



30 September 2016

Your Ref: SRB

Our Ref: A15781495 (CP02456/2011)

Enquiries: Susan O'Brien, 6552 9525

Hon Kate Doust MLC
Chair
Standing Committee on Uniform Legislation and Statutes Review
Legislative Council
Parliament House
PERTH WA 6000

By email: unileg@parliament.wa.gov.au

Dear Ms Doust

INQUIRY INTO THE STATUTES (REPEALS) BILL 2016

I refer to your letter dated 22 September 2016, seeking my comment on whether Part 4, Division 2 of the above Bill may impact on the sovereignty and law making powers of the Parliament of Western Australia (WA). For the following reasons, my view is that it will not:

Background

In summary, Part 4, Division 2 of the Bill repeals the *Spear-guns Control Act 1955*, with regulation of spear-guns to fall to the *Weapons Act 1999*, and makes a consequential amendment removing the *Spear-guns Control Act 1955* from Schedule 1 of the *Fair Trading Act 2010* (FTA). By reason of its current listing in FTA Schedule 1, the *Spear-guns Control Act 1955* is an Act that prevails over Part 3-3 of the Australian Consumer Law (WA) (ACL (WA)) to the extent of any inconsistency¹. However, the *Spear-guns Control Act 1955* does not currently (and cannot) prevail over the Australian Consumer Law (Cwlth)².

The ACL (WA) is a modified version of the Commonwealth Australian Consumer Law (found in the *Competition and Consumer Act 2010* (Cwlth)). While particular provisions of the Australian Consumer Law (Cwlth) apply in different circumstances, most commonly that Law applies only to corporations; whereas the ACL (WA) applies also to sole traders, partnerships and certain government entities operating in WA. The aim is to provide reasonably consistent consumer protection regardless of business structure.

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¹ Section 15 of the *Fair Trading Act 2010*.

² Section 109 of the *Commonwealth of Australia Constitution Act 1901*.

Effect of amendments

The proposed amendments do not impact on the ambit or degree of control the Western Australian Parliament retains in regulating spear-guns. That regulation will continue under the *Weapons Act 1999*. Nor do the amendments impact on the modifications WA may make to the Australian Consumer Law to determine the content of the ACL (WA).

The *Weapons Act 1999* is not listed in FTA Schedule 1 and does not otherwise prevail over the ACL (WA). The proposed amendments do, therefore, reverse the hierarchy between the ACL (WA) and spear-gun legislation, but this is a re-ordering of the relationship between State legislation only.

Over the past six years, the Department of Commerce - Consumer Protection Division has not identified any need for spear-gun regulation that is inconsistent with the ACL (WA). Should the State decide at some future time that it wished to specify the *Weapons Act 1999* as an Act that prevails over the ACL (WA), or reintroduce a spear-gun specific Act that prevails over the ACL (WA), there is no barrier to it doing so.

Thank you for this opportunity to provide you with my submission.

Yours sincerely



David Hillyard

A/COMMISSIONER FOR CONSUMER PROTECTION