



House of Representatives Standing Committee on Indigenous Affairs
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Sir / Madam

Reference: The growing presence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise for sale across Australia

Regional Arts Australia appreciates the opportunity to contribute to the Inquiry and would welcome an opportunity to cooperate and engage more fully with the Inquiry should that be considered appropriate.

Yours sincerely



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3 November, 2017

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Executive Summary

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.

We regard this Inquiry as an important opportunity to strengthen the industry. At the same time, it is important to note that while previous investigations and Parliamentary Inquiries have done much to support the industry, they have largely failed to produce fundamental solutions to solve much of the chronic dysfunction in the marketplace.

We support a ban on inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products proposed by Mr Bob Katter in the Parliament. We also call for effective policing should this legislation come into law.

We also support more effective measures for monitoring market behaviour through the Competition and Consumer Act.

About Regional Arts Australia

Regional Arts Australia (RAA) is a peak organisation representing the arts in regional Australia. We promote the importance of the arts as a key driver in creating vibrant and sustainable regional communities. We believe arts and culture enrich the lives of regional Australians, and build innovative and creative communities.

RAA has served regional Australia for almost 70 years and we provide national reach and national impact to resource and promote regional arts and culture in collaboration with our members, the state-based Regional Arts Organisations.

Regional artists, including thousands of Aboriginal and Torres Strait Islander artists, are renowned for their artistic and creative excellence. One in three people in Australia live in regional Australia and their arts and cultural contributions have a national impact.

Through arts and culture, we want to broaden our national vision of the brilliance that regional, remote and very remote Australia contributes to the nation. We want to ensure that all regional and remote Australians, including Indigenous Australians, have valuable and equitable opportunities to engage with the arts. We know that access to arts and cultural experiences build aspiration, resilience and economic benefit.

1. The definition of authentic art and craft products and merchandise.

We acknowledge and support the important work done by the Australia Council to define principles and establish protocols for dealing with Aboriginal and Torres Strait Islander Art. Namely;

Aboriginal and Torres Strait Islander arts are a rich contribution to the world's culture, and to Australia's diverse contemporary culture and national identity.

Aboriginal and Torres Strait Islander arts include classical, traditional and contemporary practice, including all new forms of cultural expression. This is applied across all art forms and in urban, regional and remote areas.¹

In the context of this Inquiry there are two critical principles in play - identity and respect.

Identity:

A commonly understood definition of Aboriginal or Torres Strait Islander identity includes:

- the person identifies as an Aboriginal or Torres Strait Islander
- the person is of Aboriginal or Torres Strait Islander descent
- the community of origin or the community in which he/she resides accepts the person as Aboriginal or Torres Strait Islander.

This identity underpins the authenticity of art and craft products.

Respect:

Fundamental respect involves the rights of Indigenous people to own and control their heritage, including Indigenous images, designs, stories and other cultural expressions².

Manufacturers and dealers in inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products demonstrate their lack of respect for Aboriginal and Torres Strait Islander culture when they handle inauthentic products. At the same time, they demean and exploit the product and steal the benefits that would otherwise flow to Aboriginal and Torres Strait Islander artists.

2. 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.

The Committee should note the United Nations Declaration on the Rights of Indigenous Peoples Article 31 1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

¹ <http://www.australiacouncil.gov.au/aboriginal-and-torres-strait-islander-arts/>

²

http://www.australiacouncil.gov.au/symphony/extension/richtext_redactor/getfile/?name=daaf1afd6d719315db5e5e174a1da961.pdf

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

The Australian Competition and Consumer Act 2010 (CCA) is designed to protect free trade and promote competition in the marketplace. Suppliers, including Indigenous artists, are currently not allowed to use their market power for the purpose of eliminating or substantially damaging a competitor or to prevent a business from entering into a market. In essence all dealers have a right to operate in the marketplace. This includes the right to deal in inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products. However, it needs to be noted that the Australian Competition and Consumer Commission (ACCC) also recognises that circumstances can exist in which an exemption from statutory competitive practice should apply where it results in a net public benefit.³

Some will argue that banning the import of inauthentic Aboriginal and Torres Strait Islander 'style' art limits free trade and results in a less competitive marketplace. The Committee will note that bans on the importation of goods exist in a wide range of circumstances where there is a threat to the public good. Such bans include the importation of illicit drugs, plant and animal material and certain firearms among others. There is a net public good to be promoted and protected by banning the import of inauthentic Aboriginal and Torres Strait Islander 'style' art.

3. An examination of the prevalence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise in the market.

The prevalence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise is largely positioned in the tourist market.

The Queen Victoria Market is a major landmark in Melbourne, and is described as the largest open air market in the Southern Hemisphere. This market includes a proliferation of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products. The product generally carries very limited description of product origin. When questioned, stall holders provide evasive answers about authenticity and the identity of the artist. The City of Melbourne Code of Practice for Galleries and Retailers of Indigenous Art⁴ has had little effect in stamping out this kind of misleading and deceptive conduct.

The Committee should be aware of the Senate Standing Committee on the Environment, Communications, Information Technology and the Arts (2007), *Indigenous Art: Securing the Future - Australia's Indigenous visual arts and craft sector*, which highlighted illegal market behaviour including the production of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products by European backpackers in Cairns.

The Todd Mall markets in Alice Springs is filled with inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products. They include fake boomerangs, Aboriginal figures, printed tea towels carrying Aboriginal style designs and fake clap sticks. They carry no authenticity statement or artist information.

³ <https://www.accc.gov.au/business/applying-for-exemptions/applying-for-an-authorisation>

⁴ <http://www.melbourne.vic.gov.au/arts-and-culture/aboriginal-torres-strait-islander-arts/pages/aboriginal-art-code-of-practice.aspx>

There is no reason to dispute the claim made by Arts Law and others that around 80% of the Aboriginal and Torres Strait Islander art product available in shops are inauthentic.

One effect of this is that Australia's cultural reputation is devalued and misrepresented on the world stage. Another obvious result is that Australia's Aboriginal and Torres Strait Islander artists are being undercut by cheap imports effectively denying them entry to their own market and the economic benefit so sorely needed by many Aboriginal and Torres Strait Islander people.

Living Culture presents arts and culture data from the ABS's National Aboriginal and Torres Strait Islander Social Survey. It tells us that one in three First Nations people in remote Australia creatively participate in First Nations arts, higher than the national average.⁵

In many remote communities arts and cultural production provide the only feasible pathway towards long-term economic and cultural sustainability.⁶ Therefore, the existence of inauthentic art undermines the livelihood of many Australians.

4. Options to promote the authentic products for the benefit of artists and consumers.

Australia is increasingly using Aboriginal and Torres Strait Islander design as a way of branding for our identity. We see more and more of our public art, public buildings, public companies, and national events capitalising on the uniqueness obtained through Indigenous cultures. We value this as a nation. As a nation we would want to be recognised as a creative nation and a multi-cultural nation that upholds respect for cultural values. We would not want to be characterised as the "shonky" nation, nor the exploitative nation.

The Australian Government invests heavily in the Aboriginal and Torres Strait Islander art sector. The IVAIS and ILS programs⁷ managed through the Department of Communications and the Arts are important, highly successful programs underpinning the cultural value of the sector and the business capacity of Aboriginal and Torres Strait Islander art centres. The sector has worked hard since the downturn experienced as a result of the 2007 global financial crisis. Art centres have come back by creating more diverse products including low cost items such as fabrics and prints. There is a range of important festivals and art fairs in Cairns, Darwin, Perth, Alice Springs, and more recently in Adelaide through the Tarnanthi Festival, which are catalysts for industry promotion and market development. The 2017 Desert Mob festival in Alice Springs achieved record sales including sales of low cost items. This indicates that art centres are building a new capacity to fill the market demand for tourist product alongside the more traditional Aboriginal and Torres Strait Islander paintings. One of the best examples is the Warlukurlangu Art Centre in central Australia which has developed a range of authentic licensed product designed specifically for the low cost tourist market.⁸ These developments mean that the sector is better placed to replace inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products should they be no longer available. It also means there are new opportunities to forge new partnerships between Aboriginal and Torres Strait Islander artists, arts organisations, tourism and manufacturing industries.

⁵ <http://www.australiacouncil.gov.au/research/living-culture/>

⁶ Throsby D and Petetskaya K 2017, *National Survey of Remote Indigenous Artists*, Department of Economics, Macquarie University. Woodhead A and Acker T. 2014, *The Art Economies Value Chain reports: Synthesis*, CRC-REP Research Report CR004, Ninti One.

⁷ <https://www.arts.gov.au/funding-and-support>

⁸ <https://warlu.com/shop/other-products/>

5. Options to restrict the prevalence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise in the market.

The Competition and Consumer Amendment (Exploitation of Indigenous Culture) Bill 2017 introduced by Mr Bob Katter MP should be supported. It is widely recognised that free markets and greater competition in the marketplace are desirable. This applies when credible market forces are at work. However, in this market there are factors in play which skew the fairness of the market. Authenticity has an important yet incalculable value. The nature of the market means that it is difficult to prove misleading and deceptive conduct even when such behaviour is obvious to a reasonable person.

In general, constraint on free trade is defensible when it is implemented for the public good. There can be no doubt that there are important public benefits to be gained by an import ban. These benefits include:

- Enhancement of Australia's international reputation as a culturally responsible global citizen.
- Protection of the substantial investment Australia has made over decades in its national Aboriginal and Torres Strait Islander art industry.
- The elimination of forces that undermine the reputation of Aboriginal and Torres Strait Islander art in the market place.
- Tangible earned and rightful economic benefit for Aboriginal and Torres Strait Islander people.

There is also a need for more resources to enable more effective oversight and policing in this area. An import ban would need to be enforced. In addition, those art sector organisations such as the Indigenous Art Code, the Arts Law Centre of Australia and Copyright Agency Ltd which work at the coal face of these issues, need to be better resourced for their work if the nation is to overcome the cultural debilitation involved here.