



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'.¹

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.²

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.³

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.⁴

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.⁵

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.

- 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.⁶

- 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.⁷

- 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.

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.⁸

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.⁹

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.¹⁰

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.¹¹

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.¹²

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.¹³

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.¹⁴

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'.¹⁵ 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.¹⁶

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.¹⁷

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.¹⁸

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’.¹⁹

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.²⁰

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

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.²¹

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'.²²

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.²³

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.²⁴

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.

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.²⁵

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.²⁶

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.'²⁷

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.²⁸

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.²⁹

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.³⁰
- 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.³¹
- 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.³²

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.³³

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.

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> 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.