

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

To Whom It May Concern,

SUBMISSION

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

I make this submission as someone who has worked in the Aboriginal and Torres Strait Islander art sector, in a range of roles, for almost 20 years. I hope the following responses and information is useful to the Committee's work.

► The definition of authentic art and craft products and merchandise;

Definitions in the art (or cross-cultural) world are both difficult and elastic. There are myriad ways in which art and craft can be made and marketed. Such products can be made entirely by an Aboriginal and Torres Strait Islander artist, by family members, in collaboration with non-Indigenous creatives, producers or manufacturers, or designs may be licensed (or appropriated/stolen) by any number of people in the supply chain linking artist and audience. In the worst instances, designs are simply made and sold as 'Aboriginal-style', with no cultural input at all.

There is no place in the art, craft or souvenir/tourism market for 'Aboriginal-style' products. These products deceive consumers, disappoint audiences (including international ones) and are to the detriment of Aboriginal and Torres Strait Islander people. Set against this clear principle is the difficulty of monitoring and enforcement. There have been attempts at authenticating and labelling Aboriginal and Torres Strait Islander art and craft – they have been problematic and expensive failures and should not be repeated under any circumstances.

Establishing certainty for the promotion and sale of authentic art, craft and merchandise is important. At its nucleus, such authenticity involves two overlapping components: ATSI creation, involvement, authority or approval in the making of the work, and an ethical, equitable commercial arrangements to support its sales and distribution. Products and merchandise that cannot readily account for both should be labelled to that effect – that is, to clearly show that it is created and produced without input from, or benefit to ATSI people.

One of the issues the sector has grappled with is that there are often degrees of ATSI input and agency into art, craft and merchandise production; that is not an authenticity problem, unless it is not acknowledged. In addition, where there is non-Indigenous

input, this should be stated on the labelling, identifying the product as a collaboration. It is primarily about clarity.

- ▶ **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;**

While there are a range of standard trade practice regulations governing retail and commercial behavior and processes, I am not aware of laws or codes of practice that effectively create the necessary transparency in labelling Aboriginal and Torres Strait Islander products and merchandise. It is currently easy to obscure the origin, provenance and transactions around ATSI art, craft and merchandise.

However, it is important to note that there are different commercial and cultural drivers for different products and price points. Art – generally paintings on canvas/bark – has some reasonably established industry practices regarding provenance; while there remain pockets of poor or illegal practice, there is considerable awareness of the issue across the sector. It is with merchandise (and sometimes with craft-type products, mainly those that are easily replicable) that the issue of ATSI authenticity is significant.

The accurate labelling of ATSI products and merchandise is crucial; this labelling informs consumers about the nature of their purchase while simultaneously acknowledging that many ATSI people that are not in an equal/informed position to be negotiating commercial arrangements – or, at the extreme, that products have no ATSI involvement or integrity, despite being sold as such. Such labelling responds to the ‘fair trade’ principles used by many consumers when making purchasing decisions – whereby customers want to buy something that is both authentic and generates benefits

In short, the definition of ‘authentic’ is derived from a robust truth-in-labelling approach. The consumer should have access to information about the level of ATSI cultural and creative input and that the commercial arrangements are equitable.

There is an international example of truth-in-labelling from the United States, known as The Indian Arts and Crafts Act of 1990. A summary can be found here: <https://www.doi.gov/iacb/act> This act is a truth-in-advertising law that makes it “illegal to offer or display for sale, or sell any art or craft product in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian Tribe or Indian arts and crafts organization”. While this US regulation offers up a worthwhile methodology, it is also problematic as it requires a level of official recognition of ethnicity that are unlikely to be appropriate in the Australian context.

Licensing arrangements are, I believe, sufficiently covered by existing regulations and processes. It is the (ethical and equitable) implementation of those regulations in situations where the power relationship between licensee and licensor is not equal that creates risk and doubt.

► **An examination of the prevalence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise in the market;**

There is very little data on the scope and scale of Aboriginal and Torres Strait Islander-style art, craft and merchandise. In 2012, a wide range of analysis of the production and sale of ATSI art products from remote Australia was published. See: <https://old.crc-rep.com/research/enterprise-development/aboriginal-and-torres-strait-islander-art-economies/project-outputs> This research considered the question of merchandise (though did not distinguish between authentic and inauthentic), but collected only limited data; this in part reflects the boundaries of the particular research project but primarily the reluctance or inability of art businesses to provide information.

Research respondents suggested that 9% of their sales were from merchandise (manufactured, as opposed to original, one-off products). Of this 9%, around 1/3 were stationery/paper products and another 1/4 were prints. Over 80% of respondents said that the products they sold were licensed. However, there is considerable anecdotal evidence to suggest these research results miss the larger and more complex picture of poorly- or unlicensed products. Further, as this research focused on remote Australia, the large tourism-driven retailers (airports, key tourist destinations etc) were not readily included in the data.

In short, there is no data-driven evidence base of the scope and scale of inauthentic or problematic content. There is a considerable amount of anecdotal evidence and observation that highlights the issue.

► **Options to promote the authentic products for the benefit of artists and consumers;**

As stated earlier, there have been previous attempts at regulation and authentication regimes (for example, NIAAA – the National Indigenous Arts Advocacy Association – online link still active, despite becoming defunct in 2002; see: <http://www.culture.com.au/exhibition/niaaa/labelqa.htm>). These approaches should not be revived.

I believe there is some value in examining the US approach; this appears to enable work by Native American artists to be marketed and sold as such, while not restricting trade in non-authentic works.

If there is to be a solution to promoting quality ATSI art/craft products, then consumer awareness and labelling is critical. Education not regulation is likely to have the best chance of succeeding – and success will be best achieved by consumers making informed choices.

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

As above, the track record of regulation around issues of authenticity in this sector is poor. While there may be some value in seeking advice from Customs regarding the importation of inauthentic or fake products, the framework for making decisions regarding such work is likely to prove difficult.

In moving away from the regulation end of the spectrum, towards a viable space whereby consumers have confidence in the integrity of what they are buying and ATSI artists aren't being 'ripped off' in some form, returns the emphasis to consumer education and more robust truth-in-labelling approaches. 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.

In considering any potential changes to the ways in which Aboriginal and Torres Strait Islander art is made and marketed, should be ensuring that such changes do not limit the creativity, innovation or entrepreneurialism essential to keeping this sector vibrant.

Thank you for the opportunity to contribute to this inquiry. I hope the above is useful in your considerations and I look forward to the results.

Regards,



Tim Acker
25 October 2017