cultural expression contract is void if the  
12 term is unfair.

13 **8 After subsection 23(5)**

14 Insert:

- 15 (6) A contract is an Indigenous cultural expression contract if the  
16 contract provides for the grant of consent by an Indigenous artist or  
17 Indigenous community to a person to supply, or offer to supply, a  
18 good to a consumer that includes an Indigenous cultural  
19 expression, with whom the Indigenous artist or Indigenous  
20 community is connected.

21 **9 Subsection 24(1) of Schedule 2**

22 Omit “or small business contract”, substitute “, small business contract  
23 or Indigenous cultural expression contract”.

24 **10 Subsection 25 of Schedule 2**

25 Omit “or small business contract”, substitute “, small business contract  
26 or Indigenous cultural expression contract”.

27 **11 Section 26 of Schedule 2 (heading)**

28 Repeal the heading, substitute:

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1 **26 Terms that define main subject matter of consumer contracts,**  
2 **small business contracts or Indigenous cultural**  
3 **expression contracts etc. are unaffected**

4 **12 Subsection 26(1) of Schedule 2**

5 Omit “or small business contract”, substitute “, small business contract  
6 or Indigenous cultural expression contract”.

7 **13 At the end of Part 3-1 of Chapter 3 of Schedule 2**

8 Add:

9 **Division 6—Unfair practices in relation to the supply of**  
10 **goods that include an Indigenous cultural**  
11 **expression**

12 **50A Misuse of Indigenous cultural expression**

13 (1) A person must not, in trade or commerce, supply or offer to supply  
14 a good to a person that includes an Indigenous cultural expression  
15 unless:

16 (a) either of the following applies:

17 (i) the good is made by an Indigenous artist or members of  
18 an Indigenous community;

19 (ii) the good is a reproduction of a thing created by an  
20 Indigenous artist or Indigenous community with whom  
21 the Indigenous cultural expression is connected, where  
22 the reproduction is in accordance with a written licence  
23 granted by the Indigenous artist or Indigenous  
24 community; and

25 (b) the good or the licensed reproduction attributes the  
26 Indigenous artist or Indigenous community who made the  
27 good or the original good in the case of a licensed  
28 reproduction; and

29 (c) if the good is an Indigenous cultural artefact, the good is  
30 made in Australia by an Indigenous artist or Indigenous  
31 community with whom the Indigenous cultural expression  
32 contained on the Indigenous cultural artefact is connected.

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- 1 (2) A person must not, in trade or commerce, supply or offer to supply  
2 to a person an Indigenous ceremonial or sacred artefact.
- 3 (3) A person must not, in trade or commerce, create, provide or rely on  
4 a document for the purposes of subsection (4), that the person  
5 knows or believes is false in any material respect.
- 6 (4) For the purposes of subsection (1), it is a defence if the person  
7 supplying or offering to supply the good has in his or her  
8 possession a document that complies with the regulations made for  
9 the purposes of this subsection.
- 10 Note: The regulations may specify requirements as to the contents of the  
11 document and the author of the document. The requirements as to the  
12 content of the document may deal with matters relating to who made  
13 the thing or the basis on which the thing is a licensed reproduction of  
14 an original thing.
- 15 (5) For the purposes of paragraph (1)(b), the attribution may be  
16 contained on the good or on packaging of the good which is  
17 provided at the time of supply to a person.
- 18 (6) For the purposes of subsection (2), it is a defence if a person  
19 supplying or offering to supply the thing can prove that the  
20 Indigenous artist or a member of the Indigenous community to  
21 which the Indigenous cultural expression relates had instructed the  
22 person supplying or offering to supply the thing that it is not a  
23 ceremonial or sacred artefact.
- 24 (7) The Minister must appoint a committee, or other appropriate body,  
25 which is representative of Indigenous communities to:
- 26 (a) monitor compliance with this Act as it applies in relation to  
27 Indigenous communities and Indigenous artists; and  
28 (b) report to the Minister on any changes that may be required to  
29 this Act to better protect the rights of Indigenous  
30 communities and Indigenous artists.

### 31 **50AB Offences**

- 32 (1) A person commits an offence if the person, in trade or commerce:  
33 (a) supplies or offers to supply a good to a person that includes  
34 an Indigenous cultural expression; or

- 1 (b) creates, provides or seeks to rely on a document for the  
2 purposes of subsection 50A(3), that the person knows or  
3 believes is false in any material respect.
- 4 (2) An offence against subsection (1) committed by a body corporate  
5 is punishable on conviction by a fine of not more than the greater  
6 of the following:
- 7 (a) \$10,000,000;
- 8 (b) if the court can determine the value of the benefit that the  
9 body corporate, and any body corporate related to the body  
10 corporate, have obtained directly or indirectly and that is  
11 reasonably attributable to the commission of the offence—3  
12 times the value of that benefit;
- 13 (c) if the court cannot determine the value of that benefit—10%  
14 of the annual turnover of the body corporate during the  
15 12-month period ending at the end of the month in which the  
16 body corporate committed, or began committing, the offence.
- 17 (3) An offence against subsection (1) committed by a person other  
18 than a body corporate is punishable on conviction by a fine of not  
19 more than \$500,000.
- 20 (4) Subsection (1) does not apply if:
- 21 (a) the good is:
- 22 (i) made by an Indigenous artist or members of an  
23 Indigenous community; or
- 24 (ii) a reproduction of a thing created by an Indigenous artist  
25 or Indigenous community with whom the Indigenous  
26 cultural expression is connected, where the reproduction  
27 is in accordance with a written licence granted by the  
28 Indigenous artist or Indigenous community; and
- 29 (b) if the good is an Indigenous cultural artefact, the good is  
30 made in Australia by an Indigenous artist or Indigenous  
31 community with whom the Indigenous cultural expression  
32 contained on the Indigenous cultural artefact is connected.
- 33 (5) For the purposes of subsection (1), it is a defence if the person  
34 supplying or offering to supply the good has in his or her  
35 possession a document that complies with the regulations made for  
36 the purposes of this subsection.
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1 Note: The regulations may specify requirements as to the contents of the  
2 document and the author of the document. The requirements as to the  
3 content of the document may deal with matters relating to who made  
4 the thing or the basis on which the thing is a licensed reproduction of  
5 an original thing.

6 (6) Subsection (1) is an offence of strict liability.

7 **14 After Part 1A of Chapter 6 of Schedule 2**

8 Insert:

9 **Part 1B—Application provision relating to the**  
10 **Competition and Consumer Amendment**  
11 **(Prevention of Exploitation of Indigenous**  
12 **Cultural Expressions) Act 2019**  
13

14 **290B Application**

- 15 (1) The amendments made by Schedule 1 to *Competition and*  
16 *Consumer Amendment (Prevention of Exploitation of Indigenous*  
17 *Cultural Expressions) Act 2019* apply in relation to a contract  
18 entered into on or after the commencement of that Schedule.
- 19 (2) The amendments do not apply to a contract entered into before the  
20 commencement of that Schedule. However:
- 21 (a) if the contract is renewed on or after that commencement—  
22 the amendments apply to the contract as renewed, on and  
23 from the day (the *renewal day*) on which the renewal takes  
24 effect, in relation to conduct that occurs on or after the  
25 renewal day; or
- 26 (b) if a term of the contract is varied on or after that  
27 commencement and paragraph (a) has not already applied in  
28 relation to the contract—the amendments apply to the term as  
29 varied, on and from the day (the *variation day*) on which the  
30 variation takes effect, in relation to conduct that occurs on  
31 and after the variation day.
- 32 (3) Despite subsection (2), the amendments do not apply to a contract,  
33 or a term of a contract, to the extent that the operation of the

**Schedule 1** Amendments

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1 amendments would result in an acquisition of property (within the  
2 meaning of paragraph 51(xxxi) of the *Constitution*) from a person  
3 otherwise than on just terms (within the meaning of that paragraph  
4 of the *Constitution*).