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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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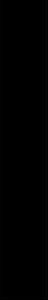
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## Chair's Foreword

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.