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The Parliament of the Commonwealth of Australia

# Report on the impact of inauthentic art and craft in the style of First Nations peoples

House of Representatives  
Standing Committee on Indigenous Affairs

December 2018  
Canberra

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**The Indigenous Affairs committee acknowledges the Aboriginal and Torres Strait Islander peoples of this nation and the traditional custodians of country throughout Australia. The committee pays respect to ancestors and Elders past, present, and future, and is committed to honouring Aboriginal and Torres Strait Islander peoples' unique cultural and spiritual relationships to land, waters and seas.**



**Aboriginal and Torres Strait Islander peoples should be aware that this report may contain the names of people who have passed away.**

**The words 'First Nations', 'Indigenous' and 'Aboriginal and Torres Strait Islander' are used interchangeably in this report to refer to the Aboriginal and Torres Strait Islander peoples of Australia and their art and cultures.**

**While the committee understands that some Aboriginal and Torres Strait Islander peoples may not feel comfortable with some of these words, we only mean to convey respect through the use of these words.**





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## Chair's Foreword

I acknowledge the Aboriginal and Torres Strait Islander peoples of this nation and the traditional custodians of country throughout Australia. I pay respect to ancestors and Elders past, present, and future.

Our First Nations peoples have been the guardians of their country and culture for thousands of years. It is an ethical and moral demand that we assist this process into the future.

First Nations art and craft is not simply a collection of design elements in some artistic media presentation. They are in fact a representation of cultural songlines. Art is therefore integral to the cultural identity, stories and history of First Nations peoples. It is about a continuous celebration and preservation of that history and cultures, which underpins all of the issues raised.

An extraordinary statistic that emerged from the evidence received is that 80% of the souvenirs sold in Australia purporting to represent First Nations cultures are in fact imitation products. These inauthentic items have no connection to First Nations peoples and are often cheaply made imports.

The committee's own observations during several visits to gift shops in popular tourist areas of Sydney were consistent with this overwhelming statistic.

What also became clear during this inquiry is that most buyers of these souvenir-type products are likely unaware that they are predominantly inauthentic. Indeed most non-Indigenous Australians and visiting tourists cannot readily distinguish authentic First Nations art and craft from imitation products.

There are two key elements that contribute to this situation. The first is that there is no accepted industry standard for authenticity, which is largely reflected by the confusing and sometime deliberately misleading presentation and labelling of these products. The second is that there is a clear lack of effective education about authenticity throughout the supply chain for First Nations art and craft, from the manufacturer to the point of sale.

First Nations artists and their communities feel completely disrespected and cheated by what is going on at the moment, particularly in the souvenir trade. They feel that their cultures are being stolen through the supply of these imitation products. In addition, they are being denied the opportunity to make a living from the obvious interest and market demand for First Nations art and craft.

This unacceptable misappropriation of First Nations cultures cannot be allowed to continue unchecked. These imitation products exist solely to make money. They demean the rich and ancient history of Australia's Indigenous peoples. These items have a profound and harmful effect on First Nations peoples. They do not teach or inform the buyer about Indigenous heritage as they have no connection to it. Beyond the immediate consequences mentioned above, this situation has a negative impact on Australia's image abroad.

Four fundamental points must be stressed:

- First Nations art, craft and cultural expressions belong to First Nations peoples. Non-Indigenous artists and artisans should not appropriate or copy this expression in any way, even with good intentions.
- Whilst producing and selling imitation First Nations art and craft is not unlawful, it has a negative impact on the integrity of the ancient cultural heritage of First Nations peoples.
- Any inauthentic piece of Indigenous art, craft or artefact such as a boomerang or didjeridu not made by a First Nations artist is by its very nature and existence purporting to be culturally authentic when it is not.
- First Nations cultures are an intrinsic part of Australian culture and allowing it to be compromised damages the identity of our nation as a whole.

First Nations fine art does not appear to be affected by authenticity issues to the same extent as the souvenir trade. This is due in part to the buyers being more discerning and the need for galleries to protect their reputation by ensuring the provenance of more expensive artworks. There are still troubling issues in this part of the market however such as alleged carpetbagging by unscrupulous dealers and unethical practices by some galleries.

There are of course other examples of individuals and businesses making outstanding contributions to safeguarding Indigenous cultural expressions. Among these are the First Nations art centres which provide opportunities for Indigenous artists, fostering and preserving their heritage. The Indigenous Art Code does an impressive job of trying to get businesses to adopt its voluntary code of practice, and thus behave ethically and responsibly in the sale of Indigenous art and craft.

They need more help however. Many art centres struggle to retain qualified staff due to lack of infrastructure and housing. This has a hugely negative impact on them as a business. They also need greater access to business development expertise. As many of these centres operate in very remote areas, there are obvious social and economic benefits to growing these businesses.

The Indigenous Art Code has only one staff member and cannot fulfil its mandate with such little resourcing, although it has done a remarkable job to date in spite of this.

There is huge potential for great outcomes in First Nations communities with the right assistance to these key entities and the right policies in place.

Another policy area of particular interest was the effectiveness of existing copyright and consumer laws to provide protections for First Nations cultural expressions, including art and craft. Current copyright laws are designed to protect the artistic and intellectual output of an individual over a period of several decades, but not ancient and typically communal ownership of cultural expressions.

In terms of consumer law, the ACCC can take action against a company for intentionally misleading its customers about authenticity through the use of information such as labels. It cannot take action however for imitation products that are not explicitly claiming to be authentic.

First Nations cultural expressions will likely need a new and separate framework to be protected under law. The committee understands that this would be a long and complex task but believes that it is achievable and that a consultation process should be started next year.

The issue of labelling was one that came up often during the inquiry. There is currently no consistent labelling used for any type of art or craft product, whether Indigenous or not, and no legal requirement to indicate whether something is authentic.

This lack of any consistency or coherency in how First Nations art and craft items such as souvenirs are marked at the point of sale contributes greatly to the current lack of awareness about authenticity.

The committee welcomes the new digital labelling trial for First Nations artworks to be administered by Desart with government funding support, and awaits the results with interest.

Also of great interest to the committee will be the outcomes of the current Australia Council inquiry into the feasibility of a National Indigenous Art and Cultural Authority. The committee would welcome the establishment of this body and believes that it would play an important future role in deliberating and advising on the issues raised in this inquiry.

## **Solutions**

The committee has made eight recommendations to the Government that it believes will severely curtail the prevalence of imitation Indigenous art and create economic opportunities for First Nations artists and communities. The intention is to chart a path forward to foster and preserve authentic First Nations cultural expressions for the benefit of all Australians.

These recommendations are also intended to start an earnest conversation among Federal, State and Territory policymakers about the harm caused by inauthentic First Nations art and craft.

The committee recommends the following:

- That the Productivity Commission conducts a comprehensive structural analysis of the entire market for First Nations art and craft. It will be difficult for policymakers to be effective in the future without this information.
- That the Indigenous Art Code be properly funded and a review take place after two years to determine whether this voluntary code of conduct is being effective or whether a mandatory system should be considered.
- That a separate arm of the existing Indigenous Business Sector Strategy be created for First Nations art centres to build their capacity.
- That an Information Standard be developed for authentic First Nations art and crafts.
- That an information guide on authentic art and crafts be developed as a short video presentation to all passengers arriving into Australia.
- That a Certification Trade Mark scheme for authentic First Nations art and crafts be developed by IP Australia in consultation with all relevant stakeholders.
- That funding be made available through the Indigenous Visual Arts Industry Support program to assist artists and art centres affected by carpetbagging.
- That a consultation process be initiated to develop stand-alone legislation protecting Indigenous Cultural Intellectual Property, including traditional knowledge and cultural expressions.

### **Acknowledgements**

This inquiry would not have been possible without the many valuable contributions from First Nations artists and communities. The committee had wonderful experiences visiting First Nations art centres in both urban and remote locations and learning the stories of those communities as expressed through their art. Many art centres and artists were able to provide submissions and attend public hearings for which we are extremely grateful.

I acknowledge the invaluable submissions and oral testimonies received from industry peak bodies, Indigenous organisations, government agencies at the State, Territory, and Federal level, academics and private individuals.

I thank the Deputy Chair of the committee, the Hon Warren Snowdon MP, and the other committee members for their contributions. I also thank the secretariat including Melanie Brocklehurst, Kilian Perrem, Louise Milligan, Joel Bateman and Ben Veava, and my own staff, for their diligent work in supporting the inquiry.

**Ann Sudmalis MP**  
Chair




## Membership of the Committee

Chair	Mrs Ann Sudmalis MP (from 25/1/18)	Ms Melissa Price MP (until 19/12/17)
Deputy Chair	Hon Warren Snowdon MP	
Members	Ms Sharon Claydon MP	Hon Dr John McVeigh MP (from 11/9/18)
	Mr Tim Hammond MP (until 14/9/17) (from 4/12/17 to 9/5/18)	Mr Llew O'Brien MP
	Ms Madeleine King MP (from 14/9/17 to 4/12/17) (from 9/5/18)	Mr Ted O'Brien MP
	Hon Sussan Ley MP (from 13/8/18 to 11/9/18)	Mr Rick Wilson MP

## Committee Secretariat

<b>Secretary</b>	Ms Melanie Brocklehurst (until 7/9/18)
	Dr Joel Bateman (from 10/9/18 to 7/12/18)
<b>Inquiry Secretary</b>	Dr Kilian Perrem
<b>Research Officers</b>	Ms Louise Milligan
	Mr Benjamin Veava
<b>Administrative Officers</b>	Ms Tanya Pratt (from 03/7/17 to 6/10/17)
	Mr Daniel Miletic (from 9/10/17 to 21/9/18)





## Terms of reference

Inquire into and report on the growing presence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise for sale across Australia, including:

- the definition of authentic art and craft products and merchandise;
- current laws and licensing arrangements for the production, distribution, selling and reselling of authentic Aboriginal and Torres Strait Islander art and craft products and merchandise;
- an examination of the prevalence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise in the market;
- options to promote the authentic products for the benefit of artists and consumers; and
- options to restrict the prevalence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise in the market.





# List of recommendations

## Recommendation 1

The committee recommends as a matter of urgency that the Productivity Commission conducts a comprehensive inquiry into the value and structure of the current market for First Nations art and crafts. This inquiry should incorporate the following elements:

- a detailed structural breakdown of the different parts of this market and the operators within it;
- the total value of the fine art market stratified by the different avenues through which this art is produced, procured and sold;
- the total value of the souvenir and craft market stratified by the different avenues through which these products are produced, procured and sold;
- the market value of inauthentic souvenirs and art sold in Australia;
- the revenues generated by art centres;
- the barriers facing art centres and First Nations artists who wish to sell fine art or souvenir style items in mainstream markets; and
- a summary reflecting both the number and value of imported imitation low end Indigenous products, and a like summary for products made and/or licenced in Australia.

### Recommendation 2

The committee recommends as a matter of urgency that the Australian Government consults with the Indigenous Art Code and the First Nations art sector on what resourcing is required for the Indigenous Art Code Ltd to fulfil its considerable potential, and provides this funding as a means of protecting both our unique Indigenous cultures and protecting the future and value of this market for Australian and International visitor purchasing.

The committee further recommends that a detailed evaluation of industry practices take place no later than two years after the provision of this funding. A mandatory code should be introduced if that review reveals few improvements in industry behaviour and little reduction in the prevalence of imitation First Nations art and craft.

### Recommendation 3

The committee recommends that the Australian Government establishes and funds a separate arm of the Indigenous Business Sector Strategy that is specifically aimed at art centres. This arm should incorporate the following aspects:

- a business advisory hub that will advise art centres on how to access mainstream souvenir markets;
- seed funding for art centres to build capacity, including staff training, to enter mainstream souvenir markets, including mentoring and monitoring strategies; and
- solutions to the lack of infrastructure, particularly housing, that prevents many art centres from hiring and retaining art centre managers.

### Recommendation 4

The committee recommends that the Australian Government develops an Information Standard for authentic First Nations art in full consultation with First Nations artists and communities and the Indigenous Art Code.

### Recommendation 5

The committee recommends that the Australian Government develops an information guide on authentic First Nations art to be provided to all arriving passengers at an airport or any other port of entry to Australia, with a preference for a short pre-arrival video presentation.

#### Recommendation 6

The committee recommends that IP Australia develops a Certification Trade Mark scheme for authentic First Nations art and craft in full consultation with all relevant stakeholders

#### Recommendation 7

The committee recommends that additional funding be provided through the Indigenous Visual Arts Industry Support program to:

- enable First Nations organisations such as art centres to advise and support artists who have been affected by carpetbagging; and
- work with advisors from the Departments of Social Services, Employment and Prime Minister and Cabinet to plan a detailed program of interactive, financially viable assistance for First Nations artists or individuals who have been abused in this way, including a model to estimate any budgetary implications.

#### Recommendation 8

The committee recommends that the Australian Government begins a consultation process to develop stand-alone legislation protecting Indigenous Cultural Intellectual Property, including traditional knowledge and cultural expressions.

The committee is mindful of the current Australia Council inquiry into the feasibility of a National Indigenous Art and Cultural Authority. The committee fully supports the establishment of this body and recommends that it be part of the consultation process.



## Introduction

- 1.1 Art and craft is integral to the cultural identity, stories and history of First Nations peoples and communities. Different communities have different stories and artistic styles, which only that community is allowed to produce. The art of our First Nations is not simply a collection of design elements in some artistic media presentation, they are in fact a representation of cultural songlines.
- 1.2 When non-Indigenous people copy an artwork without permission or attribution, this has a profound and harmful effect on First Nations peoples and cultures, denigrating the meaning of the imagery and its cultural significance. Consequently, this inquiry has not just been about art, but also about culture.

## General observations

- 1.3 A number of themes clearly and consistently emerged during the inquiry. Broadly summarised, these are:
  - Art and craft is integral to the cultural identity, stories and history of First Nations peoples;
  - Most souvenirs sold in Australia that appear to be Indigenous in style are in fact inauthentic and have no connection to First Nations peoples. Most buyers of these products are probably unaware of this;
  - Most non-Indigenous Australians and foreign tourists could not tell whether a First Nations art and craft item is authentic or not;
  - Current Australian consumer and copyright laws are not fully suited to protecting First Nations cultural expressions;

- The continuing prevalence of inauthentic products is denying First Nations artists and artisans the chance to earn a living from their own culture; and
  - Inauthentic art and craft products have a profound and harmful effect on First Nations peoples' culture and heritage. Beyond the immediate consequences, this has a negative impact on Australia's image abroad.
- 1.4 Discussions of these central issues and possible responses are discussed in the remaining chapters. It would be fair to say that almost all of the First Nations individuals, organisations and communities that spoke to the committee during the inquiry are deeply hurt by the sale of inauthentic art and craft. Many regard this as stealing both their culture and potential earnings.
- 1.5 The committee agrees that this misappropriation of culture is unacceptable and should not be allowed to continue unchecked. These imitation products exist solely to make money but they cheapen the rich and ancient history of Australia. These items have no cultural value and therefore do not serve to teach or preserve First Nations culture and history.
- 1.6 It is clear that the increasing prevalence of inauthentic art and craft products indicates a market demand for these items, particularly in the souvenir trade. This demand should be met by the production and sale of art and craft products by First Nations communities, and wherever possible, those items not produced with cultural sensitivity should be labelled accordingly.
- 1.7 Educating the general public about authenticity and creating opportunities for Indigenous artists and artisans to enter these markets are among the recommendations discussed in this report.
- 1.8 The recommendations of this report are intended to start an earnest conversation among both Federal and State policymakers about the harm caused by inauthentic Indigenous art and craft. They are also intended to chart a path forward to foster and preserve authentic First Nations cultural expressions for the benefit of all Australians.



## Referral of the inquiry

- 1.9 On 26 July 2017, the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion, referred an inquiry into the growing presence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise for sale across Australia to the committee.
- 1.10 The committee adopted the inquiry on 10 August 2017.

## Objectives and scope

- 1.11 The following terms of reference were specified by the Minister in referring the inquiry:
- the definition of authentic art and craft products and merchandise;
  - current laws and licensing arrangements for the production, distribution, selling and reselling of authentic Aboriginal and Torres Strait Islander art and craft products and merchandise;
  - an examination of the prevalence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise in the market;
  - options to promote the authentic products for the benefit of artists and consumers; and
  - options to restrict the prevalence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise in the market.

## Conduct of the inquiry

- 1.12 The inquiry received 161 submissions and 14 supplementary submissions (including 14 responses to questions taken on notice), and 32 exhibits. Of note, 19 submissions and 19 exhibits were provided by video. The committee accepted contributions in this way to ensure that a wide body of evidence could be received.
- 1.13 The committee also consulted widely with other key stakeholders including Indigenous peak bodies, art galleries and other businesses in the art trade, and both State and Federal government agencies as indicated in the appendices.
- 1.14 The submissions are listed at Appendix A and the exhibits at Appendix B.

- 1.15 The committee also held 26 public hearings in Canberra, Sydney, Melbourne, Brisbane, Cairns, Perth, Broome, Newman (WA), Warmun (WA), Darwin, Alice Springs, and Hermannsburg (NT). These hearings are listed at Appendix C.
- 1.16 The committee had the pleasure during this inquiry of speaking with numerous Indigenous art centres and representative organisations from around Australia through site visits and public hearings. A list of these organisations is at Appendix D.

## Report structure and style

- 1.17 The report contains four principal content and analysis chapters as follows:
- Chapter 2 provides an overview of the role and cultural significance of First Nations art and craft and its contribution to Australia and the definition of authenticity.
  - Chapter 3 discusses the current commercial marketplace for First Nations art and craft and the different parts of the art market. It also explores the reasons behind the increasing number of inauthentic Indigenous ‘style’ products for sale in Australia that are not produced by Indigenous artists or connected in any way to First Nations peoples.
  - Chapter 4 focuses on the need to better educate the wider Australian population about genuine Indigenous art. The effectiveness of current protections for authentic art and artists under existing Australian law are also discussed here.
  - Chapter 5 outlines recommendations aimed at curtailing the sale of inauthentic products, and creating opportunities for First Nations artists and communities to compete effectively in the marketplace.
- 1.18 In developing this report, the committee carefully considered all of the evidence it received and would like to acknowledge everyone who contributed to the inquiry. However, in the interest of brevity and readability, not all of the artists, art centres and peak organisations that submitted to this inquiry and spoke to the committee are quoted in the text.

## First Nations art

### Background

- 2.1 The consistent message about what art means to First Nations peoples, highlighted that it is about connection to country, identity and belonging. It is about the stories and traditional knowledge, as well as a continuous celebration and preservation of history and culture. This is not understood by a great many non-Indigenous Australians and certainly not by international visitors.
- 2.2 This underpins everything that is discussed in this report and what must be done to preserve First Nations past and current heritage. Importing cheap inauthentic boomerangs, just as one example, from overseas denigrates that history and culture.
- 2.3 Many First Nations artists feel cheated by what is currently happening in gift shops and galleries around the country. The shelves of many of these establishments are stacked with inauthentic art and crafts that has no connection to Indigenous cultures. They have not been produced by, or with the permission of, First Nations peoples. They are commonly made cheaply overseas with no benefit to First Nations communities either from licencing or royalties or other financial compensation.
- 2.4 In part, this situation exists because most buyers of these items, tourists and non-Indigenous Australians alike, are not aware that they are inauthentic, nor aware of the cultural significance of First Nations arts and crafts.
- 2.5 It was suggested during the inquiry that 80% or more of the First Nations souvenir products on sale in gift shops are inauthentic, including artefacts such as boomerangs and didgeridus displaying First Nations imagery and art. The committee's own private investigations and observations concur with this view.

- 2.6 It appears that this situation has arisen for three key reasons. The first is the interest of many tourists in First Nations cultures and souvenirs. The second is that selling imitation First Nations products is profitable. The third is the lack of understanding among non-Indigenous people of the difference between authentic and inauthentic First Nations art and craft items, as well as the cultural significance of artworks and artefacts.
- 2.7 An illustration of this is that whilst almost everyone in Australia, and indeed around the world, has heard of a boomerang and could sketch an example of one, very few could describe its historical and cultural significance to First Nations peoples or describe the different types that exist.
- 2.8 There are a number of similar stories about other artefacts, but the boomerang is the one that has the greatest recognition. Therefore, if the knowledge of this most recognisable and iconic object does not go beyond a rudimentary appreciation of what it looks like, it is of little surprise that Indigenous art and crafts are misunderstood, and cannot be readily distinguished from imitation products.
- 2.9 A good place to begin this report therefore is to reflect on the importance of art to First Nations cultures and history.

## **Storytelling and Australia's early history**

- 2.10 Art is part of the fabric of First Nations cultures and history. Much of it is used to tell Australia's earliest stories and preserve them for future generations. It is also used as an expression of contemporary life and culture among First Nations peoples.
- 2.11 The central and fundamental problem with the production and distribution of inauthentic art and craft is that it does none of these things. It cannot preserve and maintain history and cultures because it has no connection to it.
- 2.12 Lawyer Stephanie Parkin explains:
- Aboriginal and Torres Strait Islander 'art' is inextricably linked to stories, ceremony and connections to family, land and sea that have existed since time immemorial. Aboriginal and Torres Strait Islander 'art' therefore, does not exist in isolation or simply on the physical 'face value' of the piece – there is always a story or purpose connected to the 'art'.<sup>1</sup>

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1 Ms Stephanie Parkin, *Submission 79*, p. 1.

2.13 Mr Wayne Barker of the Kimberley Aboriginal Law and Cultural Centre, commented that:

Art, for our people, is not just a piece of art, in terms of a western concept of that – which is a product to sell, exchange, trade and barter, to decorate or to beautify. Art, for us, particularly our artistic design and our cultural design specific to language groups, specific to religious groups, if you want to use that word, is embedded in our traditional lore and custom. I will emphasise our lore and custom. Our lore and custom are a foundation of who we are as a sovereign people.<sup>2</sup>

2.14 The Buku-Larrnggay Mulka Centre describes this relationship as follows:

Our connection to our country, our history and our knowledge informs our artistic practice. If we break it, we get into big trouble and are brought into account by our elders.<sup>3</sup>

2.15 Martu artist, Mr Desmond Taylor, also explained this:

We are maintaining these stories that we put on canvass to maintain our history. No other people can make these designs that they have no understanding of. Those who fake these designs, it doesn't mean anything to them. To them, it's all about greed, fast money. It's also about ripping our way of life and our stories that belong to this place – Australia.<sup>4</sup>

2.16 These sentiments are echoed throughout the evidence received by this inquiry, in particular, in the many video submissions in which First Nations peoples speak about the damage and hurt that inauthentic art has caused them and their communities.<sup>5</sup>

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2 Mr Wayne Barker, Festival and Cultural Events Coordinator, Kimberley Aboriginal Law and Cultural Centre, *Committee Hansard*, Broome, 10 April 2018, p. 1.

3 Buku-Larrnggay Mulka Centre, *Submission 90*, p. 7.

4 Mr Desmond Taylor, Artist, Martumili Artists, *Committee Hansard*, Newman, 10 April 2018, p. 3.

5 Videos can be viewed at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Indigenous\\_Affairs/The\\_growing\\_presence\\_of\\_inauthentic\\_Aboriginal\\_and\\_Torres\\_Strait\\_Islander\\_style\\_art\\_and\\_craft/Videos](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Indigenous_Affairs/The_growing_presence_of_inauthentic_Aboriginal_and_Torres_Strait_Islander_style_art_and_craft/Videos).

- 2.17 Mr Harold Ludwick, Director of the Hopevale Arts and Cultural Centre, noted that:

Our cultural heritage is being bastardised and exploited by manufacturers who sell cheap, meaningless trinkets for which Indigenous artists and communities receive no financial gain. This fake art not only reduces our culture to merely aesthetics but also destroys the cultural integrity of our sacred and traditional objects.<sup>6</sup>

- 2.18 This deep connection between art and storytelling is a means by which cultural knowledge and skills are passed from generation to generation among Indigenous communities. Mr Rusty Peters, Director of the Warmun Art Centre, commented:

All these paintings have a story...They've got the rock painting in my country, and they have got stories there when you paint it on my country...The white people when they do a painting, I don't know if it's got a story. Every painting here is a story from the Dreamtime – we got them from the old people and old people's country.<sup>7</sup>

- 2.19 It is also worth noting that an Indigenous artist does not necessarily have the permission to produce artworks with certain images and stories. There are processes and rules within First Nations communities through which elders and custodians ensure the integrity of the traditional cultural expressions and of the artist to produce the imagery.

- 2.20 An anecdote from Mr Ron Bradfield Jnr, a Bardi man and Operations Manager of Urban Indigenous, highlighted this:

Someone presented to us a turtle story. It was actually a Bardi story. It was being sold as a Noongar story in this place. Immediately, all of the desert people, who knew my family and knew our stories and lore, said: 'You're going to have to have a conversation about this, Ron. This person needs to know that that's not right' – and we did. That other person was quite embarrassed and understood that they had transgressed, if you like.

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6 Mr Harold Ludwick, Director, Hopevale Arts and Cultural Centre, *Committee Hansard*, Cairns, 15 July 2018, p. 20.

7 Mr Rusty Peters, Artist and Director, Warmun Art Centre, *Committee Hansard*, Warmun, 11 April 2018, pp. 6-7.

Aboriginal people don't have a problem necessarily being challenged about these things, but non-Aboriginal people do.<sup>8</sup>

## Identity, knowledge and expression

2.21 Art is central to the cultural identity, place and belonging of First Nations peoples. This was repeatedly emphasised to the committee during the inquiry.

2.22 As a consequence, Indigenous style art is regarded by First Nations peoples as an insult, and in many cases as a threat, to that identity. Many of the contributors to this inquiry are upset about this situation, stating that it has profoundly negative effects.

2.23 Ms Marjorie Williams from Tangentyere Artists discussed the negative impact of inauthentic art on her:

When I see fake art I get a really bad feeling. How can they steal our culture and our style, which we learned from our elders? After many years of practising, we paint our Dreaming of our country. The river runs through and every land has Dreaming. Each Dreaming belongs to the people of that land. It's what we are. Fake art is destroying our identity and what we are. We are First Nations people and our arts and story must be protected for only us to share with our kids and the wider world.<sup>9</sup>

2.24 Mr Chadwick Creighton, Chief Executive Officer of the Aboriginal Art Centre Hub of Western Australia, also commented on the consequences of inauthentic art:

It doesn't make me feel very well. I know there has been a lot of evidence given and a lot of other Aboriginal and Torres Strait Islander people have spoken about how they feel about the cultural appropriation of their motifs, their images, their artwork. It is very harmful to our culture and our society, especially when we're continuing to struggle to teach our young people about our culture and educate them about what's right and what's wrong, and how that plays into the mix of things in the wider world.<sup>10</sup>

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8 Mr Ron Bradfield Jnr, Operations Manager, Urban Indigenous, *Committee Hansard*, Perth, 9 April 2018, p. 33.

9 Ms Marjorie Williams, Artist, Tangentyere Artists, *Committee Hansard*, Alice Springs, 2 May 2018, p. 3.

10 Mr Chadwick Creighton, Chief Executive Officer, Aboriginal Art Centre Hub of Western Australia (AACHWA), *Committee Hansard*, Perth, 9 April 2018, pp. 8-9.

2.25 Artist Joyce Summers states:

Cheap imported products which are brought in from overseas undermine the credibility of our original artwork which is, in essence, at the very centre of our identity and wellbeing.<sup>11</sup>

2.26 The Aboriginal Art Centre of Western Australia highlighted the importance of cultural respect and the inseparability of artworks from cultures:

When you buy a painting, you're buying our culture; you're not buying the image to do with it as you wish. We have struggled with some non-Aboriginal organisations who don't like to hear the Aboriginal point of view from the very first time they come and talk about having a conversation or a partnership, about where we sit in that as authors, as the knowledge elders, and having the permission for different things to happen.<sup>12</sup>

## Traditional knowledge and cultural expressions

2.27 The World Intellectual Property Organization (WIPO) refers to traditional knowledge (TK) as a communally owned 'living body of knowledge', that is passed from one generation to the next within an Indigenous community, and often forms part of a community's cultural and spiritual identity.<sup>13</sup>

2.28 Traditional cultural expressions (TCEs) include stories, music and songs, dance, art and crafts. These 'are integral to the cultural and social identities of Indigenous communities', with their protection relating to safeguarding cultural heritage.<sup>14</sup>

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11 Ms Joyce Summers, *Submission 74*, p. 1.

12 Ms Charmaine Green, Chairperson, AACHWA, *Committee Hansard*, Perth, 9 April 2018, p. 9.

13 World Intellectual Property Organization (WIPO), 'Traditional Knowledge', <<http://www.wipo.int/tk/en/>> viewed 16 August 2018.

14 WIPO, 'Traditional Cultural Expressions', <<http://www.wipo.int/tk/en/folklore/>> viewed 16 August 2018.



## Indigenous Cultural and Intellectual Property

2.29 Indigenous Cultural and Intellectual Property (ICIP) rights are First Nations peoples' 'rights to their heritage and culture'.<sup>15</sup> ICIP are ongoing communally owned by Indigenous communities, founded in customary laws, and passed between generations. ICIP includes:

- Languages;
- literary, performing and artistic works;
- tangible and intangible cultural property;
- ancestral remains and genetic material;
- types of knowledge, as well as spiritual knowledge;
- cultural environmental resources;
- sites of significance;
- documentation of cultural heritage; and
- new creations deriving from cultural heritage.<sup>16</sup>

## Australia's identity and reputation

2.30 The Victorian Government comments in its submission that in addition to compromising cultural ownership and economic opportunities for First Nations peoples, these fake items 'undermine governments' investment in Indigenous arts, culture and economic development'. It also stresses that inauthentic products erode a key part of Australia's unique identity.<sup>17</sup>

2.31 Dr Jacqueline Healy made the point that First Nations cultures are very much sought after to showcase Australia at major sporting events and to position our nation internationally through the use of artworks in embassies and other locations. She commented that this is at odds with the apparent neglect of Indigenous cultural integrity in tourist gift shops.<sup>18</sup>

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15 J Kearney & T Janke, 'Rights to Culture: Indigenous Cultural and Intellectual Property (ICIP), Copyright and Protocols', January 2018, <<http://www.terrijanke.com.au/single-post/2018/01/29/Rights-to-Culture-Indigenous-Cultural-and-Intellectual-Property-ICIP-Copyright-and-Protocols>> viewed 23 October 2018.

16 J Kearney & T Janke, 'Rights to Culture: Indigenous Cultural and Intellectual Property (ICIP), Copyright and Protocols', January 2018, <<http://www.terrijanke.com.au/single-post/2018/01/29/Rights-to-Culture-Indigenous-Cultural-and-Intellectual-Property-ICIP-Copyright-and-Protocols>> viewed 23 October 2018.

17 Victorian Government, *Submission 128*, p. 2.

18 Dr Jacqueline Healy, Private Capacity, *Committee Hansard*, Melbourne, 8 March 2018, p. 12.

2.32 The Department of Foreign Affairs and Trade (DFAT) highlights that First Nations cultures needs to be recognised as a part of Australia’s ‘collective identity and nationhood’, also stating that ‘Australian Indigenous art is unique, world-recognised and one of our greatest public diplomacy resources’.<sup>19</sup>

2.33 In support of this, Regional Arts Australia argues:

The Aboriginal and Torres Strait Islander art industry is an important Australian industry. It is unique in the world. It is acclaimed throughout the world. It enhances Australia’s national identity and national reputation. It is a source of belief and pride for both Indigenous and non-Indigenous Australians. It provides substantial economic benefit for Aboriginal and Torres Strait Islander people.

How damaging therefore, to our nation, to the regions and to the artists on which this unique industry is founded, that there are ongoing and unresolved allegations about fake art, misleading and deceptive conduct and market manipulation.<sup>20</sup>

## Teaching future generations

2.34 The important role of art in teaching future generations of Indigenous Australians about their culture must also be highlighted.

2.35 Mr Philip Rist, Management Committee President of the Indigenous Art Centre Alliance, commented that art is playing a vital role in recovering some of the previously lost culture and passing it on to the next generation:

There was loss of stories and loss of culture. All of that was decimated to a great extent. So we’re trying to claw back a little bit of this stuff. These are just massive hits to that ability for us to get back and teach language through art and stories and all of that stuff. These are massive hits to us in that long journey back to finding a place in the community, given the stuff in the past. Art is a major vehicle for that stuff – a really important vehicle to pass on knowledge to our younger people, to talk about stories that are

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19 Department of Foreign Affairs and Trade (DFAT), *Submission 136*, p. 1.

20 Regional Arts Australia (RAA), *Submission 75*, p. 2.

depicted in the art and what that means to us and to our children.<sup>21</sup>

2.36 Ms Carly Day, Manager of Martumili Artists, stated that the paintings at the art centre 'are a really incredible way of recording knowledge, teaching the next generation and keeping the culture very strong'.<sup>22</sup>

2.37 Arts Worker Mia Hacker also explains the importance of authentic cultural learning through art:

We want to see and promote authentic culture, fake art does not allow for this. I want my children to see, learn and analyse art that is true and real to Aboriginal and Torres Strait Islanders. This viewing of fake art can show incorrect symbols and messages that I don't want my family and community to be in a position of questioning its validity. Life-long learning sharing culture is important for all communities it is a platform that allows for creative conversations and social connectedness.<sup>23</sup>

2.38 The cultural importance of art in the rehabilitation of young Indigenous peoples in the prison system was also emphasised by the Department of Communications and the Arts (DCA):

There was some work done on behalf of all states and territories by the Commonwealth around the prison to employment route, to try and use the time while people are in prison for decent rehabilitation and education so it's much easier for them to find employment on release...They found that a key part of that was the importance of the arts as both an educative tool but also as part of rehabilitation to connect particularly young Indigenous people in incarceration with their culture...Much more work does need to happen in [this] area.<sup>24</sup>

## Authenticity

2.39 Understanding and defining authenticity was fundamental to the committee's assessments of the issues surrounding the prevalence of inauthentic First Nations art and craft.

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21 Mr Philip Rist, Management Committee President, Indigenous Art Centre Alliance (IACA), *Committee Hansard*, Cairns, 14 July 2018, p. 3.

22 Ms Carly Day, Manager, Martumili Artists, *Committee Hansard*, Newman, 10 April 2018, p. 1.

23 Ms Mia Hacker, *Submission 17*, p. 1.

24 Mr Richard Eccles, Deputy Secretary, Content, Arts, Strategy and Research, Department of Communications and the Arts (DCA), *Committee Hansard*, Canberra, 2 March 2018, p. 4.

2.40 The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) suggested that if an item is produced or directly controlled by Indigenous people then it can be deemed authentic. However, they noted:

Authenticity is a pretty vexed conversation, even within Indigenous Australia – this is one of the reasons we think this inquiry is so important. It's what it says to people outside of our communities about who we are and what we are.<sup>25</sup>

2.41 The Australian Council for the Arts offered the following definition:

Authentic art is that which is attributed to the creativity and the output of an Aboriginal or Torres Strait Islander person...or persons.<sup>26</sup>

2.42 Create New South Wales proposed a definition of authenticity that provides that the product must have been designed, made, or licensed by a First Nations artist, but expressed the view also that 'there are cultural objects such as boomerangs and didgeridus that should not be made by anyone other than Aboriginal and Torres Strait Islander people.'<sup>27</sup>

2.43 Ms Abigail Chaloupka remarked in relation to culture and authenticity:

We need to have respect for the ways in which things were done and the reasons for which they were done. So I guess that's the production of authentic materials made under cultural circumstances for cultural reasons. Ultimately, I guess, that is the basis for authenticity.<sup>28</sup>

2.44 Ms Terri Janke's 1999 report *Our Culture: Our Future* recommended that any definition of authenticity should be decided by Indigenous people:

Indigenous people need to decide upon and be informed of any definition. Any definition must be supported by Indigenous people nationally or allow for local and regional variations.<sup>29</sup>

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25 Mr Craig Ritchie, Chief Executive Officer, Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), *Committee Hansard*, Canberra, 2 March 2018, p. 20.

26 Ms Lydia Miller, Executive Director of Aboriginal and Torres Strait Islander Arts, Australian Council for the Arts (Australia Council), *Committee Hansard*, Sydney, 6 March 2018, p. 53.

27 Ms Alex O'Mara, Deputy Secretary, Arts, Screen and Culture Division, New South Wales Department of Planning and Environment, *Committee Hansard*, Canberra, 24 May 2018, p. 8.

28 Ms Abigail Chaloupka, Private Capacity, *Committee Hansard*, Brisbane, 17 July 2018, p. 33.

29 T Janke, *Our Culture: Our Future*, Michael Frankel & Company, Sydney, 1999, p. 194.

- 2.45 The City of Melbourne's *Code Of Practice for galleries and retailers of Indigenous Art* – authored by Ms Janke – makes a clear distinction between what it calls 'authentic Indigenous arts and craft' and 'authentic Indigenous art products':
- "Authentic Indigenous arts and craft" refers to arts and craft made by an Aboriginal or Torres Strait Islander person, from start to finish. It includes contemporary works and works that draw from Indigenous traditional practices and beliefs.
- "Authentic Indigenous art products" are products reproducing Indigenous art, such as t-shirts, postcards, souvenirs and stationery, produced under a fair licence agreement, where royalties are paid to Indigenous artists.<sup>30</sup>
- 2.46 The City of Melbourne Code also requires that:
- Retailers and galleries will not pass off imitation Indigenous craft items like plastic coolamons, bamboo didgeridoos and boomerangs made overseas, as authentic Indigenous craft.<sup>31</sup>
- 2.47 The City of Melbourne Code and other codes of practice, most notably the Indigenous Art Code, are discussed further in Chapters 4 and 5.
- 2.48 As noted previously, there are important rules within First Nations communities that do not permit artists to appropriate imagery or stories that do not belong to them.

## **The *Fake Art Harms Culture* campaign**

- 2.49 There were a number of references during the inquiry to the *Fake Art Harms Culture* campaign. This campaign was launched at the Darwin Aboriginal Arts Fair in 2016 by the Arts Law Centre of Australia, the Indigenous Art Code Ltd and Copyright Agency in response to concerns from First Nations community members and artists about the prevalence of inauthentic art.<sup>32</sup>

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30 T Janke, *Code of Practice for galleries and retailers of Indigenous Art*, City of Melbourne, 2017, p. 9, <<https://www.melbourne.vic.gov.au/SiteCollectionDocuments/code-of-practice-indigenous-arts.pdf>> viewed 2 August 2018.

31 T Janke, *Code of Practice for galleries and retailers of Indigenous Art*, City of Melbourne, 2017, p. 9, <<https://www.melbourne.vic.gov.au/SiteCollectionDocuments/code-of-practice-indigenous-arts.pdf>> viewed 2 August 2018.

32 Arts Law Centre of Australia (Arts Law), 'Fake Art Harms Culture Campaign – Launched at Darwin Aboriginal Art Fair 2016', *Media Release*, 5 August 2016, <<https://www.artslaw.com.au/news/entry/fake-art-harms-culture-campaign-darwin-aboriginal-art-fair-2016/>> viewed 2 November 2018.

- 2.50 The organisers of this campaign, all of whom subsequently made submissions to this separate inquiry, released a discussion paper with a central proposal to amend the current *Competition and Consumer Act 2010* (Cth). This Discussion Paper makes the following comments in this regard:

In this context, based on consultation to date, it is considered that a legislative solution which 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 could prove effective.<sup>33</sup>

## Committee comment

- 2.51 The cultural importance of arts and crafts is a central theme of this inquiry. Subsequent chapters will provide more detail around these issues. There are four fundamental points to make at this early stage of the report, however.
- 2.52 The first is that First Nations art, craft and cultural expressions belong to First Nations peoples. How do we as non-Indigenous Australians truly come to appreciate the essence of the Indigenous Dreamtime symbology? We have no equivalent in our British/European based cultural heritage. It is the acceptance that 'belonging to country' is the driver of Indigenous artistic expression.
- 2.53 Non-Indigenous artists and artisans should not appropriate or copy this expression in any way, even with good intentions. Indigenous expression on a canvas that tells a story of a particular nation is not just an artistic style, like impressionism, and as such it cannot simply be adopted by any artist who feels inspired to start painting in this way.
- 2.54 The telling of First Nations stories through art is a dynamic process and they can be expressed differently by different artists with the cultural authority to do so. It should be stressed in this regard that Indigenous storytelling through art will continue to evolve as the next generations begin to express themselves and their cultures.

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33 Arts Law, Indigenous Art Code Ltd (IartC) & Copyright Agency, *Fake Art Harms Culture: Discussion Paper*, February 2017, p. 4, <[https://www.artslaw.com.au/images/uploads/Fake\\_Art\\_discussion\\_paper\\_response\\_to\\_R\\_Katter\\_Private\\_Members\\_Bill\\_Final.pdf](https://www.artslaw.com.au/images/uploads/Fake_Art_discussion_paper_response_to_R_Katter_Private_Members_Bill_Final.pdf)> viewed 2 November 2018.

- 2.55 It is important to recognise that the Indigenous communities themselves, accept that their art will evolve, but the significance of their imagery must be conserved, at the very least by documentation, or that knowledge may be lost.
- 2.56 First Nations artists are more than happy to share their expressions and stories with everyone so that these wonderful cultural traditions can be enjoyed by all. We cannot therefore allow this ancient heritage of to be undermined by imitation artwork.
- 2.57 Artists of all backgrounds are of course free to express themselves but there are a myriad of ways to do so without showing disrespect to First Nations peoples. All Australians have a vital role to play in protecting Indigenous heritage and the attitudes and understanding of non-Indigenous artists will be of particular importance in this regard.
- 2.58 The second point to make, which will be addressed in detail in later chapters, is that whilst producing and selling First Nations 'style' art is not unlawful, it has a negative impact on the integrity of the ancient cultural heritage of First Nations peoples.
- 2.59 In this vein, the third point is that any inauthentic art, or piece of craft such as a boomerang or didjeridu that is not made by a First Nations artist, is by its very nature and existence purporting to be culturally authentic when it is not. The demand for these items is clearly based on an interest in Australian Indigenous culture. Inauthentic items do not need to be explicitly marketed as authentic to be misleading. Cultural artefacts such as boomerangs are inherently tied to First Nations peoples.
- 2.60 The fourth and final point to make is that imitation products are harmful to Australia's identity itself. First Nations cultures are an intrinsic part of Australian culture and allowing it to be compromised damages the identity of the nation as a whole.
- 2.61 A robust definition of authenticity for First Nations art that can become an accepted standard throughout the industry will be critical if First Nations peoples are to regain control of this important part of their cultures. Any industry definition would need to be decided on by First Nations peoples.
- 2.62 Perhaps we should have a core or a stem of a definition that enables regionalisation or even different communities to establish elements they believe are essential. The definition that is finally developed in context will provide the platform for this industry to grow and become one in which every Australian can be justly proud.





## Commercialising First Nations art

### Background

- 3.1 The market for First Nations art and craft can be roughly divided into two categories:
- fine arts typically sold in a gallery, art centre or at an art fair, and
  - cheaper craft items and artefacts, which are commonly sold as souvenirs in gift shops and local markets.
- 3.2 This chapter examines the current markets for First Nations art and craft and the challenges faced by Indigenous artists in accessing them. As will be discussed, many First Nations artists and art centres are finding it very difficult to compete with the huge prevalence of inauthentic items in mainstream retail outlets.

### Current Market

#### Size and scope of the industry

- 3.3 Knowledge of the size and structure of the commercial market for First Nations art is crucial to assessing the opportunities available to Indigenous artists and the scope for future growth. The current scale of the inauthentic market is equally important to this evaluation. Frustratingly however, there are no reliable data on this at present.
- 3.4 Professor Jon Altman poses five questions related to this issue:
- What is the size of the Indigenous visual arts sector?
  - What proportion is Indigenous art and crafts products and merchandise as distinct to fine art, bearing in mind that the boundary between the two categories is often blurred?

- Of Indigenous arts and crafts products and merchandise what proportion might be deemed to be 'authentic' and what proportion 'inauthentic'?
- Of Indigenous arts and crafts products and merchandise, what proportions of authentic/inauthentic is imported/ domestically manufactured?
- Of Indigenous arts and crafts products and merchandise, what proportion is manufactured under legitimate licencing arrangements with Indigenous art organisations or individuals and what proportion is not?<sup>1</sup>

3.5 Professor Altman further comments:

Answering these questions is a difficult task that the Australian government and numerous stakeholders have grappled with for decades. Currently there seems to be no accurate estimate of the size in financial (final sales) terms of the entire sector, let alone the component parts described above.<sup>2</sup>

3.6 The Treasury confirmed to the committee that few data are available on this issue and that although the ABS publishes information on arts and culture, these statistics incorporate multiple forms of art and do not drill down specifically to Indigenous art.<sup>3</sup>

3.7 The Treasury further highlighted the difficulty in collecting information on the sale value of authentic versus inauthentic products and that specific parameters would likely need to be established to enable this:

...I think it would probably be difficult, particularly in terms of trying to distinguish between authentic and inauthentic art...It would sound to me like something you'd do via a special data release, because they currently don't go to that level of granularity in the national accounts data. I think they would need some pretty clear guidance on what those definitions meant.<sup>4</sup>

3.8 The Department of Communications and the Arts (DCA) also commented that this issue of valuing different parts of the art market is complicated by the number of players in this sector and the fact that attempts to get any information on commercial sales have proved problematic:

...one of the top three accounting firms came to us, a few years ago now, and talked about gathering information about the value of commercial sales and after about six months they abandoned it, primarily because there was almost no response to their survey

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1 Professor Jon Altman, *Submission 118*, p. 6.

2 Professor Altman, *Submission 118*, p. 6.

3 Mr Adam McKissack, Principal Adviser, Consumer and Corporations Policy Division, The Treasury, *Committee Hansard*, Canberra, 13 September 2018, p. 1.

4 Mr McKissack, The Treasury, *Committee Hansard*, Canberra, 13 September 2018, pp. 1-2.

questions. There's also a sort of reticence for some of these commercial [businesses] to provide that information, because it's commercial-in-confidence I guess.<sup>5</sup>

- 3.9 Mr Tim Acker noted that he was able to calculate the collective revenues of art centres during his research in this area, but also commented that his attempts to obtain mainstream commercial information were not successful:

We probably spent two years of our six-year project trying to pull data together, and that was from a very contained pool – art centres, working with a certain database – and so it was manageable. As soon as you relied on retailers providing sales data or stock data, people weren't interested. It's really difficult to quantify.<sup>6</sup>

- 3.10 Professor Altman stressed the importance of supply chains and market research on the demand in the tourist market for First Nations art and cultural experiences:

We just don't seem to have a very good grasp on it. We assume that there is demand for authentic products. We don't ask questions about what the consumer is willing to pay and then we don't ask questions around whether the supply is going to match what the consumer is willing to pay. This is pretty straightforward economics in a way. It raises questions that are often not answered not just in relation to manufactured Aboriginal art but also in relation to other aspects of Aboriginal cultural tourism, its supply and demand.<sup>7</sup>

## Committee comment

- 3.11 It is frustrating to the committee that there are no robust and accurate data on the size of the markets for First Nations art, including the souvenirs that are bought by both domestic and international tourists. It is likely to be many millions of dollars. Tourism Research Australia data for 2017-18 indicate that 978 000 international and 715 000 overnight visitors participated in an Indigenous tourism activity, and that 198 000 international visitors purchased Indigenous art, crafts or souvenirs (see paragraph 3.20).

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5 Ms Jane Barney, Director, Visual Arts and Design Section, Department of Communications and the Arts (DCA), *Committee Hansard*, Canberra, 13 September 2018, p. 2.

6 Mr Tim Acker, *Committee Hansard*, Canberra, 16 August 2018, p. 11.

7 Professor Jon Altman, Private Capacity, *Committee Hansard*, Melbourne, 8 March 2018, p. 21.

- 3.12 As discussed in Chapter 5, action needs to be taken to start to compile this information accurately. This will assist with future policymaking by revealing the extent to which First Nations communities are missing out economically from the commercialisation of their cultures, and also provide indicators of the cultural damage that is being caused by inauthentic products.

### Retail sector and tourist market

- 3.13 Current practices and activities in the retail sector for art and craft are central to the strong prevalence of inauthentic products in shops. Many souvenir items on sale in mainstream retail outlets are made attractive to buyers using representations of First Nations cultures that are not genuine.
- 3.14 There are some wholesalers and retailers who make an effort to be respectful of First Nations art and cultural expressions but unfortunately a great many are either unaware of or uninterested in the issue of authenticity.
- 3.15 The tourist trade is a principal source of inauthentic Indigenous art and craft items. It also represents a major opportunity for First Nations communities to benefit commercially. There is clearly a market for affordable souvenirs that celebrate or portray First Nations cultures as evidenced by the thousands of boomerangs and other artefacts for sale in tourist hubs around the country.
- 3.16 Many of the individual submissions to this inquiry express anger and frustration that nothing is being done to curtail the large volumes of inauthentic products that are now sold throughout Australia. There is also frustration that Indigenous peoples do not have sufficient avenues to sell authentic products in a culturally appropriate way.
- 3.17 The City of Sydney noted that 394 000 domestic and international tourists participated in an Indigenous cultural tourism experience in NSW between September 2015 and September 2016, spending a total of \$1.14 billion during that time.<sup>8</sup>
- 3.18 At the hearing in Sydney on 7 March, the City of Sydney further explained these figures:
- This research comes from tourism in New South Wales. Obviously it is a survey so it doesn't unpack it terribly well. Something around 20 per cent of visitors, cultural tourists visited an Aboriginal cultural display or art gallery exhibition or maybe went shopping for some Aboriginal art. Another 11 per cent visited a

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8 City of Sydney, *Submission 93*, p. 1.

community or a cultural site, and eight or nine per cent went to a performance so it is a very broad sense of cultural experience.<sup>9</sup>

- 3.19 The City of Sydney expressed concerns however that tourists who travel to Australia and connect with First Nations cultures are leaving with souvenirs that mostly have no connection to these cultures, and therefore, with an artificial understanding of them.<sup>10</sup>
- 3.20 Analysis by Tourism Research Australia for the 2017–18 financial year indicates that 978 000 international visitors and 715 000 overnight domestic trips included an Indigenous tourism activity. This includes art, craft and cultural displays, visiting an Aboriginal site or community, or attending an Aboriginal performance. These visitors collectively spent \$8.4 billion during these trips, although the proportion that can be attributed to Indigenous tourism is not known. Notably, 198 000 international visitors in that year purchased Indigenous art, crafts or souvenirs.<sup>11</sup>
- 3.21 Mr Wayne Barker from the Kimberley Aboriginal Law and Cultural Centre commented that there are challenges for First Nations peoples when participating in tourist experiences of their culture:

...it puts enormous pressure on the Indigenous people to maintain their traditional integrity. I will use the analogy of what's happening in Hawaii, where when they get off a plane they expect you to put a lei around their neck. In this case it is some kind of Indigenous artefact. This commercial appetite or competition for the commercial integrity of it as opposed to cultural integrity is our greatest dilemma. We're always trying to find ways in which to use one to support the other but fundamentally use both to maintain a cultural economy equation that satisfies the continuance of traditional law and custom but also maintains our rights as owners of cultural artefacts.<sup>12</sup>

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9 Ms Yvette Andrews, Manager, Community Engagement, City of Sydney, *Committee Hansard*, Sydney, 7 March 2018, p. 3.

10 Mr David Beaumont, Community Engagement Coordinator, City of Sydney, *Committee Hansard*, Sydney, 7 March 2018, pp. 1–2.

11 Unpublished data from the Tourism Research Australia *International Visitor Survey and National Visitor Survey*.

12 Mr Wayne Barker, Festival and Cultural Events Coordinator, Kimberley Aboriginal Law and Cultural Centre, *Committee Hansard*, Broome, 10 April 2018, p. 8

3.22 Creative Economy states that inauthentic products tend to be found at large markets and general souvenir stores in high volume tourist locations where they predominate over authentic items. Creative Economy also noted:

The retail market, especially prominent chains traditionally buy from distributors and large suppliers. There are small retail operators that do retail authentic product but generally they have less of a profile in the marketplace.<sup>13</sup>

3.23 FORM comments that 'there is far less best-practice procurement of ethically made/authentic Aboriginal and Torres Strait Islander merchandise...within tourist value chains'.<sup>14</sup>

3.24 The Indigenous Art Code (the code), a voluntary industry code of conduct designed to promote the fair and ethical trade of First Nations artworks, informed the committee that it could not consider many of the current souvenir businesses for membership because they stock so much inauthentic product.<sup>15</sup> The code is discussed in more detail in Chapter 4.

3.25 Desart conducted a survey of its member art centres, which account for 40% of the remote art centres in Australia, and more than half stated that it is hard to compete with, or even access, retail and wholesale outlets because of lower-priced inauthentic art.<sup>16</sup>

3.26 Ms Nancy Bamaga discussed the gradual exclusion of genuine First Nations art and craft from the retail sector over the past 20 years:

A couple of decades back the retail tourism sector was a thriving industry with authentic Indigenous arts and crafts. However, over time it has changed drastically in the urban area. Aboriginal and Torres Strait Islander artists and retailers have been struggling financially in the retail tourism market, so they have cut their losses and closed their businesses. Slowly there has been a decline, so authentic arts and crafts are most likely to be found only at Indigenous festivals and art fairs, including local markets.<sup>17</sup>

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13 Creative Economy, *Submission 99*, p. [3].

14 FORM, *Submission 61*, p. 4.

15 Ms Gabrielle Sullivan, Chief Executive Officer, Indigenous Art Code Ltd (IartC), *Committee Hansard*, Sydney, 6 March 2018, p. 42.

16 Mr Philip Watkins, Chief Executive Director, Desart Inc., *Committee Hansard*, Alice Springs, 1 May 2018, p. 10.

17 Ms Nancy Bamaga, Managing Director, Black Drum Productions, *Committee Hansard*, Brisbane, 16 July 2018, p. 1.

- 3.27 WW Souvenirs, Gifts and Homewares (WW Souvenirs), a supplier of genuine First Nation art and craft, commented that the influx of cheap inauthentic souvenirs from overseas was forcing the closure of some retailers who could not compete when selling Australian made products at lower profit margins.<sup>18</sup>
- 3.28 Ms Gabrielle Sullivan, Chief Executive Officer of IartC Ltd , also remarked on the very difficult situation facing First Nations artists who want to sell their products in this market:
- ...artists are making it because they want to generate income from it. But they're also doing it to share their culture, and they feel like they simply can't compete with all of that product that's in the market. There's just no room for it on the shelves.<sup>19</sup>
- 3.29 Ms Sullivan further expressed the view that the more disturbing issue was that tourists were mainly purchasing items with no connection to Aboriginal and Torres Strait Islander cultures and the staff in these shops are often telling them absolute rubbish about First Nations cultures.<sup>20</sup>
- 3.30 Mr Joe Skeen, the Managing Director of an Aboriginal-owned business, Murra Wolka, addressed the issues facing First Nations producers with an actual dollar example:
- I've got a boomerang in front of me...It sells for \$4 retail in the shop. It's been hand painted. You can't even make a boomerang for \$4. Did an Aboriginal artist or person make that, paint it and then package it and sell it to the shop? It's just not possible.<sup>21</sup>
- 3.31 Mr Neil Cope, Director of wholesale company Cooee Brands, highlighted the economics of supplying a high demand souvenir item such as a boomerang:
- We have to produce this in Indonesia, for purely competitive reasons. We would all love to be buying Australian-made products. We've tried three times to work with communities in northern Australia, but we need a thousand boomerangs a week. We just can't get it. You've got this challenge of supply and demand. This is a classically Australian product. There' demand

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18 Mr Richard Myles-Whittington, Managing Director, WW Souvenirs, Gifts and Homewares (WW Souvenirs), *Committee Hansard*, Brisbane, 17 July 2018, p. 24.

19 Ms Sullivan, IartC, *Committee Hansard*, Sydney, 6 March 2018, p. 36.

20 Ms Sullivan, IartC, *Committee Hansard*, Sydney, 6 March 2018, p. 36.

21 Mr Joe Skeen, Managing Director, Murra Wolka, *Committee Hansard*, Canberra, 21 September 2018, p. 7.

for it at \$20 retail, but there isn't the demand for it at \$120 retail, so there's a real problem.<sup>22</sup>

- 3.32 WW Souvenirs further remarked that the stores that they supply with authentic products are generally the more up-market style of businesses, although these retailers will typically also sell inauthentic items.<sup>23</sup>
- 3.33 The *Fake Art Harms Culture* campaign noted that retail outlets usually display authentic and inauthentic products side-by-side and that the labelling of these products is variable and confusing.<sup>24</sup>
- 3.34 DCA and the Department of the Prime Minister and Cabinet also comment that confusing product presentation and insufficient or inconsistent labelling makes it very difficult for consumers to determine what is authentic.<sup>25</sup>
- 3.35 Arnhem, Northern and Kimberley Artists Aboriginal Corporation (ANKA) argues that the side-by-side presentation of authentic and inauthentic products by retailers not only creates confusion for customers but devalues and disrespects genuine First Nations cultural expression.<sup>26</sup>
- 3.36 DCA commented that inauthentic products not only erode economic opportunities for First Nations peoples, as well as the ownership and control of their culture, but also devalue tourist experiences of Australia.<sup>27</sup>
- 3.37 The Darwin Aboriginal Art Fair Foundation (DAAF) queried why the prevalence of inauthentic products in retail outlets was not being addressed and whether a consumer could be expected to be aware of the authenticity issue:

...why should they [consumers] have to understand that?...As a foreign tourist, you should not have to question what is authentic and what is not authentic. That is not a tourist's responsibility.<sup>28</sup>

- 3.38 DAAF also expressed the view that art centres would be perfectly capable of meeting the demand for souvenirs in the mainstream retail sector if given the opportunity:

I think one of the misconceptions we have in this country is that Aboriginal people are not able to produce the work required to sell

22 Mr Neil Cope, Director, Cooe Brands, *Committee Hansard*, Canberra, 21 September 2018, pp. 21–22.

23 Mr Myles-Whittington, WW Souvenirs, *Committee Hansard*, Brisbane, 17 July 2018, p. 25.

24 Victorian Government, *Submission 128*, p. 3.

25 DCA and the Department of the Prime Minister and Cabinet (PM&C), *Submission 131*, p. 1.

26 Arnhem, Northern and Kimberley Artists Aboriginal Corporation (ANKA), *Submission 132*, p. 7.

27 Mr Richard Eccles, Deputy Secretary, DCA, *Committee Hansard*, Canberra, 2 March 2018, p. 1.

28 Ms Claire Summers, Executive Director, Darwin Aboriginal Art Fair Foundation (DAAF), *Committee Hansard*, Darwin, 10 August 2018, p. 9.



in the volumes in our retail outlets, and I think that's anything but the truth...Our art centres are doing it brilliantly, so maybe part of the solution is not ostracising the people who are selling in these tourist environments; it's giving them the mechanisms to be able to purchase artwork that has been endorsed and supplied by our art centres. That is how we can, perhaps slowly, over a period of time, start ensuring that what is available in our retail outlets across this country is driven by Indigenous artists.<sup>29</sup>

3.39 DCA surveyed 79 art centres in 2016 about the type and number of products they sell and a high proportion responded that they are producing items, up to 12 different products in some cases. DCA notes that these art centres are keen to build on this business but face resourcing challenges.<sup>30</sup>

3.40 DCA remarked that the art centres gave a number of reasons for producing merchandise themselves, including diversifying income and providing artists with more opportunities.<sup>31</sup>

3.41 Martumili Artists commented that they already have ideas and ways to do merchandising in wholesale markets or online but lack capacity and staff.<sup>32</sup> Martumili Artists further commented:

If you were providing the industry with the support to have the professionals in place that could help each arts centre, you could look at marketing or the development of tool kits like Arts Law do. If there were structures in place for arts centres to create more merchandise, if it was done correctly, you could start having it in more of a wholesale market as well.<sup>33</sup>

3.42 Desart summarised these concerns in this way:

...knowing who to deal with was a threshold barrier. Is the manufacturer ethical or not? Will copyright be respected? These were some of the questions that came back to us.

Art centres generally have limited human or financial resources to undertake the market research, diversify the existing business models and market their product in ways that would compete with the existing saturation of cheap, inauthentic Aboriginal-style products.<sup>34</sup>

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29 Ms Summers, DAAF, *Committee Hansard*, Darwin, 10 August 2018, p. 11.

30 Ms Barney, DCA, *Committee Hansard*, Canberra, 2 March 2018, pp. 2-3

31 Ms Barney, DCA, *Committee Hansard*, Canberra, 2 March 2018, p. 4.

32 Ms Carly Day, Manager, Martumili Artists, *Committee Hansard*, Newman, 10 April 2018, p. 5.

33 Ms Day, Martumili Artists, *Committee Hansard*, Newman, 10 April 2018, p. 5.

34 Mr Watkins, Desart Inc., *Committee Hansard*, Alice Springs, 1 May 2018, pp. 8-9.

- 3.43 DCA further commented on the challenges involved with supply chains, stating that only 0.05% of art centres sell their products through wholesalers. Some connect directly with individual retailers through art fairs or industry events but most are selling their merchandise themselves. This poses particular challenges for remote communities, and DCA noted that more work need to be done to facilitate the connection between centres and wholesalers to give them better access to regular supply chains.<sup>35</sup>
- 3.44 Desart further remarked that supporting such activities has the potential to support the future viability and sustainability of remote and regional art centres, reduce their dependence on government funding, and help to mitigate the risks associated with fluctuations in the fine art market.<sup>36</sup>

### Committee comment

- 3.45 There are some considerable barriers to the successful commercialisation of authentic First Nations art and craft, particularly in the souvenir market. There are two fundamental issues here: (1) retail businesses that stock more inauthentic First Nations souvenirs than authentic; and (2) First Nations artists have trouble competing with cheap inauthentic products due to cost, scale and lack of knowledge of supply chains.
- 3.46 It is unacceptable that a large part of this valuable market for First Nations souvenirs is not readily accessible to the only people who have any right to supply it and benefit from it commercially. First Nations peoples are also among the most economically disadvantaged in Australia, and their lives and communities could be transformed by earning a sustainable living from their own culture.
- 3.47 The long-term goal of policy development in this area needs to be the predominance of authentic and culturally appropriate First Nations products in Australia's art and craft retail sector. The way forward in the shorter term however is a) to ensure that consumers have more access to authentic products and can readily distinguish them and make informed choices; and b) have a campaign that highlights the benefits of having authenticity as a purchasing criterion. This is discussed further in Chapter 4 in relation to education and labelling.

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35 Ms Barney, DCA, *Committee Hansard*, Canberra, 2 March 2018, pp. 2-3.

36 Mr Watkins, Desart Inc., *Committee Hansard*, Alice Springs, 1 May 2018, p. 9.

## Sector-specific practices

### Fine art

- 3.48 The evidence to the inquiry indicated that authenticity was less of a problem in the fine art sector of the market, as a system of checks is already in place in terms of provenance and buyer knowledge for these typically far more expensive purchases.
- 3.49 The Australian Aboriginal Art Association (AAAA) states that the level of inauthentic Indigenous fine art was not meaningful as there is a successful system for provenance certification in place and legal arrangements are adequate.<sup>37</sup>
- 3.50 The AAAA also remarked that care must be taken not to associate the prevalence of inauthentic craft- or souvenir-type products with all Indigenous art as this will have a detrimental impact and reduce consumer confidence in the quite distinct market for First Nations fine art.<sup>38</sup>
- 3.51 Creative Economy agreed that the Indigenous fine art market did not have the same issues with authenticity as the tourist market due to buyer caution.<sup>39</sup>
- 3.52 The Cairns Indigenous Art Fair (CIAF) noted that the way people buy fine art acts as a protection of authenticity:
- Buyers of fine art are more in tune with provenance and they understand how the system works, whereas people who go to the night market aren't going to know. It's a totally different system the way people buy. That's pretty much it. They're more educated if they're buying fine art.<sup>40</sup>

### Art fairs

- 3.53 Art fairs are a major platform for First Nations artists to showcase and sell their work. The committee was fortunate to be able to visit three major annual Indigenous art fairs during the inquiry; Revealed in Fremantle, the CIAF, and DAAF.

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37 Australian Aboriginal Art Association (AAAA), *Submission 52*, p. 3.

38 AAAA, *Submission 52*, p. 3; Ms Brenda Colahan, Treasurer and Executive Member, AAAA, *Committee Hansard*, Sydney, 6 March 2018, p. 8.

39 Ms Helene George, Founder and Managing Director, Creative Economy, *Committee Hansard*, Melbourne, 8 March 2018, p. 3.

40 Ms Janina Harding, Artistic Director, Cairns Indigenous Art Fair (CIAF), *Committee Hansard*, Cairns, 15 July 2018, p. 3.

- 3.54 These site visits gave the committee a valuable opportunity to experience First Nations art and crafts, and to speak with many Indigenous artists and art centres about their work and careers, and about the impacts of inauthentic art.
- 3.55 The importance of art fairs was highlighted by a number of contributors to the inquiry. CIAF states that it provides artists with opportunities to extend their skills and promote their culture.<sup>41</sup>
- 3.56 CIAF further emphasised its value, and that of other fairs, as a safe place for remote artists and art centres to sell their work:
- Because they're not actually locally here, getting their work consistently down here to somewhere safe to be sold is an ongoing issue. They all work. They spend months working towards CIAF because they know that this is a fabulous platform for sale and then they go to the Darwin art fair equally.<sup>42</sup>
- 3.57 DAAF commented on their importance in protecting culture from the aspect of both First Nations laws and mainstream Australian law:
- We're all about protecting Indigenous art...what I think we as a foundation and we as an art fair in protecting our membership and our artists are doing is ensuring that that lore system is understood in the first instance but equally that there is equivalent legislation, non-Indigenous law, that protects and reinforces that as well.<sup>43</sup>

## Committee comment

- 3.58 The committee is cognisant of the fact that inauthenticity is far less prevalent in the fine art sector than in the souvenir trade and that fine arts could be negatively impacted by a lack of understanding of this. Future policies need to be designed accordingly and take care not to confuse these two different sectors of the art market in relation to this problem.
- 3.59 There is a wonderful tradition of First Nations fine art in Australia which must be given every opportunity to flourish and grow in the future. Art fairs will continue to be a particularly important part of this. As will be discussed in more detail below and in Chapter 4, there are ethical issues in the market for First Nations fine art that will need to be addressed.

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41 CIAF, *Submission 117*, p. [1].

42 Ms Vanessa Gillen, General Manager, CIAF, *Committee Hansard*, Cairns, 15 July 2018, p. 3.

43 Ms Franchesca Cubillo, Senior Curator, DAAF, *Committee Hansard*, Darwin, 10 August 2018, pp. 7-8.

## Art centres

3.60 Indigenous art centres are a cornerstone of the First Nations art industry. The joint submission from DCA and PM&C highlights the importance of these entities both from a business and professional perspective and as part of the social and cultural fabric of the local Indigenous communities they serve:

Art centres provide the infrastructure and relationships that allow artists to create new art, generate income, develop professional skills and connect to the commercial art market through partnerships with dealers and galleries, online sales and marketing strategies.

As community-owned organisations, art centres are responsive to local needs. While their primary purpose is to support professional art practice, they also play an important role in enhancing social cohesion, promoting respect for traditional knowledge, ensuring the transmission of culture, and providing economic and leadership opportunities for Aboriginal and Torres Strait Islander peoples.<sup>44</sup>

3.61 These centres now exist throughout Australia, including regional and remote areas. More than 30 of these organisations made contributions to this inquiry (Appendix D).

3.62 ANKA, representing 47 art centres and more than 5000 Indigenous artists, argued that art centres play a wide range of roles:

Art Centres, are a uniquely Australian invention and the model is at the heart of the successful Indigenous art movement. There is no equivalent institution to the Aboriginal owned and governed Art Centre in the mainstream art world – combining as it does, functions of commercial art galleries, art and design studios, art schools and community resource centres.<sup>45</sup>

3.63 ANKA notes that art centres are often the only Indigenous-owned enterprise, or indeed business of any kind, in remote communities, and are thus vital for local employment and livelihoods in these areas.<sup>46</sup>

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44 DCA and PM&C, *Submission 131*, p. 2.

45 ANKA, *Submission 132*, p. 8.

46 ANKA, *Submission 132*, p. 8.

- 3.64 Art centres are typically owned and governed by the local First Nations communities, but will often employ a non-Indigenous manager with the requisite administrative experience and skills. About 80 art centres are supported through the Commonwealth Government's \$20 million Indigenous Visual Arts Industry Support (IVAIS) program.<sup>47</sup>
- 3.65 Desart, representing art centres from across the Central Desert, also emphasised the cultural and economic importance of this model:
- Artists working in the art centre context have a framework that supports their artistic and cultural expressions. The support to artists is not only for the art-making but, importantly, supports how the presentation of our arts and cultures is negotiated and presented within a broader market. Management in our member art centres are tasked with negotiating those terms and conditions of sales by way of legal contracts for galleries and collectors and, in some cases, are required to negotiate license agreements for products aimed at the tourist market, merchandising and branding.<sup>48</sup>
- 3.66 Tjanpi Desert Weavers too highlighted the importance of peak bodies and regional alliances with respect to art centres:
- Tjanpi is also a part of the APY Art Centre Collective and Western Desert Mob. Both entities are a regional alliance of art centres, one in the APY lands and the other in the Ngaanyatjarra lands, created to promote community based, owned and governed Aboriginal art centres; support and protect intergenerational learning and Aboriginal culture through art; celebrate artistic and cultural integrity and the ethical sale of authentic art; and encourage sustainable Aboriginal enterprises.<sup>49</sup>
- 3.67 The Indigenous Art Centre Alliance, representing 14 art centres, remarked that its core functions are to promote, advocate, support, train and build careers for Indigenous artists.<sup>50</sup>
- 3.68 FORM highlighted that the art centre model 'has fostered greater awareness of the importance of provenance and ethical artwork procurement'.<sup>51</sup>

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47 Ms Barney, DCA, *Committee Hansard*, Canberra, 2 March 2018, p. 2.

48 Mr Watkins, Desart Inc., *Committee Hansard*, Alice Springs, 1 May 2018, p. 1.

49 Ms Michelle Young, Manager, Tjanpi Desert Weavers, NPY Women's Council, *Committee Hansard*, Alice Springs, 2 May 2018, p. 9.

50 Ms Pamela Bigelow, Manager, Indigenous Art Centre Alliance, *Committee Hansard*, Cairns, 14 July 2018, p. 1.

51 FORM, *Submission 61*, p. 4.

- 3.69 In addition to supporting and fostering the creation of the art itself, art centres provide a crucial avenue for sales. Notably however, there are many centres that are struggling financially and find it difficult to reach mainstream art markets. Ninti One notes from the results of its 2016 *Aboriginal and Torres Strait Islander Art Economies* project that ‘the financial circumstances of many art centres are fragile, with falling profitability.’<sup>52</sup>
- 3.70 Ninti One further notes that 70% of the funding for art centres comes from grants but that staffing is most critical to their success:
- A nationwide project to transform staff recruitment and retention practices in remote art centres is urgently needed, with research showing this to be the single biggest success or failure factor that Aboriginal art centres negotiate.<sup>53</sup>
- 3.71 Desart concurs fully with this view and remarked that the lack of infrastructure is a major issue for art centres when trying to recruit staff. Desart commented that quality managers are difficult to recruit and often leave because the available accommodation in particular is so poor.<sup>54</sup>
- 3.72 ANKA also remarks that despite the enterprise demonstrated by many art centres, many are becoming financially unviable due to chronic understaffing and lack of resources.<sup>55</sup>
- 3.73 Further, artists living in very remote areas may not have access to an art centre and only very limited access to a field officer who could assist them with selling their art.<sup>56</sup>
- 3.74 DCA noted a considerable diversity of roles among different centres:
- They perform very different roles in very different communities. You’ve got some, such as the arts centre in Yirrkala, which produce globally significant art. Some of the artists there, Djambawa and others, have items on display in some of the best galleries around the world. It has huge export potential; it’s almost the economic centrepiece of the community. It brings the community together. It’s the most impressive art centre you’ll see. And then there are others that are very much about a social and community hub for the community.<sup>57</sup>

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52 Ninti One, *Submission 1*, p. [1].

53 Ninti One, *Submission 1*, p. [3].

54 Mr Watkins, Desart Inc., *Committee Hansard*, Alice Springs, 1 May 2018, p. 14.

55 ANKA, *Submission 132*, p. 9.

56 Ms Young, Tjanpi Desert Weavers, NPY Women's Council, *Committee Hansard*, Alice Springs, 2 May 2018, p. 11.

57 Mr Eccles, DCA, *Committee Hansard*, Canberra, 2 March 2018, p. 2.

- 3.75 DCA also commented that success is unpredictable and varies among the centres that it monitors who receive IVAIS funding.<sup>58</sup> DCA stated:
- An arts centre's success can happen very quickly. It can be a little community with a small art centre, nothing much going on, and then suddenly there's critical acclaim.<sup>59</sup>
- 3.76 Evidence to the committee from the Aboriginal Art Centre Hub of Western Australia (AACHWA) emphasised that their art centres are very entrepreneurial and are looking to better access different markets and interact with more Indigenous artists in remote areas.<sup>60</sup>
- 3.77 While Tourism Australia currently has a program to promote Indigenous tourism, 'Discover Aboriginal Experiences', it appears that only one art centre and one art gallery are included among the 38 businesses promoted by this scheme.<sup>61</sup>

### Committee comment

- 3.78 Fostering the Indigenous art centre model will be a critical component of any policy changes aimed at protecting the integrity of First Nations artistic expressions and cultures.
- 3.79 The committee believes that with adequate resourcing and access to proper business, legal and marketing expertise, art centres could become a much larger presence in the souvenir market and be a key driver in reducing the prevalence of inauthentic souvenirs. This will also provide significant opportunities for First Nations artists to earn a sustainable living from their work, particularly those in very remote areas.
- 3.80 The committee would also like to see a culturally sensitive qualification established for administration/manager traineeships for art centres. These positions would need a mentoring element and, once established, a very firm monitoring process.

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58 Ms Barney, DCA, *Committee Hansard*, Canberra, 2 March 2018, p. 2.

59 Ms Barney, DCA, *Committee Hansard*, Canberra, 2 March 2018, p. 2.

60 Mr Chadwick Creighton, Chief Executive Officer, Aboriginal Art Centre Hub of Western Australia (AACHWA), *Committee Hansard*, Perth, 9 April 2018, p. 12.

61 Tourism Australia, 'Discover Aboriginal Experiences', 2018, <<http://www.tourism.australia.com/en/about/our-programs/signature-experiences-of-australia/discover-aboriginal-experiences.html>> viewed 31 October 2018.



## Independent artists

- 3.81 Not all First Nations artists are attached to an art centre, with some operating and working independently. However, this can place these artists in a vulnerable position when selling their work.
- 3.82 Testimony from the AACHWA suggested that in some cases artists are persuaded to work away from an art centre by unscrupulous organisations:
- Their protection really needs to be an important part of the conversation because they are being exploited by what are known as carpetbaggers and organisations that cherrypick.<sup>62</sup>
- 3.83 Desart concurs, stating:
- There are many independent artists in our region here in Alice Springs who I engage with every day. These artists sell their work to passing tourists and/or locals in the Todd Mall and CBD environs. They operate independently in the local community market, at events and even at the hospital. These artists don't have the safety net of an art centre or a peak body that can work on their behalf to negotiate equitable terms, help resolve disputes or negotiate or interpret contracts for use of their work. These artists are most vulnerable to being exposed to unscrupulous conduct.<sup>63</sup>
- 3.84 Ananguku Arts and Culture Aboriginal Corporation (Ku Arts) stated that there has been progress in ensuring fair dealing for First Nations fine arts, but made the important point that authenticity is not necessarily indicative of ethical behaviour:
- Whilst many galleries are reputable and respected, even within these structures there are dealers who operate outside of these standards with little consequence. Carpetbagging is prevalent and a major concern for much of our membership. Artwork may be authentic; however, a fair deal is not always the case.<sup>64</sup>
- 3.85 In some cases artists are being taken advantage of by being forced to work under duress. They may be receiving unfair remuneration or inappropriate payments of drugs, alcohol or vehicles for their work. As well as artists, art centre staff have been intimidated and threatened. These practices are referred to as carpetbagging.

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62 Ms Charmaine Green, Chairperson, AACHWA, *Committee Hansard*, Perth, 9 April 2018, p. 14.

63 Mr Watkins, Desart Inc., *Committee Hansard*, Alice Springs, 1 May 2018, p. 9.

64 Ananguku Arts and Culture Aboriginal Corporation (Ku Arts), *Submission 86*, pp. 2-3.

- 3.86 Ms Gabrielle Sullivan of the IartC discussed a number of cases of artists being taken advantage of by businesses preying on their need for money. Examples included a non-Indigenous-owned souvenir business purchasing artwork from Indigenous artists at unfair prices, and importing products, such as boomerangs and digeridoos, and getting artists 'to fill in a component of it [to cover off on] *hand painted by an Aboriginal person in Australia,*' with each artists being paid a unit price per object. One artist told Ms Sullivan that she had cultural concerns and 'felt terrible about...the things that she was painting', but that she needed money to look after her children.<sup>65</sup>
- 3.87 Even artists working within art centres are commonly at the receiving end of carpetbagging behaviour. Examples shared by Ms Skye O'Meara, the manager of the APY Art Centre Collective, and Ms Tuppy Goodwin of Mimili Maku Arts, included instances of artists being approached and pressured in Alice Springs – sometimes when there for medical treatment or during family crises – artists painting in sweatshop environments, and staff being threatened with physical violence.<sup>66</sup>
- 3.88 Ms O'Meara also discussed the Collective's strategies for supporting artists affected by carpetbagging, including opening their own Sydney gallery in 2018. She noted however that they receive no operational funding to support this particular work and is unaware of any other organisation providing this type of direct support.<sup>67</sup>
- 3.89 The City of Melbourne's *Code of Practices for galleries and retailers of Indigenous Art* addresses these practices and behaviours by prescribing that:

Retailers and galleries will not put pressure on Indigenous artists to paint certain styles and imagery that are not part of the individual Indigenous artist's cultural heritage.

Retailers and galleries will not force or induce Indigenous artists to sign their names to paintings not created by them, or produced under their direction and control.<sup>68</sup>

65 Ms Sullivan, IartC, *Committee Hansard*, Sydney, 6 March 2018, p. 37.

66 Ms Skye O'Meara, Manager, APY Art Centre Collective, *Committee Hansard*, Darwin, 10 August 2018, pp. 13–16.

67 Ms O'Meara, APY Art Centre Collective, *Committee Hansard*, Darwin, 10 August 2018, pp. 13–16; B Humphreys, 'APY Art Centre Collective to open gallery in heart of Sydney, taking indigenous art directly to the public', *The Advertiser*, 16 November 2017, <<https://www.adelaidenow.com.au/news/south-australia/apy-art-centre-collective-to-open-gallery-in-heart-of-sydney-taking-indigenous-art-directly-to-the-public/news-story/ad61c4c2a3c88aab1a4a81f5f432d1fd>> viewed 31 October 2018.

68 T Janke, *Code of Practice for galleries and retailers of Indigenous Art*, City of Melbourne, 2017, p. 9, <<https://www.melbourne.vic.gov.au/SiteCollectionDocuments/code-of-practice-indigenous-arts.pdf>> viewed 2 August 2018.

- 3.90 Desart suggests that increased resourcing of copyright agencies such as Arts Law and rigorous outreach programs in remote and regional areas would go some way to reducing these vulnerabilities.<sup>69</sup>
- 3.91 Tangentyere Artists remarked that some artists have been able to acquire skills and training at their centre and then successfully launch an independent career but that others have become exposed to exploitation, even by their own relatives:
- ... there are many instances of people who are incredibly vulnerable to manipulation within their own families. Just the whole question of who actually painted the painting that's being sold on the lawns in town? Is it really the person doing the selling? Where's the money really going? It's a very complex domain. When I meet people like that, all I ever do is try to encourage them to think about an arts centre.<sup>70</sup>
- 3.92 There are also other challenges in relation to connecting with certain independent artists and enabling them to show and sell their work. This was outlined by evidence from the Fremantle Arts Centre:
- Certainly we found that there is a great challenge in reaching independent Aboriginal artists, because they don't have the same resources or support networks. They are not represented by an Aboriginal art centre. It is harder to find them... We've slowly been building up our kind of communication network to let these artists know that Revealed is for them as well. I think there has been a perception that Revealed is for Aboriginal artists that are represented by art centres.<sup>71</sup>
- 3.93 The Fremantle Arts Centre further commented that independent artists operate on a spectrum from the very famous and high-profile individuals who are represented by commercial galleries to local artists with no formal training or support structures.<sup>72</sup>

## Committee comment

- 3.94 As good and important as art centres are in providing training and opportunities for First Nations artists, some of these artists are not affiliated with a centre and may wish to operate independently. They are also a crucial part of the First Nations art community.

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69 Mr Watkins, Desart Inc., *Committee Hansard*, Alice Springs, 1 May 2018, p. 9.

70 Ms Sue O'Connor, Assistant Coordinator, Tangentyere Artists, *Committee Hansard*, Alice Springs, 2 May 2018, p. 7.

71 Ms Erin Coates, Revealed Coordinator and Special Project Curator, Fremantle Arts Centre, *Committee Hansard*, Perth, 9 April 2018, pp. 21–22.

72 Ms Coates, Fremantle Arts Centre, *Committee Hansard*, Perth, 9 April 2018, p. 25.

- 3.95 The committee is concerned however about the vulnerabilities that can arise in some instances with independent artists. There needs to be consideration in the future of how to provide them with the information and resources needed to fairly sell and license their art and also deal with unscrupulous behaviour if it occurs.
- 3.96 An Indigenous-based NEIS (New Enterprise Incentive Scheme) could possibly be investigated, so that income support is maintained while the artist develops markets and still has financial security. This scheme has a supervisor and involves close monitoring, usually only for brand new ideas, but perhaps could be modified.

## Licensing arrangements

- 3.97 First Nations artists often enter into formal agreements and sign contracts to supply and sell their art. Many such agreements are mediated through an art centre which coordinates the contractual arrangements for its artists. Notably however, some of these business arrangements are a lot less formal and involve questionable ethical practices.
- 3.98 Desart discussed its practices in relation to working with members of its art centres to enter into business arrangements:
- Desart, through our strong business program, has a service agreement with Arts Law to ensure our members have access to introductory legal support, pro-forma best practice contracts and, particularly relevant to this inquiry, a licensing toolkit that supports art centres to manoeuvre through the tasks required to license art for merchandising.<sup>73</sup>
- 3.99 Tjanpi Desert Weavers commented that it has robust agreements in place with its artists that are based on best practices as developed by Arts Law, including the use of audio translations:
- Tjanpi regularly utilises Arts Law contract templates to ensure that we work in an ethical and transparent manner. We also continually strive to review our practices, and last year we reviewed our artist agreement with Arts Law to ensure best practice and compliance with the code, and had plain English statements of the agreement drafted by Arts Law, which were then translated into two languages and then spoken and recorded as audio files.<sup>74</sup>

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<sup>73</sup> Mr Watkins, Desart Inc., *Committee Hansard*, Alice Springs, 1 May 2018, p. 8.

<sup>74</sup> Ms Young, Tjanpi Desert Weavers, NPY Women's Council, *Committee Hansard*, Alice Springs, 2 May 2018, p. 9.

3.100 As noted by Tangentyere Artists however, licensing can be confusing and requires skills and resources that not all art centres have:

Opportunities may be missed by artists from arts centres because of a conservative approach by arts centre personnel regarding reproduction and licensing of the product...informed by a desire to do no more harm to the profile of artists and the value of their work, and an ongoing commitment to the maintenance of quality. But, more importantly, art centres are informed by cultural considerations.<sup>75</sup>

3.101 Professor Altman commented that enhancing the capacity of art centres to enter into commercially-sound licensing agreements is imperative, and that offshore manufacturing under licence is an important component of this that can benefit Indigenous peoples.<sup>76</sup>

### Committee comment

3.102 Aside from positive effects on Australia's cultural integrity and standing, there will be overall economic benefits to the nation from promoting different business and licencing opportunities in the art and craft market for First Nations communities. This includes increased employment and training, most notably in regional and remote areas, and a higher output of domestically manufactured goods.

3.103 Strong consideration also needs to be given to ensuring that artists operating independently of an art centre can access these same opportunities.

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<sup>75</sup> Ms Terazita Turner-Young, Arts Administrator, Tangentyere Artists, *Committee Hansard*, Alice Springs, 2 May 2018, p. 3.

<sup>76</sup> Professor Altman, *Submission 118*, p. 10.



## Protecting First Nations art

### Introduction

- 4.1 Stronger protections for First Nations cultural expressions should reduce the prevalence of inauthentic Indigenous style art and craft items. This chapter discusses some ways First Nations arts and craft items could be protected, including:
- education – better informing consumers and the supply chain on the importance of authenticity in First Nations cultural expressions;
  - labelling systems – providing information to customers at the point of sale;
  - consumer law and copyright – the adequacy of current legislative frameworks in protecting cultural expressions;
  - the Indigenous Art Code – a retailer-level approach, encouraging authentic items and ethical processes; and
  - a Cultural Authority – an identifiable body whose role is focused on protecting traditional heritage and cultural expressions.

### Education

- 4.2 There is a widespread lack of knowledge about First Nations cultures among non-Indigenous Australians. Most have difficulty in distinguishing between authentic and inauthentic First Nations art and crafts. This is equally an issue for tourists.

- 4.3 As discussed, the prevalence of inauthentic First Nations ‘style’ art and craft in the souvenir trade is indicative of a healthy tourist demand for these products, but also of a distinct lack of knowledge about what is authentic and what is not.
- 4.4 A private survey by Ms Myvanwy Moar was instructive in this regard. She found that when people at a popular Melbourne market were asked to distinguish between authentic and inauthentic artworks, the majority answered incorrectly.<sup>1</sup> Ms Moar commented that:
- We surveyed 63 people and showed them four photos...Two people correctly identified all four...Sixteen people either couldn’t identify any or were incorrect in all four instances. Overall, photo by photo, they were correct 36 per cent of the time.<sup>2</sup>
- 4.5 Although this was a small survey, it is consistent with other evidence that the wider public is largely uninformed about authentic Indigenous cultural expression and do not know of its significance.
- 4.6 An education campaign for buyers of Indigenous art is advocated by many of the contributors to this inquiry. The Indigenous Art Code Ltd (IartC) fully supports this also but acknowledges that it would be costly, including a marketing campaign which would need to ‘ensure that it was promoting what Aboriginal and Torres Strait Islander people want to communicate about their culture and artistic expression’.<sup>3</sup>
- 4.7 The IartC’s suggestions include technology aids for consumer decision-making, presenting information publicly about the various supply chains, and linking the various stakeholders and peak bodies.<sup>4</sup>
- 4.8 The IartC commented that an effective education framework for retailers and suppliers will need to be quite prescriptive about what is authentic, what is not, and why imitation products should not be supplied.
- 4.9 The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) commented that education in this context would involve capacity building for First Nations communities to enable them to engage with the wider community, and would also involve including Indigenous culture in the school curriculum.<sup>5</sup>

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1 Ms Myvanwy Moar, *Supplementary Submission 71:1*, Answer to Question on Notice, p. [9].

2 Ms Myvanwy Moar, Private Capacity, *Committee Hansard*, Melbourne, 8 March 2018, p. 8.

3 Indigenous Art Code Ltd (IartC), *Submission 138*, p. 15

4 Ms Gabrielle Sullivan, Chief Executive Officer, IartC, *Committee Hansard*, Sydney, 6 March 2018, p. 43.

5 Mr Craig Ritchie, Chief Executive Officer, Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), *Committee Hansard*, Canberra, 2 March 2018, p. 17.



- 4.10 BlakDance commented that local Indigenous knowledge from First Nations communities should also be part of any teaching of culture.<sup>6</sup>
- 4.11 Mr Tim Acker believes that the emphasis needs to be on consumer education as well as robust labelling. He states:
- Restricting supply of inauthentic works would involve detailed knowledge of the supply chain involved in each product – this is unlikely to be realistic. The focus on any changes in this sector should be on giving consumers as many reasons as possible to seek out and buy art, craft and merchandise of integrity and quality.<sup>7</sup>
- 4.12 The Aboriginal Art Association of Australia (AAAA) believes that the supply chain is also viable target for effective education about authenticity. AAAA stated that:
- ...we need to educate every segment of this supply chain but put a lot of that focus on the intermediaries – your manufacturers, your distributors and most of all your retailers.<sup>8</sup>
- 4.13 The Copyright Agency stressed that whilst there is no one thing that can fix the education problem:
- One of the things you do is support the creation of ethically sourced, commercially viable products. We need to give more education to distributors, manufacturers, artists, art centres – everybody in the supply chain. We also need to promote good products. That’s a whole piece around education to the consumer.<sup>9</sup>
- 4.14 The Martumili Artists commented that additional support for artists and art centres to promote ethical practices, and better resourcing of organisations such as the Arts Law Centre of Australia (Arts Law) and the Copyright Agency, will foster the education of artists, consumers and others.<sup>10</sup>
- 4.15 Araluen Arts Centre stated that art centres are a gateway for the wider public to learn about First Nations art and cultural expressions.<sup>11</sup>

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6 BlakDance, *Submission 119*, p. [8].

7 Mr Tim Acker, *Submission 22*, p. [4].

8 Ms Sylvie Tsatsaronis, Director, Aboriginal Art Association of Australia (AAAA), *Committee Hansard*, Sydney, 6 March 2018, pp. 8–9.

9 Ms Judy Grady, Manager, Visual Arts, Copyright Agency, *Committee Hansard*, Sydney, 6 March 2018, p. 20.

10 Ms Carly Day, Manager, Martumili Artists, *Committee Hansard*, Newman, 10 April 2018, p. 2.

11 Mr Stephen Williamson, Curator, Araluen Arts Centre, *Committee Hansard*, Alice Springs, 2 May 2018, p. 23.

- 4.16 Girringun Aboriginal Art Centre from North Queensland remarked that while it constantly seeks to raise knowledge and cultural awareness, it cannot on its own spread this education as widely as it needs to go.<sup>12</sup>
- 4.17 The scale of the education shortfall from the business perspective was stressed by the City of Sydney:
- Would we be able to resource that education campaign? That would be incredibly difficult. And I think that's the same with the Indigenous Art Code. Do they have the knowledge? Absolutely. Are there too many people for them to share it with to make a significant difference? I suspect so. Understanding the extent of the problem is going to help inform the investment in the response, and I'm not sure that we've really nailed the extent of the problem yet.<sup>13</sup>
- 4.18 The Australian Competition and Consumer Commission (ACCC) noted that it publishes its own guidelines on the production and sale of Indigenous art but they only focused on the Australian Consumer Law (ACL) and the government may wish to consider a broader education campaign.<sup>14</sup>
- 4.19 The IartC and Arts Law argue however that although education is a necessary part of the response to this issue, only legislative change will ultimately deter suppliers of inauthentic product.<sup>15</sup> IartC further states:
- Fundamentally, in the absence of legislative change, education relies on the good intentions of suppliers and retailers. There will not be a strong deterrent to supplying inauthentic Indigenous art.<sup>16</sup>
- 4.20 Copyright Agency states that education and promotion activities will be less potent without a legislative component to addressing this problem.<sup>17</sup>

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12 Dr Valerie Keenan, Manager, Girringun Aboriginal Art Centre, *Committee Hansard*, Cairns, 15 July 2018, p. 8.

13 Ms Yvette Andrews, Manager, Community Engagement, City of Sydney, *Committee Hansard*, Sydney, 7 March 2018, p. 5.

14 Australian Competition and Consumer Commission (ACCC), *Submission 54*, p. 4.

15 Arts Law Centre of Australia (Arts Law) and IartC, *Submission 149*, p. 1.

16 IartC, *Submission 138*, Appendix A: 'A Proposed Way Forward—Amending the Australian Consumer Law', p. 10.

17 Copyright Agency, *Submission 56*, p. [2].

4.21 The Queensland Office of Fair Trading (OFT) informed the committee that it developed state-wide compliance operations in 2017–18 in light of the concerns raised about inauthentic art. It stated:

The program consisted of four main phases: research and consultation, an education and engagement component, and two dedicated compliance operations which focused on potential contraventions of the ACL...Based on the information obtained, OFT was able to develop the scope of its education and compliance phases in accordance with ACL requirements. OFT incorporated an educational phase because it was important for traders to be aware of and understand their legal obligations under the ACL. The critical output of this phase was the development of a fact sheet for industry which OFT produced in consultation with the Australian Competition and Consumer Commission and key stakeholders.<sup>18</sup>

4.22 The Queensland OFT further noted that following inspections of 110 retailers of Indigenous craft, nine investigations were conducted due to possible ACL breaches and all instances were willingly rectified by the trader.<sup>19</sup>

4.23 FORM suggested that an approach combining education and preventative measures is needed. For example, prohibiting imitation art under the Australian Tourism Accreditation Program and stamping out inauthentic product sales by local governments.<sup>20</sup>

### Committee comment

4.24 A well-resourced, targeted education campaign aimed at tourists, domestic consumers, retailers, wholesalers and distributors would assist in reducing the prevalence of inauthentic First Nations art and craft products. Such a campaign would support the other methods suggested in this report for bolstering the sale of authentic products.

4.25 The principal goal of such a campaign is to enable the consumer to make an informed choice between authentic and inauthentic First Nations art and craft. The committee believes that many properly informed consumers would prefer to buy genuine products. An increased demand for authentic First Nations products will create opportunities to meet that demand.

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18 Mr David Ford, Deputy Director-General, Department of Justice and Attorney-General, Queensland Office of Fair Trading (Qld OFT), *Committee Hansard*, 16 July 2018, Brisbane, p. 48.

19 Mr Ford, Qld OFT, *Committee Hansard*, 16 July 2018, Brisbane, p. 49.

20 FORM, *Submission 61*, p. 6.

- 4.26 The Queensland OFT approach to ensuring that traders of First Nations art and crafts are compliant with the ACL appears to be a very effective model. The committee would like to see this positive and direct approach adopted in other States and Territories. It is clear to the committee that State Governments need to tighten up their compliance and inspections and fines should become part of their strategy for retailers and suppliers of Indigenous style products who knowingly mislead their customers regarding its authenticity.

## Labelling

- 4.27 Much of the current labelling of First Nations art and craft objects, such as souvenir items, is confusing and provides inadequate, or in some cases misleading, information about authenticity. However, a well-administered scheme, by providing clear information to customers, may help to reduce the prevalence of inauthentic Indigenous style goods in Australian stores.
- 4.28 Ms Janke suggested that trademarks ‘strengthen and identify authentic Indigenous-made or Indigenous-licensed arts and crafts products’.<sup>21</sup>
- 4.29 A previous but ultimately unsuccessful label of authenticity scheme (known as the National Certification Scheme) was introduced and administered by the now defunct National Indigenous Arts Advocacy Association (NIAAA) from the late 1990s until 2003.
- 4.30 The scheme was designed to protect artists by ensuring adequate payment, encouraging buyers to purchase Indigenous art, and differentiating authentic artwork from copied artwork. To register for use of the trademark, artists had to show they identified as Aboriginal or Torres Strait Islander, and had permission from their relevant community to make the artwork.<sup>22</sup>
- 4.31 Under the scheme the NIAAA registered two trademarks – an authenticity mark and a collaboration mark. The authenticity mark certified that an artwork was created by an Indigenous artist. The collaboration mark certified that an Indigenous artist had made a significant contribution to an artwork’s creation.<sup>23</sup>

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21 Terri Janke and Company Pty Ltd, *Submission 73*, p. 3.

22 Senate Standing Committee on Environment, Communications, Information Technology and the Arts, *Indigenous Art – Securing the Future* tabled 20 June 2007, p. 122.

23 Senate Standing Committee on Environment, Communications, Information Technology and the Arts, *Indigenous Art – Securing the Future* tabled 20 June 2007, p. 122.

- 4.32 Criticisms of the scheme were that it was not well promoted or administered, and that many artists who applied for the mark were rejected as tests for Aboriginality were too complex, with over 75% of applications failing the requirements.<sup>24</sup>
- 4.33 The symbol representing the mark was also criticised because ‘it was thought to be overly exclusive [and] that Indigenous artists not using the mark would be perceived as being inauthentic’.<sup>25</sup>
- 4.34 The Department of Communications, Information Technology and the Arts advised the 2007 Senate inquiry into Indigenous Art that the scheme also failed because it did not make a distinction between fine art and souvenir products and merchandise.<sup>26</sup> Arts Law and AAAA made this same point in each of their submissions to the current inquiry.<sup>27</sup>
- 4.35 Mr Tim Acker also submitted that the scheme was problematic and expensive, warning against a similar system being repeated.<sup>28</sup>
- 4.36 It must be noted also, as highlighted by Arts Law and others, that some First Nations artists can be resistant to the notion that they have to somehow prove to others that what they are doing is genuine, and then go through a potentially burdensome administrative process to do so.<sup>29</sup>
- 4.37 Prior to its closure, a review of the NIAAA had been commissioned by the Aboriginal and Torres Strait Islander Arts Board of the Australia Council for the Arts (Australia Council). This review noted that the take-up of the certification scheme was only of fraction of what had been hoped for.<sup>30</sup> The review also stated that there was considerable anger and disillusionment amongst stakeholders about the inadequate implementation and administration of this labelling scheme, which was seen at the time as a vital activity to address authenticity concerns.<sup>31</sup>

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24 Senate Standing Committee on Environment, Communications, Information Technology and the Arts, *Indigenous Art – Securing the Future* tabled 20 June 2007, pp. 122–23; Arts Law, *Submission 64.1*, p. 14.

25 Senate Standing Committee on Environment, Communications, Information Technology and the Arts, *Indigenous Art – Securing the Future* tabled 20 June 2007, p. 123.

26 Senate Standing Committee on Environment, Communications, Information Technology and the Arts, *Indigenous Art – Securing the Future* tabled 20 June 2007, p. 123.

27 Arts Law, *Submission 64.1*, p. 14, AAAA, *Submission 52*, p. 7.

28 Mr Tim Acker, *Submission 22*, p. 1.

29 Ms Robyn Ayres, Chief Executive Officer, Arts Law, *Committee Hansard*, Sydney, 6 March 2018, p. 30; Professor Jon Altman, Private Capacity, *Committee Hansard*, Melbourne, 8 March 2018, p. 19.

30 Dr Matthew Rimmer, *Exhibit 26b*, ‘Final Report of the Review of the National Indigenous Arts Advocacy Association’, p. iv.

31 Dr Rimmer, *Exhibit 26b*, ‘Final Report of the Review of the National Indigenous Arts Advocacy Association’, p. 19.

4.38 Many submitters have nevertheless called for the reconsideration of an authenticity labelling scheme in consultation with Indigenous communities.<sup>32</sup>

4.39 Some art centres have tried developing their own labels.<sup>33</sup> However, where art centres produce labels, these can be copied by inauthentic producers:

The issue is that the inauthentic producers pretty much mimic them. They'll put a photo of someone on there; they'll use a name; they'll tell a little story. With old-fashioned style labelling, as with any sort of rip-off product, they do their best to make it look and feel exactly like the authentic product.<sup>34</sup>

4.40 Contributors to the inquiry also pointed to the use of trademark labels in New Zealand and Canada.<sup>35</sup>

4.41 New Zealand's *Toi Iho* trademark identifies and distinguishes Māori-made products and certifies quality and authenticity. It was established in 2002 by Creative Arts New Zealand and Te Waka Toi (Māori Arts Board). However, the government found that the trademark had failed to increase sales of Māori art by licensed artists and retailers, and withdrew funding in 2009. The administration of the trademark transferred to the Toi Iho Charitable Trust in 2013,<sup>36</sup> who maintain a register of artists and supports the advancement of Māori art.<sup>37</sup>

4.42 In Canada, the government developed the *Igloo tag* 1958, to protect and distinguish Inuit art and craft products from mass-produced imitations, and certifies that products are handmade by Inuit artists.<sup>38</sup> A 2016 survey of the Inuit Arts Economy found that consumers highly valued the tag,

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32 Ms Debbie Taylor, *Submission 12*, p. 2; Ms Libby Harward, *Submission 21*, p. 2; Dr Bianca Beetson, *Submission 23*, p. 2; Ms Trisha Newton, *Submission 43*, p. 1; Arts Law, *Submission 64:1*, p. 14; Arts Law, *Submission 64*, p. [6].

33 Ms Banduk Marika, Director, IartC, *Committee Hansard*, Sydney, 6 March 2018, p. 44.

34 Ms Jane Barney, Director, Visual Arts and Design Section, Department of Communications and the Arts (DCA), *Committee Hansard*, Canberra, 2 March 2018, p. 3.

35 The Treasury, *Submission 60*, p.5; Arts Law, *Submission 64:1*, p. 14; Queensland Tourism Industry Council, *Submission 82*, p. 7.

36 Toi Iho Charitable Trust, 'About Toi Iho', <<http://www.toiho.co.nz/about-toi-iho/>> viewed 22 January 2018; The Big Idea, 'Creative NZ scraps Maori art trademark toi iho', October 2009, <<https://www.thebigidea.nz/news/industry-news/2009/oct/62121-creative-nz-scraps-maori-art-trademark-toi-iho>> viewed 22 January 2018; Taranaki Daily News, 'Artists mourn trademark loss', *Stuff NZ*, October 2009, <<http://www.stuff.co.nz/taranaki-daily-news/news/2996676/Artists-mourn-trademark-loss>> viewed 22 January 2018.

37 Toi Iho Charitable Trust, 'About Toi Iho', <<http://www.toiho.co.nz/about-toi-iho/>> viewed 22 January 2018.

38 Inuit Art Foundation, 'The Igloo Tag Trademark', <<http://iglootag.inuitartfoundation.org/>>, viewed 25 January 2018.

- while retailers and wholesalers saw little value in it.<sup>39</sup> However, the Inuit Art Foundation has noted that a Canadian government study estimates the tag contributes CAD\$3.5 million annually to the Inuit arts economy.<sup>40</sup>
- 4.43 While these labelling schemes appear to have had some success, the AAAA stress that for a new labelling scheme to be effective in Australia, it should be directed at souvenir style products and merchandise; and crucially have a strong education, monitoring and compliance program.<sup>41</sup>
- 4.44 Ananguku Arts and Culture Aboriginal Corporation commented that while better product labelling has merit, the onus should be on the suppliers to sell authentic product with penalties imposed if they do not.<sup>42</sup>
- 4.45 Professor Jon Altman also cautions that any regulation not be overly complex to administer and recommended that 'Indigenous stakeholders [b]e empowered to determine what is or is not authentic rather than [it being] determined by [a] centralised committee or mandatory authenticity labelling requirement'.<sup>43</sup>
- 4.46 Other contributors to the inquiry also stressed that any new system of labelling for First Nations art products must have an adequate public education campaign behind it.<sup>44</sup>
- 4.47 The committee notes the emerging success of the SAM (Stories Art Money) arts management database developed by Desart with Indigenous Visual Arts Industry Support (IVAIS) funding. SAM is designed to collate income data and measure financial performance and has now been adopted by more than 80 art centres.<sup>45</sup>
- 4.48 Notably, the Government has recently announced \$150 000 in funding for a digital labelling trial in 2018–19 for up to three art centres, to be conducted by Desart utilising its SAM platform.<sup>46</sup>

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39 Big River Analytics, *Impact of the Inuit Arts economy*, Indigenous and Northern Affairs, Canada, 2017, <<https://www.aadnc-aandc.gc.ca/eng/1499360279403/1499360407727>>, viewed 25 January 2018.

40 Inuit Art Foundation, 'The IAF Announces Igloo Tag Transfer', 7 July 2017, <<https://www.inuitartfoundation.org/igloo-tag-announcement/>> viewed 25 January 2018.

41 AAAA, *Submission 52*, pp. 9, 19.

42 Ananguku Arts and Culture Aboriginal Corporation, *Submission 86*, p. 3.

43 Professor Jon Altman, *Submission 118*, p. 11.

44 Ms Helene George, Founder and Managing Director, Creative Economy, *Committee Hansard*, Melbourne, 8 March 2018, p. 3; Professor Altman, Private Capacity, *Committee Hansard*, Melbourne, 8 March 2018, p. 20.

45 Mr Philip Watkins, Chief Executive Director, Desart Inc., *Committee Hansard*, Alice Springs, 1 May 2018, p. 14.

46 DCA, *Supplementary Submission 131:1*, Answer to Question on Notice, p. 2.

## Committee comment

- 4.49 There is no current labelling standard for the many souvenir products that contain First Nations imagery and this makes it virtually impossible for any consumer to distinguish authentic and inauthentic products. The committee visited souvenir and gift shops during the inquiry and noted that many of the labels on Indigenous style products provided little or no information on the item's origin. It was also not clear from the labels on the numerous souvenir products made overseas if the artwork was genuinely and fairly licenced.
- 4.50 A properly resourced and well managed labelling system for the Indigenous souvenir market has merit. Care must be taken however to avoid the mistakes of the previous failed National Certification Scheme.
- 4.51 Any new labelling scheme should be well targeted and relatively simple to administer. It must be developed in conjunction with First Nations artists, art centres, and peak bodies, and in consultation with wider Indigenous communities. It should take advantage of new technologies whenever possible.
- 4.52 Whilst any such mark would not be compulsory, there must be a) an incentive for the artist, eg promotion of this label through various channels such as an international arrivals video, and b) an incentive for the retailer and supplier to recognise their ethical approach to such items.
- 4.53 The committee welcomes the decision of the government to fund a digital label trial using Desart's already established SAM platform and looks forward to seeing the results. If such a labelling system were to prove successful among art centres in the first instance, this would likely go a long way to establishing such a system more widely.
- 4.54 It may not prove feasible however to develop a single, universally accepted label that will be used by the majority of First Nations artists. Care must be taken to ensure that genuine Indigenous art and craft is not disadvantaged if a particular mark were to be developed but not adopted in every case.
- 4.55 It should be noted also that labelling, even if successfully implemented and promoted, will not address the prevalence of inauthentic products on its own and must be used in conjunction with ethical codes of conduct and the effective education of suppliers, vendors and consumers about authenticity and respect for First Nations cultures.



## Consumer and copyright law

- 4.56 Australian consumer law (ACL) is an ‘economy-wide law of general application’, prohibiting misleading or deceptive conduct and false representations in the marketing and sale of products, including First Nations art and craft products and merchandise.<sup>47</sup> However, it does not preclude the sale of inauthentic art and craft products, unless they are falsely labelled.<sup>48</sup>
- 4.57 Australian intellectual property (IP) laws, including copyright, do not have specific provisions to protect Indigenous cultural expressions.<sup>49</sup> Rather, the *Copyright Act 1968* (Cth) ‘protects the form or way an idea or information is expressed, not the idea or information itself’. Protection is granted automatically at the time of creation and generally lasts 70 years after an artist’s death.<sup>50</sup> Under the Copyright Act individuals, including artists, have the right to reproduce or copy, publish, perform and amend their own work. For other individuals or organisations to do the same, permission must be sought from the owner of the copyright.<sup>51</sup>
- 4.58 Notwithstanding these provision, the IartC notes that many artists are unaware of, or have a limited understanding of, their rights. Some artists believe that once their original work is sold to a buyer, that buyer now has the rights over the work to reproduce it without permission or fee.<sup>52</sup>
- 4.59 Others point to the protections prescribed by the *United Nations Declaration on the Rights of Indigenous Peoples* ‘to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions’, noting that current legislation does not recognise these rights.<sup>53</sup>

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47 ACCC, *Submission 54*, p. 1.

48 ACCC, *Submission 54*, p. 3; Terri Janke and Company Pty Ltd, *Submission 73*, p. 2; Ms Stephanie Parkin, *Committee Hansard*, 16 July 2018, p. 44.

49 World Intellectual Property Organization Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore Secretariat (WIPO IGC), ‘Survey on existing forms of intellectual property protection for traditional knowledge’, Doc. WIPO/GRTK/IC/2/5, WIPO, p. 8, <<http://www.wipo.int/export/sites/www/tk/en/igc/pdf/replies.pdf>> viewed 11 September 2018.

50 *Copyright Act 1968* (Cth); DCA, ‘Short Guide to Copyright’, pp. 3, 6, 11, <<https://www.communications.gov.au/documents/short-guide-copyright>> viewed 12 September 2018.

51 Arts Law, ‘What is copyright?’, <<https://www.artslaw.com.au/legal/raw-law/what-is-copyright>> viewed 12 September 2018.

52 IartC, *Submission 138*, p. 3.

53 Ms Delwyn Everard, *Submission 83*, p. 1.

- 4.60 The City of Melbourne *Code of Practice for galleries and retailers of Indigenous Art* (CoP) tackles this issue through its copyright provision, which requires that subscribed galleries and retailers respect and acknowledge Indigenous artists' copyright ownership. The CoP establishes a number of key directives to gallerists and retailers in consideration of safeguarding artists' copyright, including:
- advising customers that copyright remains with the artist, even after the physical work is purchased;
  - not pressuring artists to license or assign copyright of their works;
  - obtaining prior written consent from artists to use works for advertising and promotional purposes; and
  - taking measures to protect artists' works, where images are reproduced on online.<sup>54</sup>
- 4.61 Arts Law and the IartC, supported by other industry organisations and experts<sup>55</sup> believe modifying the ACL will effectively address the sale of inauthentic products in the short term.<sup>56</sup> They propose changing the *Unfair Practices* section of the ACL to make it an offence to supply or offer to supply:
- an artwork that (being a creative expression in a material form) includes *Indigenous Cultural Expression* that is not either
    - ⇒ hand crafted by an Aboriginal or Torres Strait Islander person; or
    - ⇒ a licensed reproduction of an artwork created by an Aboriginal or Torres Strait Islander person...
  - certain traditional [artefacts] that are not handcrafted in Australia by Aboriginal or Torres Strait Islander person.<sup>57</sup>

54 T Janke, *Code of Practice for galleries and retailers of Indigenous Art*, City of Melbourne, 2017, p. 11, <<https://www.melbourne.vic.gov.au/SiteCollectionDocuments/code-of-practice-indigenous-arts.pdf>> viewed 2 August 2018.

55 Terri Janke and Company Ltd, *Submission 73*, p. 2; Darwin Aboriginal Art Fair (DAAF), *Submission 64*, p. 5; Arnhem, Northern and Kimberley Artists Aboriginal Corporation (ANKA), *Submission 132*, p. 6; Mr Kon Stellios, Partner, Allens Linklaters, *Committee Hansard*, 6 March 2018, Sydney, pp. 27–28; Ms Lydia Miller, Australia Council for the Arts (Australia Council), *Committee Hansard*, 6 March 2018, Sydney, p. 50; Ms Stephanie Rajalingam, Art Centre Manager, Warmun Art Centre, *Committee Hansard*, 11 April 2018, Warmun, p. 2.

56 Arts Law and IartC, *Submission 149*, p. 1.

57 IartC, *Submission 138*, p. [25]

- 4.62 Mr Kon Stellos, of Allens Linklaters, highlighted a number of advantages to amending the ACL to prohibit the sale of works that include Indigenous cultural express, unless created by an Indigenous person or reproduced under license:
- ...it automatically brings with it the power of the [ACCC] to enforce the prohibition[;]
  - ...the [ACL] already contains within it a broad set of penalties and remedies which the court can order when there's a breach of the prohibitions...the penalties and remedies which appear in the [ACL] are appropriate because they seek to deter the continued sale of inauthentic products[; and]
  - ...it's probably the most cost-effective option when compared with the paradigm of alternative regimes: sui generis legislation, a certification labelling regime or even relying on the existing misleading or deceptive conduct provisions in the ACL.<sup>58</sup>
- 4.63 Arts Law and the IartC also stressed that amending the ACL eliminates the need to establish a new administrative and enforcement agency, as this would continue under the ACCC, with the assistance of state and territory fair trading agencies.<sup>59</sup> Further, consumers and businesses are familiar with the powers and operation of the ACCC.<sup>60</sup>
- 4.64 However, the ACCC, although recognising the significant harm the sale of inauthentic products causes First Nations peoples and consumers, is of the view that because the ACL is an 'economy-wide law', it is not best placed to safeguard Indigenous culture.<sup>61</sup>

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58 Mr Stellos, Allens Linklaters, *Committee Hansard*, 6 March 2018, Sydney, pp. 27–28.

59 Arts Law and IartC, *Submission 149*, pp. 1–2.

60 Arts Law and IartC, *Submission 149*, pp. 1–2.

61 ACCC, *Submission 54*, pp. 1, 4.

- 4.65 The ACCC has enforced the ACL in a number of cases relating to the sale of inauthentic Indigenous art and craft products,<sup>62</sup> and some artists have successfully used copyright to protect their works.<sup>63</sup> However, many artists, art centres, legal experts and industry organisations believe that existing consumer and copyright laws are inadequate as a protector of First Nation cultural expressions because they do not prohibit the selling of inauthentic products,<sup>64</sup> noting that:
- ...the law should recognise that it is inappropriate for Indigenous culture to be unfairly misappropriated for commercial gain; the concern is not just about misleading consumers.<sup>65</sup>
- 4.66 One such example of enforcement by the ACCC occurred in October 2018. The Federal Court concluded that Birubi Art Pty Ltd, a wholesaler of souvenirs based in Queensland, had misleadingly given the impression that 18 000 of its boomerangs, bullroarers and other artefacts were genuine First Nations products, when in fact they had been made in Indonesia.<sup>66</sup>
- 4.67 Unfortunately, the ACCC is not able to pursue every case, only taking a certain number to the Federal Court each year. There are sometimes challenges in distinguishing ‘overt representations’ that a product is Indigenous in origin or simply Indigenous in style. Other challenges may relate to obtaining evidence, whether that is dealing with vulnerable consumers or uncovering the artists and origin of artworks.<sup>67</sup>
- 4.68 In recognising their inability to pursue all cases that are brought to their attention individually, the ACCC tries to pursue alternative outcomes. This includes engaging with partners such as the IartC and fair-trading agencies, as well as with traders and consumers through education.<sup>68</sup>

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62 ACCC, *Submission 54*, p. 2-3.

63 Terri Janke and Company Pty Ltd, *Submission 73*, p. 1; Janke, T 1995, ‘The carpets case’, *Alternative Law Journal / Aboriginal Law Bulletin*, vol. 20, no. 3 / vol. 3, no. 72, February 1995, pp. 36-39, <<http://www.austlii.edu.au/au/journals/AltLawJl/1995/15.pdf>> viewed 12 September 2018.

64 Arts Law & IartC, *Submission 149*, p. 6; DAAF, *Submission 62*, p. 5; AAAA, *Submission 52*, pp. 4, 10; Arts Law, *Submission 64*, pp. 5-10; Mr Ian Goss, Chair, World Intellectual Property Organization Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (WIPO IGC), *Committee Hansard*, pp. 4, 8.

65 Arts Law, *Submission 64*, p. 10.

66 ACCC media release <<https://www.accc.gov.au/media-release/court-finds-that-birubi-art-misled-consumers-over-fake-indigenous-australian-art>> viewed 5 December 2018.

67 Mr Scott Gregson, Executive General Manager, Enforcement Division, ACCC, *Committee Hansard*, 15 February 2018, Canberra, p. 1.

68 Mr Gregson, ACCC, *Committee Hansard*, 15 February 2018, Canberra, p. 1.

- 4.69 As such, the ACCC believes any amendments to the ACL should focus on misleading behaviour, instead of outright prohibition;<sup>69</sup> and that a certification scheme, such as a trademark, and an education campaign would ‘encourage consumers and businesses to support suppliers of genuine [products]’.<sup>70</sup>
- 4.70 Other stakeholders agreed that the ACL is not appropriate to protect First Nations cultural expressions because it is aimed at ‘providing a baseline standard for all traders across all products’<sup>71</sup> and that measures beyond the ACL are needed instead.<sup>72</sup>
- 4.71 The Copyright Act, designed for individuals and limited duration, is fundamentally unsuited to recognising communal ownership,<sup>73</sup> and the enduring nature of Indigenous cultural expressions that ‘have been reproduced over tens of thousands of years’.<sup>74</sup>
- 4.72 Beyond that, the application of existing copyright laws may be problematic because Indigenous works may not be original, in a material form or have an identifiable author.<sup>75</sup>
- 4.73 Mr Ian Goss, of the World Intellectual Property Organization (WIPO), also points out that under the Copyright Act third parties are able to make works deriving from First Nations cultural expressions, with the copyright then belonging to the third party.<sup>76</sup> For example, a person who makes a recording of Indigenous people singing becomes recognised as the copyright owner, not the people who are singing.<sup>77</sup>
- 4.74 A previous attempt was made to amend the Copyright Act to include provisions for communal moral rights in 2003.<sup>78</sup> However, Ms Janke noted that this ‘was not well received by Indigenous interest groups [due to its] complexity and limited utility’.<sup>79</sup> She further noted that moral rights will

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69 Mr Gregson, ACCC, *Committee Hansard*, 15 February 2018, p. 2.

70 ACCC, *Submission 54*, p. 4.

71 Mr Ford, Qld OFT, *Committee Hansard*, 16 July 2018, Brisbane, p. 51.

72 Mr Ford, Qld OFT, *Committee Hansard*, 16 July 2018, Brisbane, p. 51; Dr Kylie Pappalardo, *Private Capacity*, *Committee Hansard*, 17 July 2018, Brisbane, p. 3.

73 Ms Stephanie Parkin, *Committee Hansard*, 16 July 2018m Brisbane, p. 44.

74 AIATSIS, *Submission 127*, p. 11.

75 T Janke, *Our Culture: Our Future*, Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) and the Aboriginal and Torres Strait Islander Commission (ATSIC), 1998, p. xxii.

76 Mr Goss, WIPO IGC, *Committee Hansard*, 16 August 2018, Canberra, p. 8.

77 Mr Goss, WIPO IGC, *Committee Hansard*, 16 August 2018, Canberra, p. 8.

78 Dr Rimmer, *Private Capacity*, *Committee Hansard*, 17 July 2018, Brisbane, pp. 4–5.

79 T Janke, *Indigenous Knowledge: Issues for protection and management*, IP Australia and the Department of Industry, Innovation and Science (DIIS), 2018, p. 43.

not stop the misappropriation of works considered to be ‘in the public domain such as rock art images’.<sup>80</sup>

4.75 Dr Kylie Pappalardo and Ms Stephanie Parkin, copyright lawyers and academics, cautions against changing the Copyright Act to deal with Indigenous works, because for non-Indigenous works current copyright protections are appropriate.<sup>81</sup>

4.76 Instead, both Dr Pappalardo and Ms Parkin, advocate for separate, special legislation,<sup>82</sup> that is ‘deeper than copyright law can provide’.<sup>83</sup>

Dr Pappalardo further explains:

What the Indigenous communities are asking for is really stringent protection of their culture: high levels of control over things like artistic styles and stories, and protection that's much more enduring than the length of copyright protection.<sup>84</sup>

4.77 Arts Law, Ms Janke and Mr Goss also advocate for a unique legal approach to safeguarding Indigenous cultural heritage,<sup>85</sup> with Mr Goss pointing to mechanisms that have been developed internationally,<sup>86</sup> including:

- Secretariat of the Pacific Community’s (SPC) *Model Law for the Protection of Traditional Knowledge and Expressions of Culture* (Model Law);
- African Regional Intellectual Property Organisation’s (ARIPO) *Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore* (Swakopund Protocol); and
- Melanesian Spearhead Group’s (MSG) *Framework Treaty on the Protection of Traditional Knowledge and Expressions of Culture* (Treaty).<sup>87</sup>

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80 T Janke, *Indigenous Knowledge: Issues for protection and management*, IP Australia and DIIS, 2018, p. 43.

81 Dr Pappalardo, Private Capacity, *Committee Hansard*, 17 July 2018, Brisbane, p. 3.

82 Dr Pappalardo, Private Capacity, *Committee Hansard*, 17 July 2018, Brisbane, p. 4; Ms Stephanie Parkin, *Committee Hansard*, 16 July 2018, Brisbane, p. 44.

83 Dr Pappalardo, Private Capacity, *Committee Hansard*, 17 July 2018, Brisbane, p. 4.

84 Dr Pappalardo, Private Capacity, *Committee Hansard*, 17 July 2018, Brisbane, p. 4.

85 Arts Law, *Committee Hansard*, 6 March 2018, p. 29; Arts Law, *Submission 64.1*, p. [31]; T Janke, *Our Culture: Our Future*, AIATSIA and ATSIC, 1998, p. 194; Mr Goss, WIPO IGC, *Committee Hansard*, 16 August 2018, p. 2.

86 Mr Goss, WIPO IGC, *Committee Hansard*, 16 August 2018, p. 2.

87 Mr Goss, WIPO IGC, *Committee Hansard*, 16 August 2018, p. 2.

- 4.78 The Model Law assists governments to legally protect TK and TCEs against exploitation and inappropriate commercialisation.<sup>88</sup> The SPC considers the Model Law to be a starting point, noting that individual countries are free to ‘adopt and/or adapt the provisions...in accordance with their own national needs [and] wishes of its traditional communities’.<sup>89</sup> The Model Law designates that a Cultural Authority should administer this law.<sup>90</sup>
- 4.79 The Swakopmund Protocol also protects TK and TCEs against misappropriation and unlawful exploitation, and establishes an agency to implement and administer the protocol.<sup>91</sup>
- 4.80 As signatories to the MSG Treaty, Fiji, Papua New Guinea, the Solomon Islands, Vanuatu and New Caledonia agree to ‘strengthen their cooperation and collaboration’ to protect, preserve and promote the recognition of traditional knowledge and expressions of culture, including protection ‘against misappropriation, misuse and unlawful exploitation’.<sup>92</sup>
- 4.81 However, Mr Goss does note ‘that there remains a level of immaturity in...these laws’, and therefore, sees adopting new legislation as a longer term solution, needing careful consideration.<sup>93</sup> Ms Janke also believes this is a long-term goal that will require significant Indigenous community involvement.<sup>94</sup>
- 4.82 Ms Parkin pointed to the Victorian *Aboriginal Heritage Act 2006*. Amendments to the Act in 2016 recognise intangible cultural heritage rights such as ‘stories, traditional knowledge, song and dance’.<sup>95</sup> The amendments also introduce a mechanism to record Traditional Owner groups’ rights on a register, and ensure legal obligations on organisations

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88 Secretariat of the Pacific Community (SPC), *Pacific Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture*, 2002, p. [iii].

89 SPC, *Pacific Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture*, 2002, p. [iii].

90 SPC, *Pacific Regional Framework for the Protection of Traditional Knowledge and Expressions of Culture*, 2002, p. 15.

91 African Regional Intellectual Property Organisation (ARIPO), *Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore*, 2010, pp. 7-8.

92 Melanesian Spearhead Group (MSG), *Framework Treaty on Traditional Knowledge and Expressions of Culture*, 2011, p. 3.

93 Mr Goss, WIPO IGC, *Committee Hansard* 16 August 2018, p. 2.

94 Terri Janke and Company, *Indigenous Knowledge: Issues for protection and management*, IP Australia and DIIS, 2018, p. 119; Terri Janke and Company, *Submission 73*, p.4.

95 Ms Parkin, *Committee Hansard*, 16 July 2018, Brisbane, p. 44.

to engage with owners, safeguarding owners' rights to decide how traditional knowledge is used.<sup>96</sup>

## Committee comment

- 4.83 Neither the ACL nor copyright law were designed to protect First Nations cultural expressions, and therefore each is inadequate to do so. The ACL prevents inauthentic products from being passed off as genuine under provisions that prevent businesses from misleading their customers. Current copyright law provides any artist, whether Indigenous or not, with legal protection against reproduction without permission.
- 4.84 The situation regarding inauthentic art is, however, far more complex and nuanced than this. In the first instance, the ACL cannot deal with issues of inauthentic Indigenous products, while the Copyright Act is not designed to recognise the eternal and communal nature of Indigenous cultural expressions, making it inadequate to deal with the misappropriation of culture. Stand-alone legislation may be the best long-term option to resolve this complex issue.

## Indigenous Art Code

- 4.85 The *Indigenous Art Code* (the Code) is a voluntary industry code of conduct administered by Indigenous Art Code Ltd (IartC). It is designed to promote the fair and ethical trade of First Nations artworks. Adherence to the code requires transparency in the promotion and sale of art and that disputes are dealt with efficiently and fairly.<sup>97</sup> It was launched in 2010 by the National Association for the Visual Arts (NAVA) and the Australian Council for the Arts following consultation with artists, art centres, galleries and peak bodies.<sup>98</sup>
- 4.86 Membership costs \$150 annually for dealers and support members but is free for artists.<sup>99</sup> The Commonwealth Government also provides funding and administrative support through its IVAIS program.<sup>100</sup>

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96 Ms Parkin, *Committee Hansard*, 16 July 2018, Brisbane, p. 44; Victorian Department of Premier and Cabinet, *Aboriginal Heritage Amendment Act 2016*, <<https://www.dpc.vic.gov.au/index.php/communication/communication-planning-and-mams/7-about/897-aboriginal-heritage-amendment-act-2016>> viewed 30 October 2018.

97 IartC, 'FAQS', 2018, <<https://indigenousartcode.org/faqs/>> viewed 30 October 2018.

98 IartC, 'The Indigenous Art Code', 2018, <<https://indigenousartcode.org/the-indigenous-art-code/>> viewed 30 October 2018.

99 Ms Sullivan, IartC, *Committee Hansard*, 6 March 2018, p. 44; IartC, 'FAQS', 2018, <<https://indigenousartcode.org/faqs/>> viewed 30 October 2018.



- 4.87 The Code requires that its members not engage in misleading or deceptive conduct in relation to any of the following:
- the authenticity or provenance of an artwork;
  - any sponsorship, approval or affiliation of an artist (including an artist's affiliation with a dealer or an art centre);
  - the place of origin of an artwork;
  - that an artwork has been produced by an Indigenous artist or artists; and
  - the artwork's exhibition history, reference notes, authenticity statements or price.<sup>101</sup>
- 4.88 The Code also requires dealer members to provide a 'Code Certificate' for artworks valued over \$250. This certificate includes the artist's name; date and location of the work; a description of size and type of work; the contact details for a person who can identify the work and their signature; and the dealer member's details.<sup>102</sup>
- 4.89 The IartC maintains a register of members, investigates complaints and breaches by members, and issues sanctions for non-compliance.<sup>103</sup>
- 4.90 Evidence to the inquiry was largely supportive of the work of the IartC and there was a general belief that it should be better resourced to enable it to expand its membership and profile. Currently, the IartC, in addition to membership fees, receives \$200 000 in Australian Government funding and has only one full time staff member, CEO Gabrielle Sullivan.
- 4.91 NAVA argues that the IartC should be appropriately resourced and implemented nationally 'to create better informed international tourists and buyers of Australian Indigenous cultural products'.<sup>104</sup>
- 4.92 Create NSW proposes increased resources for the IartC as a strategy to promote authentic products.<sup>105</sup>
- 4.93 The SA Government recommended ongoing and expanded funding for the IartC as a support organisation in the First Nations art sector.<sup>106</sup>

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100 Ms Sullivan, IartC, *Committee Hansard*, 6 March 2018, p. 44; IartC, 'FAQS', 2018, <<https://indigenouartcode.org/faqs/>> viewed 30 October 2018.

101 IartC, *Indigenous Art Code*, 2010, <<https://indigenouartcode.org/wp-content/uploads/2017/03/Indigenous-Art-Code.pdf>> viewed 30 October 2018.

102 IartC, 'FAQS', 2018, <<https://indigenouartcode.org/faqs/>> viewed 30 October 2018.

103 IartC, 'Board of Directors', 2018, <<https://indigenouartcode.org/board-of-directors/>> viewed 30 October 2018.

104 National Association for the Visual Arts (NAVA), *Submission 55*, p. [2].

105 Create NSW, *Submission 137*, pp. 8–9.

106 South Australian Government, *Submission 160*, p. [10].

4.94 FORM also supports the IartC in its recommendations to the inquiry:

Equip consumers with the knowledge to make informed purchasing decisions by continual support and promotion of the Indigenous Art Code principles (truth in labelling), and proactively educating tourists/wider society on the negative impacts of purchasing fake goods.<sup>107</sup>

4.95 Martumili Artists comment on the value of the IartC in promoting ethical dealings in the art industry:

Through the work of the Indigenous Art Code, industry dealers and creators are held to a standard of ethical trade, transparency of promotion and representation of ATSI Indigenous Cultural and Intellectual property (ICIP). Through [IartC] certification, dealers and creators are acknowledging the importance of ATSI sovereignty and recognition within the Aboriginal Art industry. There is no reason why this standard of business could not be adopted more widely, throughout the national art, craft or souvenir/tourism market.<sup>108</sup>

4.96 Spinifex Hill Artists from the Pilbara region of WA also regard the IartC as a valuable resource. Mr Greg Taylor, Studio Manager, commented:

I think the code is a very positive step and I'm very happy it exists. Even as an educational tool for people working in art centres it's so valuable, that here we have the best practice across the country...For myself, we've started an art centre and we knew the Indigenous Art Code was key, so we were able to start off on the right foot.<sup>109</sup>

4.97 A great many contributors to the inquiry expressed the view that the IartC should in fact be mandatory.<sup>110</sup>

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107 FORM, *Submission 61*, p. 7.

108 Martumili Artists, *Submission 63*, p. [2].

109 Mr Greg Taylor, Studio Manager, Spinifex Hill Artists, *Committee Hansard*, Darwin, 9 August 2018, p. 34.

110 See for example Ms Ayres, Arts Law, *Committee Hansard*, Sydney, 6 March 2018, p. 30; Australia Council, *Submission 96*, p. 18; Ms Rajalingam, Warmun Art Centre, *Committee Hansard*, Warmun, 11 April 2018, p. 2; Mr Darrell Harris, Manager, Yarrabah Arts and Cultural Precinct, *Committee Hansard*, Cairns, 15 July 2018, p. 16.

4.98 Gallery owner Mr Paul Johnstone argued that before any mandatory code was explored, the existing IartC should be properly resourced and expanded. He stated:

Build the code up for what it was to be in the first place – give it some policing power, give it some teeth and give it some resources – and then see what type of reaction you get and how well they can actually put themselves into these issues.<sup>111</sup>

4.99 Regional Arts Australia informed the committee that the board of the IartC had at one time agreed that a mandatory code was the best outcome.<sup>112</sup> Executive Director Mr John Oster noted however:

There are very few mandatory codes in Australia. To convince the ACCC, the minister and the sector that a mandatory code was the best outcome was an impossible feat. I think we've come to a place where everyone's come to learn to live with the code as a guide and as an example of good practice, and then doing good work to educate people and to work through licences. I think the code does excellent work, but I don't think it's gotten to the point where it's encapsulated the whole industry because there's still a whole section of dealers and tourist shops that are operating outside of any understanding of the code.<sup>113</sup>

4.100 IartC and Arts Law have also pointed out that a mandatory code would need to be legislated for as part of the ACL and therefore be enforced by the ACCC.<sup>114</sup>

4.101 There was also a concern that the IartC could be utilised by unethical operators and that any mandatory system would group these entities together with ethical practitioners. Mr Matt Ward, Director of Outstation Gallery (and previous director of the IartC) remarked:

I think the problem with it being mandatory is that you group a whole lot of people in it and it's like grouping apples and oranges... There are people who are currently members of the Indigenous Art Code who I don't like being affiliated with. What they do and what I do are completely different. By making it mandatory, you're kind of grouping everyone in together... There are people on there who I don't like being associated with.<sup>115</sup>

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111 Mr Paul Johnstone, Director, Paul Johnstone Gallery, *Committee Hansard*, Darwin, 9 August 2018, p. 8.

112 Mr John Oster, Executive Director, Regional Arts Australia, *Committee Hansard*, Alice Springs, 1 May 2018, p. 4.

113 Mr Oster, Regional Arts Australia, *Committee Hansard*, Alice Springs, 1 May 2018, p. 4.

114 Arts Law & IartC, *Submission 149*, pp. 6-9.

115 Mr Matt Ward, Director, Outstation Gallery, *Committee Hansard*, Darwin, 9 August 2018, p. 7.

## Committee comment

- 4.102 The IartC is extremely well-regarded by most Indigenous artists, art centres, and by different art organisations across the country, but needs to be better funded to achieve its mandate. The IartC cannot promote the Code more widely and properly monitor compliance with the limited resources it currently has.
- 4.103 Compliance issues have been highlighted by concerns that some existing members of IartC are using the Code to validate their business practices, but are not actually adopting its principles. These could be addressed by enhancing the capacity of the organisation to detect and exclude such operators.
- 4.104 An expanded IartC will be an important component of any future policy settings aimed at reducing the prevalence of inauthentic art and thereby increasing the opportunities for First Nations artists to sell their work. The committee therefore welcomes the recent endorsement from the meeting of Federal and State Cultural Ministers in September 2018 to provide additional funding to the IartC.<sup>116</sup> This funding must be sufficient to enable the Code to become the national standard over the long-term.
- 4.105 There were calls by some during the inquiry for the Code to become mandatory. This is understandable given the frustration of many First Nations artists and communities with the sale of inauthentic products and unethical practices by some in the industry. However, the committee notes the view of IartC that its Code is inherently a voluntary set of principles, and that any mandatory practices would actually need to be enshrined in law and enforced by a regulatory agency such as the ACCC.
- 4.106 The committee is of a mind to recommend a mandatory code given that self-regulation within this industry has proved to be largely ineffective. In the first instance, however, it would be useful to assess the impact of a properly resourced IartC. It is possible that a respected, properly funded and much more widely recognised IartC will eventually lead to behavioural change in the industry by putting non-members at a commercial disadvantage.
- 4.107 The committee would like to see an evaluation of industry practices within two years of adequate funding being made available to IartC. Steps should be taken to implement mandatory rules if there is little evidence of improvement in these behaviours.

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116 DCA, *Supplementary Submission 131:1*, Answer to Question on Notice, p. 5.

## National Indigenous Art & Cultural Authority

- 4.108 A further means of safeguarding traditional heritage and cultural expressions, and therefore addressing the prevalence of inauthentic art and craft in the market place, is to establish a National Indigenous Cultural Authority (NICA) or National Indigenous Art and Cultural Authority (NIACA).
- 4.109 Under the United Nations *Declaration on the rights of Indigenous peoples*, First Nations peoples and communities have the right to ‘maintain, control, protect and develop their [ICIP] over [their] cultural heritage, [TK] and [TCEs]’.<sup>117</sup> If these rights are to be recognised, then a mechanism must be established to assert and enforce those rights.<sup>118</sup>
- 4.110 Ms Janke strongly advocates for an independent peak advisory body to safeguard ICIP.<sup>119</sup> In her view, such a body should be comprised of various Indigenous organisations and be independent of government, but would need government assistance. Responsibilities would relate to the protection, advocacy and promotion of First Nations cultures, including TK, TCEs and ICIP. Her model is intended to establish a framework for:
- developing industry polices and protocols;
  - providing advice on ICIP rights;
  - monitoring exploitation of cultures, including ensuring benefit sharing and prior informed consent;
  - public education and awareness;
  - connecting users with custodians and rights holders to facilitate consultation processes and approvals;

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117 United Nations 2007, *Declaration on the Rights of Indigenous Peoples*, p. 11.

118 T Janke, *Beyond Guarding Ground: A vision for a National Indigenous Cultural Authority*, Terri Janke and Company Pty Ltd, Sydney, 2009, p. 17; Ms Ayres, *Committee Hansard*, 6 March 2018, Sydney, p. 34.

119 T Janke, *Our Culture: Our Future*, AIATSIS and ATSIC, Canberra, 1998; T Janke, *Beyond Guarding Ground: A vision for a National Indigenous Cultural Authority*, Terri Janke and Company Pty Ltd, Sydney, 2009; T Janke, *New tracks: Indigenous knowledge and cultural expression and the Australian intellectual property system*, Terri Janke and Company Pty Ltd, Sydney, 2012; Terri Janke and Company, *Cultural Protocols and the Arts*, Terri Janke and Company, Sydney, 2016; Terri Janke and Company, *Indigenous Knowledge: Issues for protection and Management*, IP Australia and DIIS, 2018, <[https://www.ipaustralia.gov.au/sites/g/files/net856/f/ipaust\\_ikdiscussionpaper\\_28march2018.pdf](https://www.ipaustralia.gov.au/sites/g/files/net856/f/ipaust_ikdiscussionpaper_28march2018.pdf)> viewed 18 October 2018.

- providing culturally-appropriate and inexpensive dispute resolution; and
  - advancing ICIP rights domestically and internationally.<sup>120</sup>
- 4.111 In circumstances of ICIP being used ‘without prior informed consent and benefit sharing’, the authority could take a regulatory role by imposing fines for infringements or referring cases to the ACCC.<sup>121</sup>
- 4.112 Where products are produced in accordance with consent processes, a trademark or brand ‘could be applied to [those] products’,<sup>122</sup> endorsing the producer’s compliance with NIAC processes and protocols. This would be unlike the former label of authenticity, which endorsed the product itself, this is about ‘endorsing the process...about saying that we're following a process’.<sup>123</sup> Ms Janke envisages this as being similar to the IartC logo, where registered galleries and retailers, by subscribing to the Code, have the right to use the logo.<sup>124</sup>
- 4.113 A number of individuals and organisation support the establishment of a NIACA or NICA to ‘provide a co-ordinated response to the protection of [ICIP]’, [TK] and expressions of culture.<sup>125</sup>
- 4.114 Submissions by Arts Law and the IartC endorse the adoption of Ms Janke’s cultural authority model to protect ICIP. Arts Law believes that a cultural authority could achieve this by administering licencing agreements and investigating complaints of non-compliance, as well as managing a label of authenticity.<sup>126</sup>

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120 T Janke, *Our Culture: Our Future*, AIATSIS and ATSIC, Canberra, 1998, p. xli; Terri Janke and Company, *Submission 73*, pp. 3-4; Ms Janke, *Committee Hansard*, 6 March 2018, Sydney, p. 56-57; Terri Janke and Company, *Indigenous Knowledge: Issues for protection and management*, IP Australia and DIIS, 2018, p.117, <[https://www.ipaustralia.gov.au/sites/g/files/net856/f/ipaust\\_ikdiscussionpaper\\_28march2018.pdf](https://www.ipaustralia.gov.au/sites/g/files/net856/f/ipaust_ikdiscussionpaper_28march2018.pdf)> viewed 18 October 2018.

121 Terri Janke and Company, *Submission 73*, p. 4.

122 Ms Janke, *Committee Hansard*, 6 March 2018, Sydney, pp. 56-58.

123 Ms Janke, *Committee Hansard*, 6 March 2018, Sydney, pp. 56-58.

124 Ms Janke, *Committee Hansard*, 6 March 2018, Sydney, p. 58.

125 Ms Debbie Taylor, *Submission 12*, p. 2; Ms Libby Harward, *Submission 21*, p. 2; Dr Beetson, *Submission 23*, p. 3; Dr Rimmer, *Submission 95*, p. 16; Ms Clothilde Bullen, *Committee Hansard*, 6 March 2018, Sydney, p. 17; Dr Beetson, *Committee Hansard*, 14 July 2018, Cairns, p. 10; Mr Leo Akee, UMI Arts, *Committee Hansard*, 14 July 2018, Cairns, p. 18; Ms Nancy Bamaga, *Committee Hansard*, 16 July 2018, Brisbane, p. 5; Mr Bob Weatherall, *Committee Hansard*, 16 July 2018, Brisbane, p. 10; Ms Merindah Donnelly, *BlakDance, Committee Hansard*, 16 July 2018, Brisbane, p. 11; Mr Elliott Bledsoe, Arts Front, *Committee Hansard*, 16 July 2018, Brisbane, p. 37; Mr Goss, WIPO IGC, *Committee Hansard*, 16 August 2018, Canberra, p. 3.

126 Arts Law, *Submission 64.1*, pp. 14, 16; Indigenous Art Code, *Submission 138*, p. 3.

- 4.115 Ms Joella Warkill, of BlakDance, highlighted the importance of resourcing for this authority:

We have the skill in our sector; we do not have the financial resourcing. We call on the Australian government to resource the development of a national Indigenous arts and cultural authority to provide us with the infrastructure and administrative processes to tackle one of the biggest issues for Indigenous arts in the 21st century. Fake art harms culture.<sup>127</sup>

- 4.116 The Australia Council in October 2018 published a discussion paper on the establishment of a NIACA, arguing that First Nations peoples should be ‘enabled to control and protect their [TCEs]’ through a ‘collective voice in relation to arts and cultural’ matters.<sup>128</sup>

- 4.117 The Australia Council notes that while peak bodies exist, with ‘strong mandates and governance structures’, a national organisation to provide a co-ordinated approach to protection and promotion of rights, connectivity, capacity building and strategic direction across the entire Indigenous arts sector is needed.<sup>129</sup>

- 4.118 In presenting options and asking questions about the scope, role, value and form of a NIACA, the Australia Council is asking interested stakeholders to make submissions and attend consultation forums, to respond to the suggested scope, priorities and formation of such a body.<sup>130</sup>

## Committee comment

- 4.119 The committee is supportive of a national peak body to advocate for and safeguard Indigenous Cultural Intellectual Property, including traditional knowledge and expressions of culture. The committee therefore looks forward to the outcome of the consultation process being conducted by the Australia Council on the possible establishment of a National Indigenous Art and Cultural Authority.

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127 Ms Joella Warkill, BlakDance, *Committee Hansard*, 16 July 2018, Brisbane, p. 8.

128 Australia Council, *A proposed National Indigenous Arts and Cultural Authority (NIACA): Public discussion paper*, 2018, p. 3, <[https://niaca.com.au/wp-content/uploads/2018/09/NIACA-Discussion-Paper\\_2018.pdf](https://niaca.com.au/wp-content/uploads/2018/09/NIACA-Discussion-Paper_2018.pdf)> viewed 16 October 2018.

129 Australia Council, *A proposed National Indigenous Arts and Cultural Authority (NIACA): Public discussion paper*, 2018, pp. 3–4, <[https://niaca.com.au/wp-content/uploads/2018/09/NIACA-Discussion-Paper\\_2018.pdf](https://niaca.com.au/wp-content/uploads/2018/09/NIACA-Discussion-Paper_2018.pdf)> viewed 16 October 2018.

130 Australia Council, *A proposed National Indigenous Arts and Cultural Authority (NIACA): Public discussion paper*, 2018, <[https://niaca.com.au/wp-content/uploads/2018/09/NIACA-Discussion-Paper\\_2018.pdf](https://niaca.com.au/wp-content/uploads/2018/09/NIACA-Discussion-Paper_2018.pdf)> viewed 16 October 2018; Australia Council, ‘Register to attend a First Nations consultation forum’, *National Indigenous Arts & Cultural Authority*, 2018 <<https://niaca.com.au/consultation-forums/>> viewed 16 October 2018.





## Possible solutions

- 5.1 There are many examples of individuals and businesses making outstanding contributions to safeguarding Indigenous cultural expressions. These include the artists themselves, art centres, art fairs, and various peak bodies.
- 5.2 However, there are also many examples of businesses and individuals who are causing significant harm through unethical dealings with artists or by manufacturing and supplying large quantities of inauthentic product.
- 5.3 In some cases the harm may be unintentional, but it remains damaging nonetheless. It is clear therefore that First Nations cultural expressions require some protections given the countless inauthentic art and craft items being sold throughout the country.
- 5.4 It appears to the committee that there are three fundamental drivers of the prevalence of imitation Indigenous art and craft. The first is the interest that many tourists and domestic customers have in First Nations cultures and souvenirs. The second is that imitation products are profitable and can be traded legally. The third is that most consumers are unaware of what is authentic and what is not.
- 5.5 This chapter provides possible solutions, through a number of recommendations to government that the committee believes will significantly change this industry for the better over time. The ultimate goals of these suggested changes are that First Nations peoples will be able to exercise proper and rightful control over the production of cultural expressions in the future and benefit economically from it.

## Defining authenticity

- 5.6 Establishing a universally accepted definition of authenticity for artworks is not going to be straightforward and may not be feasible. Whilst there must of course be involvement of a First Nations artist for a piece of art to be authentic, the context of the item in question will be relevant to this question. The relevant government agencies including the departments of Communications and the Arts (DCA) and Prime Minister and Cabinet (PM&C) and the Australian Competition and Consumer Commission (ACCC) should investigate this further with First Nations stakeholders as part of developing an accepted standard.
- 5.7 As a starting point, the committee supports the definition employed by the City of Melbourne in its Code of Practice:

“Authentic Indigenous arts and craft” refers to arts and craft made by an Aboriginal or Torres Strait Islander person, from start to finish. It includes contemporary works and works that draw from Indigenous traditional practices and beliefs.

“Authentic Indigenous art products” are products reproducing Indigenous art, such as t-shirts, postcards, souvenirs and stationery, produced under a fair licence agreement, where royalties are paid to Indigenous artists.<sup>1</sup>

## Art centres

- 5.8 Art centres create significant opportunities for First Nations artists and artisans to earn a living whilst remaining in their own communities. As discussed previously in the report, these centres are often the only source of employment for Indigenous peoples in remote areas. Equally important are their roles in protecting cultural authenticity and fostering ethical dealings in the art industry, educating the wider public about First Nations art, and contributing to the social life and cohesion of their communities. The dedication of art centre staff is central to these activities and is acknowledged by the committee.

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1 T Janke, Code of Practice for galleries and retailers of Indigenous Art, City of Melbourne, 2017, p. 9, < <https://www.melbourne.vic.gov.au/SiteCollectionDocuments/code-of-practice-indigenous-arts.pdf> > viewed 2 August 2018.

- 5.9 The art centre model is important, but proper resourcing is required given this vital role. Art centres have the potential to be even more successful, both culturally and economically. There are some impediments to this, most notably in terms of staffing. A lack of housing in remote locations makes it difficult to hire or retain an art centre manager.
- 5.10 An investment in housing infrastructure would therefore be of benefit, but this needs to be part of an overall strategy to promote the effectiveness of art centres as small businesses. A major outcome that the committee wants to see from this inquiry is that art centres can compete effectively in the souvenir market and thus have the opportunity to significantly increase their output, if they so desire. This will require access to a level of business expertise and advice that many do not currently have. The promotion of art centres by the tourist industry will be another element of such a strategy, as discussed below.
- 5.11 The committee notes that DCA and PM&C confirmed that further support for art centres will now be available through the recently launched Indigenous Business Sector Strategy (IBSS) and a \$90 million Indigenous Entrepreneurs Fund (IEF).<sup>2</sup>
- 5.12 It is particularly encouraging that the key actions of the IBSS will include the roll out of three Indigenous business hubs, support for remote businesses, and increased funding for Indigenous start-ups.
- 5.13 It is the committee's firm view however that art centres and independent artists need a bespoke business advisory hub that will allow them to compete in mainstream souvenir markets. Funding and support needs therefore to be specifically earmarked for this capacity building. This should be a separate arm of the IBSS and be implemented as a matter of urgency.
- 5.14 The damage to First Nations cultures that is being done by inauthentic art cannot be stopped and reversed unless more clearly identifiable authentic products start to become available for both tourists and domestic consumers.
- 5.15 The issue of carpetbagging requires capacity-building for art centres and First Nations organisations to be able to identify and provide strategic intervention, and support to protect artists who are affected. The committee would like a specific fund under IVAIS to be established to provide for this.

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2 Department of Communications and the Arts (DCA), *Supplementary Submission 131:1*, Answer to Question on Notice, p. 6.

## Indigenous Art Code

- 5.16 The Indigenous Art Code Ltd (IartC) has been remarkably active and successful, but lacks the resources needed to reach its considerable potential. Many of the organisations that contributed to the inquiry spoke very highly of the Code and expressed the view that it should become the industry standard. There were also arguments made during the inquiry that the Code should be mandatory.
- 5.17 The expansion of the IartC is a key component of any future strategy to foster and preserve the integrity of First Nations art and craft items. The committee does not believe however that a mandatory code is feasible for the reasons stated in Chapter 4.
- 5.18 It is pleasing that the Cultural Ministers from the States and Territories have agreed to provide matching funding for the IartC.<sup>3</sup> Funding increases for IartC need to be substantial and sustained however. The IartC and the First Nations art sector should be consulted fully on the resourcing requirements going forward.

## Art fairs

- 5.19 Art fairs are now hugely important for promoting Indigenous art and the committee was privileged to be able to visit three of the most significant of these events in Fremantle, Cairns and Darwin.
- 5.20 Indigenous art fairs have a number of key roles. They are significant sales avenues for artists and art centres, and generate millions of dollars in revenue both directly and indirectly. For example, the Darwin Aboriginal Art Fair contributes \$15 million to the economy of the city annually.
- 5.21 An expanded series of fairs in the future is likely to be very beneficial for the Indigenous art industry as it will boost sales and provide other economic opportunities. It will also contribute to the wider teaching of First Nations cultures.

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3 DCA, *Supplementary Submission 131:1*, Answer to Question on Notice, p. 5.

## Current education

- 5.22 The lack of awareness among most non-Indigenous Australians that inauthentic First Nations art and craft is being sold in high volumes, indicates that the current level of education about Indigenous cultures is inadequate.
- 5.23 As mentioned at various stages throughout this report, tourists are not receiving adequate information about questions of authenticity, nor about the significance of this. This is addressed further in the section below on tourism.
- 5.24 The committee notes that the outcome of recent ACCC court proceedings against the Birubi Company will be used to frame some of its future consumer guidance.<sup>4</sup> This will certainly be useful.
- 5.25 The longer term policy option idea prepared jointly by the Treasury, DCA and the ACCC to develop an Information Standard for authenticity, in a similar manner to that used for free-range eggs, also appears to have merit and should be pursued. Such a Standard would require that clear information is provided to consumers and would be enforceable by the ACCC.<sup>5</sup>
- 5.26 Consultation on the definition of authenticity referred to earlier needs to form part of this.
- 5.27 It will be of paramount importance that the new Standard is adequately resourced to enable its wide promotion in the industry.

## First Nations tourism

- 5.28 The current promotion of First Nations cultures by Australia's tourism industry, including both the private sector and public agencies, seems to be very patchy at present.
- 5.29 Evidence indicates that visitors to Australia are keen to have an Indigenous experience, including purchasing souvenirs. It seems to the committee that this demand is strong and there is opportunity for First Nations communities to benefit economically from this interest. That this is not happening in any consistent way is down to policies not being optimal and the right structures not being in place.

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<sup>4</sup> DCA, *Supplementary Submission 131:1*, Answer to Question on Notice, pp. 4–5.

<sup>5</sup> DCA, *Supplementary Submission 131:1*, Answer to Question on Notice, p. 3.

- 5.30 Some initiatives are in place such as the art trail being promoted by the Northern Territory Government, but a coordinated approach is needed at all levels of government.
- 5.31 Neither domestic nor international tourists are sufficiently informed about authenticity and this has to change. The relevant government agencies in consultation with First Nations communities need to develop a system for providing clear and succinct information at all airports or ports of entry in Australia. This information can be provided in the form of a card that accompanies a customs declaration form, information in an in-flight video presentation, magazine, or other format.

## Copyright

- 5.32 Copyright laws are designed to protect the artistic and intellectual output of an individual over a period of several decades, but not an ancient and typically communal ownership of a particular form of Indigenous expression. The committee acknowledges that amending existing copyright legislation to achieve this would be difficult and complex.
- 5.33 First Nations cultural expressions will likely need a separate framework to be protected under law. Introducing stand-alone legislation to protect First Nations cultural expressions is a complex task that is not likely to be achievable in the short term, but the committee believes this is achievable and should be considered.
- 5.34 IP Australia noted that a Certification Trade Mark (CTM) scheme could be looked at,<sup>6</sup> with full consideration of the lessons learned from the previously failed scheme. The committee supports this idea and would like to see a proposal in the next 12–18 months. During this process, there needs to be proper consultation with artists and other producers.

## Labelling

- 5.35 There is currently no consistent labelling used for any type of art or craft, whether Indigenous or not, and no legal requirement to indicate whether something is authentic. An inauthentic product can be labelled in any number of ways that neither confirm nor deny this fact. Consumer law is designed to prevent buyers from being misled, only preventing inauthentic products being sold if explicitly labelled as authentic.

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6 DCA, *Supplementary Submission 131:1*, Answer to Question on Notice, p. 7.

- 5.36 The committee believes that the lack of any consistency or coherency in how art and craft items, such as souvenirs, are marked at the point of sale contributes greatly to the current lack of awareness about authenticity.
- 5.37 The new labelling trial to be conducted by Desart with government funding of \$150 000 is welcome. The committee awaits the results of this trial with interest.

## Industry data

- 5.38 One of the biggest problems for any policymaker considering a possible response to inauthentic art is that the value of this market is unknown. There has been some detailed work done on art centre revenues by Mr Tim Acker, as noted earlier in the report. As noted also by Mr Acker however, and confirmed by the Treasury, there are no accessible data on the revenues and profits made from the nationwide sale of inauthentic products.
- 5.39 This information would provide a dollar figure for the potential earnings that could be going to First Nations artists. A detailed and robust structural analysis of this market and its revenues is urgently needed.

### Recommendation 1

- 5.40 **The committee recommends as a matter of urgency that the Productivity Commission conducts a comprehensive inquiry into the value and structure of the current market for First Nations art and crafts. This inquiry should incorporate the following elements:**
- a detailed structural breakdown of the different parts of this market and the operators within it;
  - the total value of the fine art market stratified by the different avenues through which this art is produced, procured and sold;
  - the total value of the souvenir and craft market stratified by the different avenues through which these products are produced, procured and sold;
  - the market value of inauthentic souvenirs and art sold in Australia;
  - the revenues generated by art centres;

- the barriers facing art centres and First Nations artists who wish to sell fine art or souvenir style items in mainstream markets; and
- a summary reflecting both the number and value of imported imitation low end Indigenous products, and a like summary for products made and/or licenced in Australia.

## **Recommendation 2**

- 5.41 The committee recommends as a matter of urgency that the Australian Government consults with the Indigenous Art Code and the First Nations art sector on what resourcing is required for the Indigenous Art Code Ltd to fulfil its considerable potential, and provides this funding as a means of protecting both our unique Indigenous cultures and protecting the future and value of this market for Australian and International visitor purchasing.

The committee further recommends that a detailed evaluation of industry practices take place no later than two years after the provision of this funding. A mandatory code should be introduced if that review reveals few improvements in industry behaviour and little reduction in the prevalence of imitation First Nations art and craft.

## **Recommendation 3**

- 5.42 The committee recommends that the Australian Government establishes and funds a separate arm of the Indigenous Business Sector Strategy that is specifically aimed at art centres. This arm should incorporate the following aspects:

- a business advisory hub that will advise art centres on how to access mainstream souvenir markets;
- seed funding for art centres to build capacity, including staff training, to enter mainstream souvenir markets, including mentoring and monitoring strategies; and
- solutions to the lack of infrastructure, particularly housing, that prevents many art centres from hiring and retaining art centre managers.



**Recommendation 4**

- 5.43 The committee recommends that the Australian Government develops an Information Standard for authentic First Nations art in full consultation with First Nations artists and communities and the Indigenous Art Code.

**Recommendation 5**

- 5.44 The committee recommends that the Australian Government develops an information guide on authentic First Nations art to be provided to all arriving passengers at an airport or any other port of entry to Australia, with a preference for a short pre-arrival video presentation.

**Recommendation 6**

- 5.45 The committee recommends that IP Australia develops a Certification Trade Mark scheme for authentic First Nations art and craft in full consultation with all relevant stakeholders

**Recommendation 7**

- 5.46 The committee recommends that additional funding be provided through the Indigenous Visual Arts Industry Support program to:
- enable First Nations organisations such as art centres to advise and support artists who have been affected by carpetbagging; and
  - work with advisors from the Departments of Social Services, Employment and Prime Minister and Cabinet to plan a detailed program of interactive, financially viable assistance for First Nations artists or individuals who have been abused in this way, including a model to estimate any budgetary implications.

**Recommendation 8**

- 5.47 **The committee recommends that the Australian Government begins a consultation process to develop stand-alone legislation protecting Indigenous Cultural Intellectual Property, including traditional knowledge and cultural expressions.**

**The committee is mindful of the current Australia Council inquiry into the feasibility of a National Indigenous Art and Cultural Authority. The committee fully supports the establishment of this body and recommends that it be part of the consultation process.**

Ann Sudmalis MP  
Chair

17 December 2018



## Appendix A – List of submissions

1. Ninti One
2. Margaret Opie
3. Thomas Shillingford
4. Kimberley Cornick
5. Baden Hitchcock
6. Lynda Nutter
7. Carol McGregor
8. Jeff Mitting
9. Department of Parliamentary Services
10. Museum of Contemporary Art
11. Confidential
12. Debbie Taylor
13. Kimberley Aboriginal Law & Cultural Centre
14. Carolyn Ienna
15. Leeton Lee
16. Vicki Williams
17. Mia Hacker
18. UMI Arts Ltd
  - 18.1 Supplementary
19. Michele Grimston
20. John Graham
21. Libby Harward
22. Tim Acker
23. Dr Bianca Beetson

24. Toni Ostwald-Brown
25. Sandra Faber
26. Wendy Rix
27. Roslyn Hall
28. Regina Lankin
29. Margaret Boko
30. Iris Bendor, Iltja Ntjarra Many Hands Art Centre
31. Delrose Armstrong
32. Beth Inkamala
33. Ada Beasley
34. Tien Lee
35. Judith Muller
36. Patricia Robinson
37. Margaret Maughan
38. Haydn Dinsdale
39. Warakurna Artists
40. Name Withheld
41. Maningrida Arts & Culture
42. Fiona Wrobel
43. Trisha Newton
44. Maureen Newton
45. Palngum Wurnangat Art Centre Wadeye
46. Julie Venables
47. Brian Tucker
48. Harold Thomas
49. Birubi Art Pty Ltd
50. Lou-anne Barker
51. Eileen Lubiana
52. Aboriginal Art Association of Australia
- 52.1 Supplementary
53. Nici Cumpston
54. Australian Competition and Consumer Commission
55. The National Association for the Visual Arts
56. Copyright Agency

57. Dr Jacqueline Healy
58. Julie Purcell
59. Soroptimist International Moreton North Inc
60. The Treasury
  - 60.1 Supplementary
61. FORM building a state of creativity Inc.
62. Darwin Aboriginal Art Fair Foundation
  - 62.1 Supplementary
63. Martumili Artists
64. The Arts Law Centre of Australia
  - 64.1 Supplementary
65. Department of State Growth, Tasmanian Government
66. Benjamin Greaves
67. Delvene Cockatoo-Collins
68. Sarah Schmidt
69. Community Arts Network WA Ltd
70. Artitja Fine Art
71. Myvanwy Moar
  - 71.1 Supplementary
72. Wiradjuri Condoblin Corporation
73. Terri Janke and Company Pty Ltd
74. Joyce Summers
75. Regional Arts Australia
76. Chris Knight
77. Abigail Chaloupka
78. Leesa Watego, Iscariot Media
79. Stephanie Parkin
80. IP Australia
  - 80.1 Supplementary
81. Bluethumb Online Art Gallery
82. Queensland Tourism Industry Council
83. Delwyn Everard, Everard Advisory
84. Aboriginal Artists Agency LTD
85. Arts Ceduna

86. Ananguku Arts and Culture Aboriginal Corporation
87. Desart
88. Paul O'Halloran
89. WW Souvenirs Gifts and Homewares
90. Buku-Larrnggay Mulka Centre
  - 90.1 Supplementary (video submission)
91. Indigenous Art Centre Alliance
  - 91.1 Supplementary (video submission)
92. Northern Territory Government
93. City of Sydney
94. The Artery Contemporary Aboriginal Art
95. Dr Matthew Rimmer
96. Australian Council for the Arts
97. Queensland Law Society
98. Aboriginal Art Centre Hub of Western Australia
99. Creative Economy
100. Julie Marsh
101. Joann Russo (video submission)
102. Margaret Mara (video submission)
103. Roanna Jacob (video submission)
104. Bereline Loogatha (video submission)
105. Solomon Booth (video submission)
106. Vikki Burrows (video submission)
107. Philip Rist (video submission)
108. Glenn Iseger-Pilkington (video submission)
109. Dr Damien Jacobsen (video submission)
110. Samantha Cook (video submission)
111. Valerie Keenan (video submission)
112. Abe Muriata (video submission)
113. Frank Young (video submission)
114. Ignatius Taylor (video submission)
115. Marjorie Williams (video submission)
116. Marcus Wheeler (video submission)
117. Cairns Indigenous Arts Fair

118. Professor Jon Altman
  - 118.1 Supplementary
119. BlakDance
120. Diann Lui
121. Vincent Namatjira
122. Betty Muffler
123. Margaret Kemarre Ross
124. Pamela Hogan
125. Tamisha Williams
126. Narelle Holland
127. Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)
128. Victorian Government
  - 128.1 Supplementary
129. Donald Richardson and Ms Vesna Tenodi
130. Donald Richardson
  - 130.1 Supplementary
131. Department of Communications and the Arts and the Department of the Prime Minister and Cabinet
  - 131.1 Supplementary
132. Arnhem, Northern and Kimberley Artists Aboriginal Corporation (ANKA)
  - 132.1 Supplementary (video submission)
133. Department of Immigration and Border Protection
  - 133.1 Supplementary
134. Gapuwiyak Culture and Arts (video submission)
135. ACT Government
136. Department of Foreign Affairs and Trade
  - 136.1 Supplementary
137. Create NSW
  - 137.1 Supplementary
138. Indigenous Art Code
139. Name Withheld
140. Name Withheld
141. Robert Mathieson

142. Confidential
143. Confidential
144. Lenie Namatjira
145. Choice
146. Vivien Anderson
147. Stephen Hogarth
148. Paul Johnstone Gallery
149. Arts Law Centre of Australia and Indigenous Art Code
150. Confidential
151. Queensland Government
152. Laurie Nona (video submission)
153. Dr Alex Malik
154. Warmun Art Centre
155. Girringun Aboriginal Art Centre
156. Sydney Airport
157. Dr Dimitrios Eliades
158. Municipal Association of Victoria
159. Bits of Australia
160. Confidential
161. Feral Arts





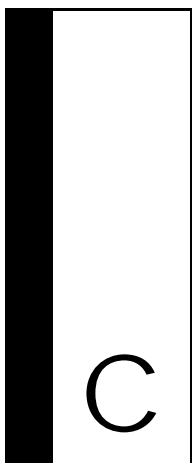
## Appendix B – List of exhibits

1. Nancy Bamaga  
Video
2. John Smith Gumbula  
Video
3. Jade Belfour  
Video
4. Peter Farmer  
Video
5. Dr Bianca Beeton  
Video
6. Ian Plunket  
Video
7. Richard Bell  
Video
8. Debbie Taylor  
Video
9. Alec Coles and Deanne Fitzgerald  
Video
10. Phil Walley-Stack  
Video
11. Vernon Ah Kee  
Video
12. Ernie Dingo  
Video
13. Miranda Farmer  
Video

14. Neil Coyne  
Video
15. Gordon Hookey  
Video
16. Dennis Stokes  
Video
17. Andrew Gall  
Video
18. Dr Richard Walley  
Video
19. Althea Beetson and Emily Wells  
Video
20. Community Arts Network
  - a. Burdiya Mob: Djarliny (music CD)
  - b. Kwobadak Maar Beautiful Hands: art and stories by the Northam Yorgas (catalogue)
  - c. The Bush Babies: Elders Portrait Exhibition (catalogue)
  - d. Born On Country: Bush Babies Moora and New Norcia (Catalogue)
21. Martumili Artists, East Pilbara Art Centre
  - a. Songlines: tracking the Seven Sisters (catalogue)
  - b. We don't need a map: a Martu experience of the western desert (catalogue)
  - c. We don't need a map: a Martu experience of the western desert (educational resource, inquiry sheets, fact sheets, stories and information)
  - d. Thank you for supporting Martumili Artists magnets (4)
  - e. Experience Extraordinary Western Australia: tourist brochure about Martumili Artists (4)
  - f. Our Country mini jigsaw
  - g. Martumili Artists: an explanation of the workings of the art centre (video resource for Martu artists in language)
22. Warmun Art Centre
  - a. Warmun Art: Contemporary Aboriginal Art Brochure
  - b. Warmun Art information guide
23. Desart
  - a. Desart Mob 2016 catalogue
  - b. Desart Mob 2017 catalogue

24. Waltja Tjutangku Palyapayi Aboriginal Corporation  
Family News: Edition 59, 2015
25. Girringun Aboriginal Art Centre
  - a. Girringun Aboriginal Art Centre: Cultural Strength in Art brochure
  - b. Girringun Aboriginal Art Centre: brochure and pamphlets in mandarin
  - c. Wabu Jananyu: Cultural plant use by the Girringun Aboriginal tribal groups of North Queensland
26. Dr Matthew Rimmer
  - a. The Indigenous Law Journal at the University of Toronto Faculty of Law, Volume 3, Fall 2004
  - b. Final report of the review of the National Indigenous Arts Advocacy Association
27. Confidential
28. Arnhem Northern and Kimberly Artists Aboriginal Corporation (ANKA)
  - a. Homelands Mapping Project Foundation Map
  - b. Safe Keeping: Report on the care and management of Art Centre-based Community Collections (Aug 2017)
  - c. Arts Backbone: Cultural legacy Edition (Aug 2018)
29. Tim Acker
  - a. Licensing Aboriginal and Torres Strait Islander Art: Information kit
  - b. Licensing Aboriginal and Torres Strait Islander Art: Information for Artists
  - c. Licensing Aboriginal and Torres Strait Islander Art: Information for Manufacturers and Wholesalers
  - d. Licensing Aboriginal And Torres Strait Islander Art: Information for Retailers
30. Tourism Australia
  - a. Discover Aboriginal Experiences pamphlets x 4
  - b. Signature Experiences of Australia brochure
  - c. Discover Aboriginal Experiences Trade Fact Sheets (Mar 2018)
31. City of Sydney  
Eora Journey: Economic Development Plan – Executive Summary (2016)
32. Department of Foreign Affairs (DFAT)  
Aboriginal and Torres Strait Islander Peoples Engagement Toolkit: A Practical reference guide for all staff to enhance Indigenous cultural competency across DFAT’s work in Australia and overseas





## Appendix C – List of witnesses, hearings and site visits

### **Thursday, 15 February 2018 – Canberra, ACT**

#### Public hearing

##### Australian Competition and Consumer Commission

Mr Scott Gregson, Executive General Manager, Enforcement Division

### **Thursday, 1 March 2018 – Canberra, ACT**

#### Public hearing

##### Department of Parliamentary Services

Mr Luke Hickey, Assistant Secretary, Parliament Experience Branch

Ms Cate Saunders, Chief Operating Officer

Mr Rob Stefanic, Secretary

Ms Justine van Mourik, Director, Parliament House Art Collection,  
Parliament Experience Branch

### **Friday, 2 March 2018 – Canberra, ACT**

#### Public hearing

##### Department of Communications and the Arts

Mr Richard Eccles, Deputy Secretary, Content, Arts, Strategy and Research

Ms Jane Barney, Director, Visual Arts and Design Section

**Department of the Prime Minister and Cabinet**

Mr Christopher Simpson, Senior Advisor, Cultural Policy

**IP Australia**

Mr Brendan Bourke, Acting Assistant General Manager, Policy and  
Governance Group

Mr Will Nixon, Policy Officer, Trade and Policy Projects

**Australian Institute of Aboriginal and Torres Strait Islander Studies**

Mr Craig Ritchie, Chief Executive Officer

Ms Lyndall Osborne, Executive Director, Collections

**Department of Foreign Affairs and Trade**

Mr Andrew Byrne, First Assistant Secretary, Soft Power, Communications  
and Partnerships Division

Ms Barbara Poliness, Assistant Director, Soft Power Strategy Section, Soft  
Power, Communications and Partnerships Division

**Department of Home Affairs**

Mr Andrew Chandler, Acting First Assistant Secretary, Traveller Customs &  
Industry Policy

Acting Commander Stephen Hledik, Customs Compliance division,  
Australian Border Force

**Commonwealth Scientific and Industrial Research Organisation**

Dr Mark Staples, Research Group Leader, CSIRO-Data61

Dr Liming Zhu, Research Director, CSIRO-Data61

**Tuesday, 6 March 2018 – Sydney, NSW****Public Hearing****National Association for the Visual Arts**

Ms Esther Anatolitis, Executive Director

**Aboriginal Arts Association of Australia**

Mr Adam Knight, President

Ms Brenda Colahan, Treasurer and Executive Member

Ms Sylvie Tsatsaronis, Director

**Museum of Contemporary Art**

Ms Clothilde Bullen, Curator, Aboriginal & Torres Strait Islander Collections  
& Exhibitions

**Copyright Agency**

Ms Libby Baulch, Policy Director  
Ms Judy Grady, Manager, Visual Arts

**Arts Law Centre of Australia**

Ms Robyn Ayres, Chief Executive Officer  
Mr Kon Stellios, Allens Linklaters

**Indigenous Art Code**

Ms Gabrielle Sullivan, Chief Executive Officer  
Mr Richard England, Chair  
Ms Banduk Marika, Director  
Mr Kon Stellios, Allens Linklaters

**Wiradjuri Condobolin Corporation**

Mr Ally Coe, Chairperson  
Mr Joel Harrison, Project Manager, Language Revival Program

**Australian Council for the Arts**

Ms Lydia Miller, Executive Director, Aboriginal and Torres Strait Islander  
Arts

**Terri Janke and Company Pty Ltd**

Ms Terri Janke, Solicitor Director  
Ms Maiko Sentina, Solicitor

**Wednesday, 7 March 2018 – Sydney, NSW****Public Hearing****City of Sydney**

Yvette Andrews, Manager, Community Engagement  
David Beaumont, Community Engagement Coordinator

**Aboriginal Arts Agency Ltd**

Ms Fay Nelson AM, Chair

Ms Delwyn Everard, private capacity

### Site Visits

Australia the Gift, 1 Gateway Plaza, Circular Quay  
Spirit Gallery Aboriginal Art and Didgeridoos, Argyle Street, The Rocks  
Museum of Contemporary Art Gift Shop, George St, The Rocks

## **Thursday 8 March 2018 – Melbourne, VIC**

### Public Hearing

#### Creative Economy

Helene George, Founder & Managing Director

Ms Myvanwy Moar, private capacity

Dr Jacqueline Healy, private capacity

Professor Jon Altman, private capacity

### Bluethumb Online Art Gallery

Freddy Grant, PR & Communications Manager, Indigenous Art Lead –  
Marketing, Business Development

### Indigenous Design Charter

Dr Russell Kennedy, Senior Lecturer in Screen & Design,  
Faculty of Arts & Education, Deakin University

Dr Meghan Kelly, Associate Head of School (Teaching & Learning),  
Faculty of Arts & Education, Deakin University

Mr Jefa Greenaway, Director, Indigenous Architecture and Design Victoria

## **Sunday, 8 April 2018 – Fremantle WA**

### Site Visit

Revealed Exhibition, Fremantle Art Centre



## **Monday, 9 April 2018 – Perth WA**

### **Public Hearing**

#### **FORM building a state of creativity Inc.**

Ms Mollie Hewitt, Curator and Regional Manager  
Ms Amy Plant, Project Manager

#### **Aboriginal Art Centre Hub of Western Australia**

Mr Chad Creighton, Chief Executive Officer  
Ms Charmaine Green, outgoing Chair

#### **Artitja Fine Art**

Ms Anna Kanaris, Director  
Mr Arthur Clarke, Director

#### **Freemantle Arts Centre**

Ms Erin Coates, Special Projects Curator

#### **Mr Glenn Iseger-Pilkington, private capacity**

#### **Community Arts Network WA**

Ms June Moorhouse, General Manager  
Ms Monica Kane, General Manager  
Mr Ron Bradfield Jnr, Operations Manager of Urban Indigenous

## **Tuesday, 10 April 2018 – Broome WA**

### **Public Hearing**

#### **Kimberly Aboriginal Law & Cultural Centre**

Wayne Barker, KALACC Festival and Cultural Events Coordinator

#### **Nagula Jarndu Women's Art and Resource Centre**

Ms Lyn Yu-Mackay, Chairperson  
Ms Eunice Yu, Coordinator

## **Tuesday, 10 April 2018 – Newman WA**

### **Site Visit**

Martumili Artists, East Pilbara Arts Centre

### **Public Hearing**

#### **Martumili Artists**

Ms Carly Day, Arts and Business Manager  
Mr Desmond Taylor, Artist  
Mr Muuki Taylor, Artist  
Mr Wokka Taylor, Artist  
Ms Amy Mukherjee, Gallery Coordinator  
Ms Ngamaru Bidu, Artist

## **Wednesday, 11 April 2018 – Broome WA**

### **Site Visit**

Nagula Jarndu Women's Art and Resource Centre

## **Wednesday, 11 April 2018 – Warmun WA**

### **Site Visit**

Warmun Art Centre - Warmun

### **Public Hearing**

#### **Warmun Art Centre**

Mr Gabriel Nodea, Chairman  
Ms Mary Thomas, Vice Chairwoman & Artist  
Ms Stephanie Rajalingam, Manager  
Ms Mabel Juli, Director & Artist  
Ms Lindsay Malay, Director & Artist  
Ms April Nulgit, Director & Artist  
Mr Rusty Peters, Director & Artist  
Ms Phyllis Thomas, Director & Artist  
Mr Ralph Juli, Director & arts worker  
Mr Gordon Barney, Artist

Ms Sadie Carrington, Artist  
Ms Bessie Daylight, Artist  
Mr Patrick Mung Mung, Artist  
Ms Nancy Nodea, Artist  
Mr Mark Nodea, Artist  
Ms Shirley Purdie, Artist  
Ms Jane Yalunga, Artist  
Ms Betty Carrington, Artist

## **Tuesday, 1 May 2018 – Hermannsburg NT**

### **Public Hearing**

#### **Hermannsburg Potters Aboriginal Corporation**

Ms Beth Inkamala, Founding member & Chairperson  
Ms Judith Inkamala, Founding member  
Ms Rona Rubuntja Panangka, Founding member  
Ms Rahel Ungwanaka, Founding member  
Ms Hayley Coulthard Panangka, Artist & Desart Board Member  
Ms June Campbell, Emerging artist  
Ms Gabrielle Wallington, Manager

### **Site Visit**

Hermannsburg Potters Aboriginal Corporation

## **Tuesday, 1 May 2018 – Alice Springs NT**

### **Public Hearing**

#### **Regional Arts Australia**

Mr John Oster, Executive Director

### **Desart**

Ms Jane Young, Chairperson  
Mr Philip Watkins, Chief Executive Officer

## **Wednesday, 2 May 2018 – Alice Springs NT**

### **Site Visits**

Tjanpi Desert Weavers  
Tangentyere Artists

### **Public Hearing**

#### **Tangentyere Artists**

Ms Sue O'Connor, Assistant Coordinator  
Ms Marjorie Williams, Artist  
Ms Gwen Gillen, Director & Artist  
Ms Terazita Turner-Young, Arts Administrator

#### **Tjanpi Desert Weavers**

Ms Michelle Young, Manager  
Ms Margaret Smith, Vice Chairperson, NPY Woman's Council

#### **Waltja Tjutangku Palyapayi**

Ms Jane Clark, Media Art and Online Consultant

#### **Araluen Arts Centre**

Mr Mark Crees, Director  
Mr Stephen Williamson, Curator

### **Site Visit**

Waltja Tjutangku Palyapayi

## **Thursday, 24 May 2018 – Canberra ACT**

### **Public Hearing**

#### **Tourism Australia**

Mr Leo Seaton, General Manager, Communications and Government  
Ms Victoria Maigre, Global Manager, Government Relations

## Create NSW

Ms Alex O'Mara, Deputy Secretary, Arts, Screen & Culture Division, NSW  
Department of Planning & Environment

Mr Tarek Barakat, Acting Executive Director, Create NSW

## **Thursday, 31 May 2018 – Canberra ACT**

### Public Hearing

#### Australian Made

Mr Ian Harrison, Chief Executive

Ms Lisa Crowe, Manager – Compliance & Policy of Australian Made  
Campaign

## **Thursday, 28 June 2018 – Canberra ACT**

### Public Hearing

#### The Department of Treasury

Mr Ian Lawrence, Manager, Consumer Policy Unit, Consumer and  
Corporations Policy Division, Markets Group

Ms Lucy Vincent, Principal Adviser, Consumer and Corporations Policy  
Division, Markets Group

## **Saturday, 14 July 2018 – Cairns QLD**

### Site Visit

Cairns Indigenous Art Fair

### Public Hearing

#### Indigenous Art Centre Alliance

Ms Pam Bigelow, Manager

Mr Philip Rist, President of IACA & Chief Executive Officer of Girringun  
Aboriginal Corporation

Mr Abe Muriata, Board Member for IACA

Dr Bianca Beetson, private capacity

### **Mornington Island Arts**

Mr John Armstrong, Manager  
Ms Agnes Kohler, Artist  
Ms Coralie Thompson, Artist

### **UMI Arts Ltd**

Mr Peter Lenoy, Executive Officer  
Mr Leo Akee, Chairperson

### **Badu Art Centre**

Mr Laurie Nona, Artist

## **Sunday, 15 July – Cairns QLD**

### **Public Hearing**

#### **Cairns Indigenous Art Fair**

Ms Vanessa Gillen, General Manager  
Ms Janina Harding, Artistic Director

#### **Girringun Aboriginal Art Centre**

Dr Valerie Keenan, Manager  
Mr Abe Muriata, Artist & Board Member for IACA  
Mr Daniel Beeron, Artist

#### **Yarrabah Arts and Cultural Precinct**

Mr Ross Andrews, Mayor  
Mr Darrell Harris, Manager

#### **Hopevale Arts and Cultural Centre**

Mr Harold Ludwick, Director

#### **Moa Arts**

Mr Solomon Booth, Artist

## **Monday, 16 July 2018 – Brisbane QLD**

### **Public Hearing**

#### **Black Drum Productions**

Ms Nancy Bamaga, Chief Executive Officer

#### **Blakdance**

Ms Merindah Donnelly, Executive Producer

Mr Bob Weatherall, Elder

Ms Joella Warkill, Marketing and Membership Coordinator

Ms Hannah Scanlon, Emerging Producer

Ms Nancy Bamaga, Elder

**Mr Steven Hogarth, private capacity**

**Ms Delvene Cockatoo-Collins, private capacity**

**Dr Damien Jacobsen, private capacity**

#### **Feral Arts**

Mr Norm Horton, Executive Director

Ms Sara Moynihan, Executive Director

Mr Elliott Bledsoe

Ms Nancy Bamaga, Elder

Mr Bob Weatherall, Elder

Mr John Smith Gumbula, Artist

**Ms Stephanie Parkin, private capacity**

#### **Queensland Office of Fair trading, Department of Justice & Attorney General**

Mr David Ford, Deputy Director-General and Commissioner for Fair Trading

Mr Christopher McKenzie, Director, Complaint & Program Coordination

**Mr Gordon Hookey, Artists, private capacity**

**Tuesday, 17 July 2018 – Brisbane QLD****Public Hearing**

Dr Kylie Pappalardo, private capacity

Dr Matthew Rimmer, private capacity

**Iscariot Media**

Ms Leesa Watego, Director

**Bundarra**

Mr Troy Drasdo, Director

Mr Jesse Green, Managing Director

**WW Souvenirs**

Mr Richard Myles-Whittington, Managing Director

Mr Colin Jones, Artist, private capacity

Ms Abigail Chaloupka, private capacity

Mr Jason Passfield, Artist, private capacity

Ms Margaret Lawton, Elder, private capacity

**Thursday, 9 August 2018 – Darwin NT****Public Hearing**

Mr Brian Tucker, private capacity

**Outstation Gallery**

Mr Matt Ward, Director

**Paul Johnstone Gallery**

Mr Paul Johnstone, Director

**Warnayaka Art and Cultural Aboriginal Corporation**

Ms Nungarrayi Myra Herbert, Elder, Senior Lore Lady, Director

Ms Louisa Erglis, Manager



**Gab Titui Cultural Centre**

Ms Leitha Assan, Exhibitions and Public Programs Manager  
Ms Rosie Ware, Artist  
Ms Nancy Kiwat, Artist  
Ms Maryann Sebasio, Artist

**Arlpwe Art Cultural Centre**

Mr Ian Grieve, Art Centre Manager  
Mr Graham Beasley, Cultural Director  
Mr Peter Corbett, Assistant Manager  
Mr Damien Brown, Art Centre Worker

**Spinifex Hill Artists**

Mr Greg Taylor, Studio Manager  
Nyangulya Katie Nalgood, Artist  
Ms Crystal Gardiner, Artist  
Nyaparu William Gardiner, Artist

**Northern Territory Government**

Mr Phillip Leslie, Executive Director, Community Participation, Sports and  
the Arts, Department of Tourism and Culture

**Mangkaja Arts Resource Agency**

Ms Belinda Cook, Manager  
Ms Lynley Nargoodah, Director

**Injalak Arts**

Ms Felicity Wright, Manager

**Mowanjum Art and Cultural Centre**

Ms Ella Doonan, Manager  
Ms Leah Umbagai, Art Centre Representative

**Maningrida Arts & Culture and Babbarra Women's Centre**

Ms Kate O'Hara, Art Centre Manager  
Ms Jessica Phillips, Assistant Manager, Babbarra Women's Centre

**Site Visit**

Darwin Aboriginal Art Fair

## **Friday, 10 August 2018 – Darwin NT**

### **Public Hearing**

#### **Arnhem Northern and Kimberley Artists Aboriginal Corporation**

Ms Christina Davidson, Chief Executive Officer  
Mr Gabriel Nodea, Deputy Chair  
Ms Ruth Nalmakarra, Director

#### **Darwin Aboriginal Art Fair Foundation**

Ms Franchesca Cubillo, Chair  
Ms Claire Summers, Executive Director

#### **Tjala Arts, Mimili Maku Arts and APY Art Centre Collective**

Ms Annie McLoughlin, Acting Manager, Tjala Arts  
Ms Yaritji Young, Member, Tjala Arts  
Ms Tuppy Goodwin, Member, Mimili Maku Arts  
Ms Skye O'Meara, General Manager, APY Art Centre Collective

#### **Merrepen Arts Centre**

Dr Cathy Laudenbach

#### **Maruku Arts**

Mr Clive Scollay, General Manager  
Ms Saha Jones, Equity Advocate

#### **Warakurna Artists**

Ms Jane Menzies, Art Centre Manager

## **Thursday, 16 August 2018 – Canberra ACT**

### **Public Hearing**

World Intellectual Property Organisation Committee on Intellectual Property  
Genetic Resources, Traditional Knowledge and Folklore

Mr Ian Goss, Chair

Mr Tim Aker, personal capacity

## **Thursday, 13 September 2018 – Canberra ACT**

### **Public Hearing**

#### **The Treasury**

Mr Ian Lawrence, Manager, Consumer Policy Unit, Consumer and  
Corporations Policy Division, Markets Group

Mr Adam McKissack, Principal Adviser, Consumer and Corporations Policy  
Division

#### **Department of the Prime Minister and Cabinet**

Mr Ryan Bulman, First Assistant Secretary, Housing, Land and Culture  
Branch

Ms Wendy Ah Chin, Assistant Secretary, Cultural Branch

#### **Department of the Communications and the Arts**

Mr Richard Eccles, Deputy Secretary, Content, Arts, Strategy and Research  
Ms Jane Barney, Director, Visual Arts and Design Section

#### **IP Australia**

Mr Brendan Bourke, Acting Assistant General Manager, Policy and  
Governance Group

Mr Will Nixon, Policy Officer, Trade and Policy Projects

#### **Australian Competition and Consumer Commission**

Mr Scot Gregson, Executive General Manager, Enforcement Division

**Thursday, 20 September 2018 – Canberra ACT****Public Hearing****Brilliant Silk**

Mr Jack Brilliant

**Friday, 21 September 2018 – Canberra ACT****Public Hearing****Australian Choice**

Mr Tom Butt, Owner and Managing Director

**Murra Wolka Creations**

Mr Joe Skeen Jnr

**Alperstein Designs**

Mr Marc Alperstein, Director

**Supply Nation**

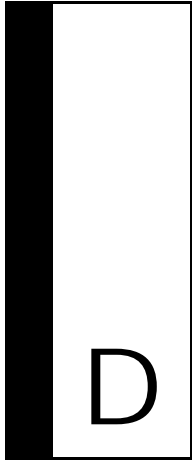
Ms Laura Berry, Chief Executive Officer

**Cooee Brands**

Mr Neil Cope, Managing Director

**Bits of Australia**

Ms Micaela Smith, Managing Director



## Appendix D – Indigenous art centres and representative art organisations that contributed to the inquiry

1. Aboriginal Art Centre Hub of Western Australia
2. APY Art Centre Collective
3. Arlpwe Art Cultural Centre
4. Arnhem Northern and Kimberley Artists Aboriginal Corporation
5. Badu Art Centre
6. Desart
7. Gab Titui Cultural Centre
8. Girringun Aboriginal Art Centre
9. Hermannsburg Potters Aboriginal Corporation
10. Hopevale Arts and Cultural Centre
11. Indigenous Art Centre Alliance
12. Injalak Arts
13. Mangkaja Arts Resource Agency Aboriginal Corporation
14. Maningrida Arts & Culture
15. Martumili Artists
16. Maruku Arts
17. Merrepen Arts Centre
18. Mimili Maku Arts
19. Moa Arts
20. Mornington Island Arts
21. Mowanjum Art and Cultural Centre
22. Nagula Jarndu Women's' Art and Resource Centre

23. Spinifex Hill Artists
24. Tangentyere Artists
25. Tjala Arts
26. Tjanpi Desert Weavers
27. UMI Arts Ltd
28. Waltja Tjutangku Palyapayi
29. Warakurna Artists
30. Warmun Art Centre
31. Warnayaka Art and Cultural Aboriginal Corporation
32. Yarrabah Arts & Cultural Precinct



## Appendix E – List of abbreviations

AAAA	Australian Aboriginal Art Association
AACHWA	Aboriginal Art Centre Hub of Western Australia
ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
ANKA	Arnhem, Northern and Kimberley Artists Aboriginal Corporation
ARIPO	African Regional Intellectual Property Organisation
Arts Law	Arts Law Centre of Australia
Australia Council	Australia Council for the Arts
CIAF	Cairns Indigenous Art Fair
CoP	City of Melbourne <i>Code of Practice for galleries and retailers of Indigenous Art</i>
Cth	Commonwealth
CTM	Certification Trade Mark
DAAF	Darwin Aboriginal Art Fair Foundation
DCA	Department of Communications and the Arts
DFAT	Department of Foreign Affairs and Trade
IartC	Indigenous Art Code Ltd
IBSS	Indigenous Business Sector Strategy
ICIP	Indigenous Cultural and Intellectual Property

IEF	Indigenous Entrepreneurs Fund
IP	Intellectual Property
IVAIS	Indigenous Visual Arts Industry Support
Ku Arts	Ananguku Arts and Culture Aboriginal Corporation
Model Law	<i>Model Law for the Protection of Traditional Knowledge and Expressions of Culture</i>
MSG	Melanesian Spearhead Group's
NAVA	National Association for the Visual Arts
NIAAA	National Indigenous Arts Advocacy Association
NIACA	National Indigenous Art and Cultural Authority
NICA	National Indigenous Cultural Authority
PM&C	Department of the Prime Minister and Cabinet
OFT	Queensland Office of Fair Trading
RAA	Regional Arts Australia
SAM	Stories Art Money
SPC	Secretariat of the Pacific Community
Swakopund Protocol	<i>Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore</i>
TCEs	Traditional cultural expressions
Treaty	<i>Framework Treaty on the Protection of Traditional Knowledge and Expressions of Culture</i>
The Code	Indigenous Art Code
TK	Traditional knowledge
WIPO	World Intellectual Property Organization
WW Souvenirs	WW Souvenirs, Gifts and Homewares