



Submission for Gifts Mate Pty Ltd and Benjamin Wooster

1. Thank you for the opportunity to provide submissions to the Select Committee on the Aboriginal Flag. This submission is made on behalf of Gifts Mate Pty Ltd and Benjamin Wooster. Gifts Mate Pty Ltd is controlled by Benjamin Wooster.
2. Mr Wooster is a passionate supporter of the Aboriginal Flag and recognises the unique unifying effect of the flag for all Australians.

Licence

3. Gifts Mate Pty Ltd is the manufacturer and wholesaler of a range of souvenir products featuring the Aboriginal Flag. Gifts Mate Pty Ltd has permission from the exclusive licensee for use of the Aboriginal Flag on the products, Wooster Holdings Pty Ltd.
4. Wooster Holdings Pty Ltd has been granted an exclusive licence for the use of the Aboriginal Flag on the products from the copyright owner and original artist who designed the flag, Mr Harold Thomas, for an agreed period of time.
5. Wooster Holdings Pty Ltd paid a license fee and pays ongoing royalties to Mr Harold Thomas in accordance with the terms of a confidential licence agreement. Wooster Holdings Pty Ltd, Gifts Mate Pty Ltd and Mr Wooster respect Mr Thomas' wishes to maintain confidentiality in the terms of the licence agreement.
6. As is intended by Mr Thomas, the Aboriginal Flag may presently be freely flown by all Australians. The copyright issues that are being examined by the Select Committee are in relation to other uses for the Aboriginal Flag.

Discussions with Australian Government

7. Wooster Holdings Pty Ltd, WAM Clothing Pty Ltd and Mr Thomas have entered discussions with the National Indigenous Affairs Agency in relation to the acquisition of the copyright in the Aboriginal Flag. Those negotiations are ongoing.
8. Mr Thomas has specifically requested the discussions remain confidential. Gifts Mate Pty Ltd, Wooster Holdings Pty Ltd and Mr Wooster respect Mr Thomas' request.

Respect for Mr Thomas

9. Gifts Mate Pty Ltd, Wooster Holdings Pty Ltd and Mr Wooster acknowledge Mr Thomas' significant and valuable contribution to the advancement of the interests of the Aboriginal people and the unifying effect his design of the Aboriginal Flag has had over the course of nearly 50 years. They acknowledge that the Aboriginal Flag is of significant and unique value to all Australians.

Relationship with Birubi Art Pty Ltd

10. There has been some recent media attention on the relationship of Gifts Mate Pty Ltd, WAM Clothing Pty Ltd and Mr Wooster to Birubi Art Pty Ltd. Mr Wooster thanks the Committee for the opportunity to make this submission and to set the record straight in relation to Birubi Art Pty Ltd. Mr Wooster is a former director of Birubi Art Pty Ltd.
11. Birubi Art Pty Ltd was prosecuted by the Australian Competition and Consumer Commission in the Federal Court of Australia in 2018 for making *implied* representations that certain products were handmade or painted by an Aboriginal person and/or were made in Australia when they were not ("the Proceeding"). Birubi Art Pty Ltd defended the Proceeding on the basis that the implied representations were not made.

12. In a judgment delivered by Justice Perry in October 2018, Birubi Art Pty Ltd was found to have made some of the implied representations (see *ACCC v Birubi Art Pty Ltd* [2018] FCA 1595). Importantly, in her reasons for judgment, Justice Perry said at [14] that

“It is important to emphasise that in making these findings, I have not found that Birubi had any intention to mislead potential purchasers of the Products...nor was there any challenge to the literal truth of the express representations made on the Products such as the representation made on some of the products that royalties were paid to the Aboriginal artist whose work had been reproduced on those products”.

13. No complaints were ever made by the ACCC against Mr Wooster personally.

Regards,

Gifts Mate

Ben Wooster
