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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**COMPETITION AND CONSUMER AMENDMENT (PREVENTION OF
EXPLOITATION OF INDIGENOUS CULTURAL EXPRESSIONS) BILL 2019**

EXPLANATORY MEMORANDUM

(Circulated by authority of Senator Sarah Hanson-Young)

COMPETITION AND CONSUMER AMENDMENT (PREVENTION OF EXPLOITATION OF INDIGENOUS CULTURAL EXPRESSIONS) BILL 2019

OUTLINE

The Competition and Consumer Amendment (Prevention of Exploitation of Indigenous Cultural Expression) Bill 2019 seeks to amend parts of the *Competition and Consumer Act 2010* to prevent the proliferation of fake Aboriginal and Torres Strait Islander art and art products. It makes it an offence to supply or offer commercial goods to a consumer that include Indigenous cultural expression unless it is supplied by, or in accordance with a transparent arrangement with an Indigenous artist or relevant Indigenous community.

NOTES ON CLAUSES

Clause 1: Short Title

1. Clause 1 is a formal provision specifying the short title of the Bill.

Clause 2: Commencement

2. Sections 1 to 3 will commence the day this Bill receives the Royal Assent. Schedule 1 will commence the day after the Bill receives Royal Assent.

Clause 3: Schedules

3. Each Act specified in a Schedule to this Act is amended or repealed as is set out in the applicable items in the Schedule. Any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Competition and Consumer Act 2010

Item 1 Subsection 2(1) of Schedule 2

4. This item sets out definitions of Indigenous artist, Indigenous ceremonial or sacred artefact, Indigenous cultural artefact and Indigenous cultural expression.

Item 2 Subsection 2(1) of Schedule 2 (definition of rely on), Item 3 Subsection 2(1) of Schedule 2 (paragraph (b) of the definition transparent) and Item 4 Subsection 2(1) of Schedule 2 (definition of unfair)

5. These items change occurrences in definitions of terms, so that wherever “small business contract” appears, Indigenous cultural expression contracts are included.

Item 5 After section 14 of Schedule 2

6. This item inserts a definition of the term Indigenous community.

Item 6 Section 23 of Schedule 2 (heading)

7. This item repeals the existing heading and amends it to: 23 Unfair terms of consumer contracts, small business contracts and Indigenous cultural expression contracts

Item 7 After subsection 23(1)

8. This item inserts a provision that voids a term of an Indigenous cultural expression contract if the term is unfair.

Item 8 After subsection 23(5)

9. This item inserts a provision that explains what constitutes an Indigenous cultural expression contract.

Item 9 Subsection 24(1) of Schedule 2 and Item 10 Subsection 25 of Schedule 2

10. These items change references to “small business contract” to “small business contract or Indigenous cultural expression contract.”

Item 11 Section 26 of Schedule 2 (heading)

11. This item changes the heading of section 26 of Schedule 2: “Terms that defining the main subject matter of consumer contracts, small business contracts or Indigenous cultural expression contracts etc. are unaffected.”

Item 12 Subsection 26(1) of Schedule 2

12. This item changes a reference to “small business contract” to “small business contract or Indigenous cultural expression contract.”

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

13. This item inserts an explanation of what constitutes the misuse of Indigenous cultural expression and sets out what constitutes an offence, in relation to supplying goods that include an Indigenous cultural expression, the relevant penalties and the exceptions to the offence in subsection (1).

Item 14 After Part 1A of Chapter 6 of Schedule 2

14. This item explains which contracts the amendments apply to, namely contracts signed or renewed after the amendments come into effect but not those signed prior to its commencement.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of *the Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

This Bill seeks to prevent the proliferation of fake Aboriginal and Torres Strait Islander art and art products. It makes it an offence to supply or offer commercial goods to a consumer that include Indigenous cultural expression unless it is supplied by, or in accordance with a transparent arrangement with an Indigenous artist or relevant Indigenous community.

The Bill proposes to respond to the growing market in fake art and merchandise. These commercially-produced goods, mostly aimed at the tourist market, are often made from non-traditional materials and feature inauthentic and culturally inappropriate designs. This trade misappropriates Aboriginal and Torres Strait Islander culture, undermining the role of traditional communities and artists. It denies Aboriginal and Torres Strait Islander artists economic and other opportunities as well as deceiving and misleading buyers.

Human Rights Implications

This Bill promotes the legal rights of Aboriginal and Torres Strait Islander artists and communities.

As such the Bill does not infringe any of the applicable rights or freedoms.

Conclusion

This Bill is compatible with human rights.

Senator Sarah Hanson-Young