

# Competition and consumer issues for Indigenous Australians

A report to the Australian Competition and Consumer Commission by  
the Centre for Aboriginal Economic Policy Research, the Australian  
National University, Canberra

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(Editors)

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## Disclaimer

The views contained in this report are those of the consultants engaged to undertake the project, and are not necessarily shared by the Australian Competition and Consumer Commission.

Cover photograph excerpt taken from Utopia Art Centre, NT, March 2001.

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# Foreword

The severe economic and social disadvantage of many Indigenous people in Australia is widely recognised, but progress to overcome it has been painfully slow. In many communities Indigenous people are still far from having equitable access to basic public services, including local amenities, education, health and housing.

As a national statutory authority, the Australian Competition and Consumer Commission (ACCC) has a responsibility to ensure that it provides Indigenous people with at least the same level of effective access to its services as other groups in Australia. Since the *Trade Practices Act 1974* (TPA) can help empower vulnerable people in their dealings with business, access to it is essential.

Any serious effort to work with Indigenous people requires an appreciation and understanding of the cultural and intercultural contexts—the lived reality of many Indigenous communities. Relevant issues for the ACCC include whether the promotion of competition in any way conflicts with distinct Indigenous values and whether cultural differences should affect approaches adopted by the ACCC in promoting awareness of the TPA and in ensuring adherence to its provisions.

This report on the implications of the TPA for Indigenous people was commissioned by the ACCC in light of growing awareness of the special needs of Indigenous people as a disadvantaged and culturally distinct, but also heterogeneous, group in Australian society. There has been very little research specifically on this subject. In the report, researchers from the Centre for Aboriginal Economic Policy Research (CAEPR) at the Australian National University have developed a broad conceptual framework within which to consider competition and consumer issues. They have provided specific commentaries on the role of stores in remote Indigenous communities and the Indigenous visual arts industry.

While the views expressed in the report are those of the researchers and not necessarily of the ACCC, the report will be valuable in helping the ACCC, and other consumer agencies, develop future Indigenous strategies. Early phases of the research have already assisted in the development of *Store charter—a service charter serving remote and Indigenous communities* and in the development of community-focused education materials.

It is hoped that the report will stimulate further research in this area that is closely linked to current debates on the economic development futures of Indigenous communities and the promotion of individual rights. This research could usefully extend to cover the market experiences of Indigenous people living in urban areas.

The ACCC would like to acknowledge the valuable work done for it by CAEPR under the skillful direction of Professor Jon Altman. The assistance of the

Aboriginal and Torres Strait Islander Commission (ATSIC), which willingly accepted an invitation to join a project steering committee, is also acknowledged. Finally I would also like to acknowledge the contribution of Mr Petras Kruzas of the ACCC for his very effective management of the project to its successful completion.

Dr David Cousins

ACCC Commissioner

6 June 2002

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# Abbreviations and acronyms

ABA	Australian Bankers' Association
ABC	Australian Broadcasting Corporation
ABS	Australian Bureau of Statistics
ACCC	Australian Competition and Consumer Commission
ACCS	The Art and Craft Centre Story
AIATA	Australian Indigenous Art Trade Association
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
ALPA	Arnhem Land Progress Association
ALRA	<i>Aboriginal Land Rights (Northern Territory) Act 1976 (Cwlth)</i>
ANCAAA	Association of Northern and Central Australian Aboriginal Artists
ANKAAA	Association of Northern, Kimberley and Arnhem Aboriginal Artists
AMP	Australian Mutual Provident society
ANU	The Australian National University
ANZ	Australia and New Zealand Banking Group Ltd
ASIC	Australian Securities and Investments Commission
ATM	Automatic Teller Machine
ATSIC	Aboriginal and Torres Strait Islander Commission
AWA	Australian Workplace Agreements
BAC	Bawinanga Aboriginal Corporation
CAEPR	Centre for Aboriginal Economic Policy Research
CAFI	Centre for Australian Financial Institutions

CDEP	Community Development Employment Projects
CGC	Commonwealth Grants Commission
CLC	Central Land Council
DIST	Department of Industry, Science and Tourism
DSS	Department of Social Security
EFTPOS	Electronic Funds Transfer at Point of Sale
GETIC	Groupe d' Etudes Inuit et Circumpolaires
GST	Goods and Services Tax
HES	Household Expenditure Survey
HRSCEFPA	House of Representatives Standing Committee on Economics, Finance and Public Administration
IBIS	Islander's Board of Industry and Service
KFC	Kentucky Fried Chicken
MAC	Maningrida Arts and Culture
MoU	memorandum of understanding
MPA	Maningrida Progress Association
NACISS	National Arts and Crafts Industry Support Strategy
NARU	North Australia Research Unit
NATSIVAC	National Aboriginal and Torres Strait Islander Visual Arts Conference
NIAAA	National Indigenous Arts Advocacy Association
NWT	Northwest Territories (Canada)
OATSIA	Office of Aboriginal and Torres Strait Islander Affairs
PBI	Public Benevolent Institution
PIN	personal identification number
s.	section



THS	Territory Health Services
TPA	<i>Trade Practices Act 1974</i>
TPC	Trade Practices Commission
UAICC	Uniting Aboriginal and Islander Christian Congress
UCCC	uniform consumer credit code

\* See annotated published reference, appendix 1

† See annotated unpublished reference, appendix 1

# Acknowledgments

This research project has been an active collaboration between the ACCC, CAEPR and ATSIC and during its life from May 2001 to June 2002 many people have assisted. First and foremost is the project steering committee that comprised Dr David Cousins, Petras Kruzas and, at the start, Ms Pia Di Mattina from the ACCC; and sequentially, Geoff Richardson, David Thompson and Les O'Donoghue from ATSIC. Professor Jon Altman was the CAEPR representative on the steering committee.

A project advisory committee was established within CAEPR that included Dr John Taylor, Dr Boyd Hunter and Professor Jon Altman, as well as external members Dr Anne Daly from the University of Canberra (at the outset) and then Alex Bruce from the ANU Law School. Staff engagements with the project have varied in intensity, but Sally Ward has worked on the project from the outset, while Siobhan McDonnell was employed for six months in 2001 to assist with the literature review and to undertake central Australian-based research in conjunction with Dr David Martin.

For early assistance in the literature search reported in chapter 2 we would specifically like to thank Dr Elspeth Young (National Centre for Development Studies, ANU), David Lee (NSW Department of Fair Trading), Petras Kruzas, Pia Di Mattina and Celia Himmelreich (ACCC), David Thompson (ATSIC) and Elizabeth Tregenza (Kutjara Consultants).

For assistance in the remote Australia research reported in chapter 3 we would like to acknowledge the staff of the Maningrida Progress Association and the Bawinanga Aboriginal Corporation in Maningrida; staff of the Aurukun Shire Council and council store in Aurukun, and the staff and community members of the various remote communities visited in central Australia. Thanks must also be extended to the central Australian ATSIC regional office in Alice Springs.

For assistance with the Indigenous visual arts industry research reported in chapter 4 we would like to thank Sallie Anderson who assisted us with a brief consultancy in January 2002, Susan Congreve (ANKAAA), Diane Mossenson, Adrian Newstead, staff of Maningrida Arts and Culture, Maningrida and of Injalak Arts, Oenpelli and Anna Ward and Chris Bonney (Viscopy).

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Despite the assistance of all these people it is important to emphasise that all the opinions expressed in this report, and any mistakes, are the sole responsibility of the various authors.

Jon Altman  
Director, CAEPR  
(on behalf of project team)

## Summaries of chapters 2–4

### 2. A review of the literature

This chapter is based on a literature search conducted to identify and review relevant Australian and overseas research about Indigenous competition and consumer protection matters. Results of the literature search suggest that most research conducted to date has focused on issues associated with Indigenous community stores and consumer banking. The geographic focus of past research has also been predominantly on remote and regional Australia, areas where the structural impediments associated with remoteness may impede competition. Further, although the research has included some discussion of competition in Indigenous communities, it has mainly focused on consumer issues.

The chapter identifies and assesses a number of important issues relating to the TPA, mainly in remote Indigenous communities. Structural features may explain the high prices charged in remote localities. Store quality and health implications are issues raised by health researchers and it is argued that there is a need for healthy food as well as consumer education about what foods are nutritious.

The absence of other commercial institutions in remote Indigenous communities means that stores often have multiple roles. This multiplicity of functions creates difficulties and tension in running commercially viable enterprises. The cultural context within which stores are established combined with their corporate structure often creates enormous pressure for stores to operate in a way that is not strictly commercial. The management of community stores is of crucial significance to Indigenous competition and consumer matters. Central to this analysis is the understanding that different governance structures can have major implications on the prices faced by Indigenous consumers in remote communities.

While the number of publicised investigations about Indigenous consumers and the TPA is limited, those that do exist indicate that the law can work to protect Indigenous consumers against breaches of the Act. In the literature there is a general view that Indigenous people and particularly those in remote communities are not aware of their consumer rights. Specific Indigenous consumer issues identified by the literature may raise implications for the TPA in terms both of market structures which inhibit competition and of unconscionableness. The removal of banking services from remote and rural communities has particular welfare implications for the relatively large, and increasing, Indigenous population of these communities. Book-up is the practice of running up a tab (or book) with a store or merchant. The notion is raised that it is possible in some cases that book-up has the potential to benefit Indigenous consumers.

### 3. Indigenous community stores and the 'frontier economy'

This chapter examines key competition and consumer issues faced by Indigenous people in remote Indigenous communities. In particular, it attempts to take account of specific economic practices of Indigenous consumers and Indigenous businesses.

The chapter attempts to establish a conceptual framework, termed the 'frontier economy', through which TPA issues relevant to Indigenous consumers and businesses can be explored. There are a number of values and practices which Indigenous consumers may bring to bear on their transactions in the market. Much of the knowledge and many of the values which inform Indigenous consumers' purchases of goods and services may be quite different from those of non-Indigenous consumers. It is this nexus of knowledge and values that inform what is termed here 'Indigenous agency'; that is, instrumental or strategic Indigenous action. Moving from consumers to Indigenous businesses, the chapter then examines certain characteristics which may inhibit the operation of competitive markets in remote Indigenous communities, with reference to the operation of community stores. These include:

- the limited number of retail outlets in most remote areas
- store governance issues which may prevent the efficient operation of stores and community governance issues which may operate as a barrier to the entry of new stores
- the cultural context of community stores
- land rights legislation which may operate as a legislative barrier to entry of firms onto Aboriginal land.

Finally the chapter returns to the concepts of the 'frontier economy' and Indigenous agency, and discusses the implications of these concepts for ACCC compliance and education strategies. Such strategies must take account of the specific economic practices of Indigenous businesses (discussed in the context of Indigenous community stores) and Indigenous consumers. The argument made in this chapter is that analysis of prospective breaches of the TPA requires a culturally informed understanding of why Indigenous people may continue to participate in relationships that have the potential to be exploitative.

## 4. The Indigenous visual arts industry

This chapter focuses on how competition and consumer protection issues might be relevant to the Indigenous visual arts industry. The structure of the industry is complex: the majority of producers reside in remote localities; there are a variety of functional levels; the industry encompasses both the 'fine' and 'tourist' art markets and includes works made in collaboration with non-Indigenous people.

There is an emphasis in the chapter on government funded community art centres which collect, document and market Indigenous art. However, the objectives of most art centres are mixed and the roles that they play in remote communities extend well beyond these tasks. Perhaps most importantly, art centres act as cultural mediators between artists and the market. If they are to act in the artists' best interests, art centres may operate most effectively as monopolies. This is primarily because of market failure associated with remoteness, their small size, dispersed artist populations and the poor track record of private dealers.

Notwithstanding the fact that a few art centres have exclusive access to some geographically defined art styles, the nature of competition within the industry appears healthy. However, there is concern about competition from imported as well as locally produced 'fakes' in the tourist market. Authorship and issues of authenticity emerge as considerations with potential for future industry impacts, though labelling and other documentation strategies by art centres and other outlets have improved markedly in recent years.

Those sections of the TPA that may be relevant to the industry include unconscionable conduct, false and misleading representation and coercion or harassment. A significant amount of anecdotal evidence has emerged in the course of research in relation to the unethical practices of some private dealers. The production of a producer and consumer education charter is put forward as a strategy which may be of benefit to this growing industry.

# chapter 1 Introduction

Jon Altman and Sally Ward

In May 2001, after a select competitive tender, the Australian Competition and Consumer Commission (ACCC) commissioned the Centre for Aboriginal Economic Policy Research (CAEPR) at the Australian National University to undertake a 12-month research project on the implications of the *Trade Practices Act 1974* (TPA) for Indigenous people in Australia.

Indigenous people, as a distinct social group in Australia, have special characteristics that the ACCC may need to consider. Visits by ACCC staff to remote Indigenous communities in central and northern Australia have indicated that Indigenous consumers and businesses are often unaware of their rights and obligations under the TPA. The ACCC is seeking to take a strategic approach to trade practices compliance and awareness issues within Indigenous communities. As part of this process it chose to sponsor this research to provide better awareness of relevant Indigenous cultural issues and market practices potentially adversely affecting Indigenous communities.

There has been little systematic research on the issue of competition and fair trading in relation to Indigenous people in Australia. Historically, perhaps, there has been a tendency to see many Indigenous communities as operating beyond the market. The research undertaken for this project has focused primarily on remote Indigenous communities. For structural, as well as cultural, reasons remote communities are in an unusual position in relation to mainstream notions of competition and 'the market'. In particular, this research highlights that commercial enterprises such as stores and community controlled art centres operate in ways which go far beyond the commercial role usually ascribed to such ventures, especially in regard to the provision of supplementary cultural and social services. A well-informed understanding of the distinctiveness of Indigenous circumstances must be recognised as essential if education strategies targeted at consumers and businesses in remote Indigenous communities are to prove effective.

## Background

The ACCC is an independent statutory authority that has as its principle function the role of administering the TPA. The objective of the TPA is to enhance the welfare of Australians through the promotion of competition and fair trading and

by providing consumer protection. The ACCC seeks to improve competition and efficiency in markets, foster adherence to fair trading practices in well-informed markets, promote competitive pricing, wherever possible, and restrain price rises in markets where competition is less than effective.

CAEPR is a multi-disciplinary social sciences research centre first established at the Australian National University (ANU) in 1990—its main aim is to undertake research on Indigenous economic and social policy issues nation-wide. CAEPR has three principal fiscal stakeholders: the ANU, the Aboriginal and Torres Strait Islander Commission (ATSIC) and the Commonwealth Department of Family and Community Services. CAEPR's research program is currently grouped into five broad themes: economic and community development, governance, welfare reform, population and policy, and equality, difference and diversity. The research undertaken for this project clearly overlaps a number of these themes.

ATSIC was a stakeholder in this project, in part because of its research relationship with CAEPR and in part because of its growing linkage with the ACCC that culminated in the signing of a memorandum of understanding between the two agencies in April 2002. ATSIC was directly involved in the project in an advisory capacity via membership of the project steering committee. ATSIC also assisted by providing feedback on the research and in disseminating research findings to its national centres and regional offices Australia-wide. In April 2002 the ACCC, ATSIC and the Australian Securities and Investments Commission (ASIC) co-sponsored a conference in Alice Springs where some outcomes from this project were presented.

## Research aims

The research undertaken by CAEPR was to focus on trade practices issues and the engagement of Indigenous communities in the market. Set within this context, the research had four specific aims:

- to identify and review relevant Australian and overseas literature concerning Indigenous competition and consumer issues
- to identify and develop particular TPA-related issues relevant to Indigenous communities as case studies
- to identify special characteristics of Indigenous communities which make individuals and/or local businesses susceptible to commercial exploitation; which inhibit the competitive process from delivering benefits enjoyed by other (non-Indigenous) communities; and which should be taken into account in any ACCC compliance or education strategies
- to broaden the ACCC's knowledge of TPA-related issues likely to affect Indigenous communities.



# Research plan

A research plan to address these aims was developed by a steering committee formed to oversee the project. The committee consisted of senior representatives of the ACCC, ATSIIC and CAEPR. Three discrete, but linked, pieces of research were iteratively negotiated and undertaken.

The initial component specified in the project brief consisted of a literature review and annotated bibliography. This research set out to identify and review relevant Australian and overseas research that is of relevance to Indigenous consumer protection and competition matters in Australia. The literature search indicated that most research has focused on issues associated with Indigenous community stores and consumer banking. The main topics covered in the literature include: structural impediments, roles of stores and their quality, commerce and culture, governance, poor consumer information, access to banking facilities and book-up.

The second component of the project was a fieldwork-based analysis which focused on remote community stores in central Australia, with pilots undertaken in Maningrida, central Arnhem Land and Aurukun, western Cape York Peninsula. This focus was influenced in part by ACCC visitation to pastoral stations in central Australia, and the subsequent development of an ACCC *Store charter—a service charter serving remote and Indigenous communities*, launched in April 2002, and interest expressed by the ATSIIC Papunya Regional Council and the regional ATSIIC Commissioner. Using the concept of the ‘frontier economy’, this research examined key competition and consumer issues faced by Indigenous people in remote communities. In particular, it attempted to take account of specific economic practices of Indigenous consumers and businesses which may be quite different from those of non-Indigenous people. Analysis of prospective breaches of the TPA requires a culturally-informed understanding of why Indigenous people may continue to participate in relationships that have the potential to be exploitative.

The third component of the project sought to examine how competition and consumer protection issues might be applicable, and of relevance, to an Indigenous-specific industry. The steering committee selected the Indigenous visual arts industry as the most suitable industry case study. The research found that the structure of this industry is extremely complex, particularly because it encompasses ‘fine’ and ‘tourist’ art markets and because its many producers reside in very remote communities. Competition within the industry is robust, though there is some concern about imported ‘fakes’ sold in the tourist market. Authorship and issues of authenticity emerged as key considerations that might affect future industry growth. The research highlighted three trade practices issues that may be of significance: unconscionable conduct, false and misleading representations, and possibly harassment or coercion in informal settings.

## Research methods

The project was based on three broad approaches: literature search and analysis, interviews, and field-based data collection and analysis. The first component (presented here as chapter 2 and appendix 1) was based primarily on desk-based research complemented by the knowledge of CAEPR staff and colleagues. Items for the annotated bibliography were selected by searching various libraries' databases and the Internet and by email and telephone inquiries as well as liaising with researchers and Indigenous organisations. The literature search focused on relevant publications from Australia, New Zealand, Canada and the USA, though the international realm yielded little research of either stand-alone or comparative value.

The methodology adopted in the second component combined interrogation of the literature base relating to Indigenous businesses and consumers with primary data collected via fieldwork. The fieldwork component included brief pilot visits by David Martin to Aurukun community, western Cape York in August 2001 and by Jon Altman to Maningrida in central Arnhem Land in July 2001, and a more extensive visit to a number of localities in central Australia by David Martin and Siobhan McDonnell in August–September 2001.

A hybrid approach was taken in the third component, drawing on the diverse skills of a small team. Both Jon Altman and Felicity Wright drew on their long-standing involvement in the industry as researchers and arts advisers. Boyd Hunter focused on economic aspects of the industry and Sally Ward focused on an additional literature search. Sallie Anderson was also briefly commissioned to assist with some analysis from her recently completed PhD thesis *The Aboriginal Art Industry in Cairns, Queensland: An Ethnographic Study*. While no fieldwork was conducted specifically for this component of the project, Jon Altman discussed aspects of the project with Susan Congreve, the executive officer of the Association of Northern, Kimberley and Arnhem Aboriginal Artists (when in Darwin in February 2002) and with staff of Maningrida Arts and Culture and the Bawinanga Aboriginal Corporation (when in Maningrida in February 2002). Felicity Wright conducted a number of telephone interviews to a set of TPA-related questions identified by CAEPR as part of her research in April 2002.

## Project outputs

In undertaking this project as independent university-based research, the ACCC and the ANU negotiated joint ownership of intellectual property in research outputs. A time constraint of six months was placed on this joint ownership, with the written permission of the ACCC being required for early publication of any parts of the final report. To date, this permission has been provided for the early publication of three elements of this final report, chapters 2, 3 and 4.

Consequently, the outputs from this project take two distinct forms. First, are the three components that are being disseminated by CAEPR. These are:

- 'Indigenous Australian competition and consumer issues: A review of the literature and an annotated bibliography', by Jon Altman, Siobhan McDonnell and Sally Ward, published electronically as *CAEPR Working Paper 12* in April 2002 (available from <http://www.anu.edu.au/caepr/>)
- 'Indigenous community stores and the 'frontier economy': Some competition and consumer issues', by Siobhan McDonnell and David Martin, published as *CAEPR Discussion Paper 234* in July 2002
- 'The Indigenous visual arts industry: Some trade practices issues', by Jon Altman, Boyd Hunter, Sally Ward and Felicity Wright, to be published as *CAEPR Discussion Paper 235* in September 2002.

Second, is this final report provided to the ACCC in a slightly different composite format that includes the three project components as well as this introduction and a conclusion (Ch. 5). It is the hope of the CAEPR project team that this report will assist the ACCC in understanding the complexity and heterogeneity of Indigenous Australia and particularly the nuances that need to be considered when looking at potential competition, fair trading and consumer issues for Indigenous Australians. We also hope that this final report will be circulated as widely as possible by the ACCC and ATSIC. The collaboration between all stakeholders in this project has been extremely positive and productive. CAEPR hopes that this final report, when disseminated will prove of relevance both to policy makers and to Indigenous interests.

# chapter 2 A review of the literature

Jon Altman, Siobhan McDonnell and  
Sally Ward

The focus of this literature search has been on TPA-related matters of relevance to Indigenous communities throughout Australia, rather than on broader issues concerning Indigenous communities and their engagement in business activities (which has already been widely explored in CAEPR literature). To this end the literature identifies a number of issues of importance in assessing TPA-related matters, mainly in remote communities. These are:

- structural impediments, location and transport costs
- store quality, range of goods, and its health implications
- the multiple roles of stores
- governance and capacity building
- commerce and culture
- Indigenous-specific ACCC investigations
- poor consumer information
- specific Indigenous consumer issues
- access to banking facilities
- book-up
- international best practice.

Finally, the chapter concludes by outlining some emerging research issues.

## Background

There has been little rigorous research on the issue of competition and fair trading in relation to Indigenous people in Australia. Historically, perhaps, there has been a tendency to see many Indigenous communities as operating beyond the market. Certainly this is the case in terms of the physical distance of most remote Indigenous communities from major metropolitan centres (Levitus 2001). There has also been a degree of institutional distancing, in that specific Indigenous institutions (such as community stores) have been established which allow a high level of community control over trade. These institutional structures may also show a willingness on the part of Indigenous consumers to tolerate inefficiency associated with what has sometimes been regarded (perhaps erroneously) as a natural monopoly.

### Self-determination and land rights legislation

Some of the factors that have influenced developments in the modern policy era and especially since the early 1970s, when the overarching policy of self-determination was introduced, have included growth in the Indigenous community sector, with many community businesses being community owned and controlled. In addition, the progressive introduction since the 1970s of land rights legislation in many jurisdictions, and particularly in remote regions, has provided traditional owners of land a right to restrict (or limit) the entry of commercial or private sector interests. A variety of institutional trading forms have developed with the predominant type being the community-owned not-for-profit corporation, frequently operating as a charitable organisation, often with public benevolent institution (PBI) status.

Historically, such developments have not been uncontested, especially in situations where the traditional owners of Aboriginal land have been able to exercise a degree of control over trading enterprises located on their lands. At times there has been an uncomfortable accommodation between traditional owners, as a sub-group, and consumers (Aboriginal and non-Aboriginal) more generally. To some extent, such institutional arrangements have not been conducive to external intervention, even in the face of consumer complaint, because consumers are often members of the incorporated community store board. In other situations the trader has been a state instrumentality, often with a community services obligation and subsidy (see e.g. Arthur 1990 on IBIS stores in the Torres Strait). Or the trader has been a private sector interest but with an unequal patron–client relationship with consumers (for example, in the pastoral zone where Aboriginal communities have been located on excisions from non-Aboriginal owned pastoral leases).

## Absence of competition

Absence of competition and the associated costs for consumers have received wider public policy attention in the broader 'National Competition Policy' framework since the Hilmer Report (1993). To some extent, the absence of competition, especially in remote communities, has been based in part on their remoteness and invisibility from wider public scrutiny. It has also been assumed by many writers that the diseconomies of small scale (owing to small community size) and associated high transport costs explained reported differences in the prices of remote store-bought commodities when contrasted with prices in capital cities or larger urban situations.

## Cost of living

It is interesting from this perspective to note that a concerted effort to establish the cost of living at remote Indigenous communities has been largely limited by an absence of statistical information. In particular, there have been few, if any, studies that have rigorously examined Indigenous expenditure patterns and set these against income. This contrasts with data on the wider Australian community provided by the Australian Bureau of Statistics' (ABS) regular Household Expenditure Survey (HES). From its establishment in 1990, CAEPR has on a number of occasions made cases to the ABS to include an Indigenous identifier in the HES so that any particularities of Indigenous expenditure could be assessed (see Altman 1992; Altman et al. 1997; Altman & Taylor 1996; Smith 1991a\*, 1991b\*).<sup>1</sup>

Without such information it is difficult to assess the overall economic impact of price differentials on Indigenous consumers. Indeed the literature suggests that while researchers have alluded to these differentials there has been little attempt to break data down into analysable components such as structural factors (e.g. freight costs), inefficient store practices, unconscionable conduct and cultural practices which may hinder commercial objectives.

## Self-provisioning

Opportunities exist in some situations for people to switch between purchased commodities and services and self-provisioning. This is again a contested area of research and one that is largely limited, in the literature, to discussions of foodstuffs. Some researchers suggest that in remote communities over 90 per cent of foods are purchased (Lee, O'Dea & Mathews 1994\*), others argue that in some contexts the proportion might be as low as 50 per cent (Matsuyama 1991\*). Some

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<sup>1</sup> \* next to a reference indicates that it appears in appendix 1 as a published reference (p. 108), whereas † next to a reference indicates that it appears in appendix 1 as an unpublished reference (p. 147).

governmental investigations and reports have been premised on assumptions about high levels of reliance on store-bought goods (e.g. the Legislative Assembly of the Northern Territory's *Inquiry into Food Prices in the Northern Territory* 1999').

These assumptions are, however, based on estimates and generalisations that date back to the late 1970s and mid-1980s (see Cutter 1978; Fisk 1985\*; Young 1984\*). Part of the inconsistency stems from the diversity of ecological, geographic and economic circumstances that remote communities face, for example whether people live in townships, town camps or outstations, coastal or desert locations, and whether they live near regional centres and have access to vehicles. There has been a tendency in policy discussions to largely overlook the value (in terms of imputed income and/or consumption patterns) of informal economic activity (Altman & Allen 1992; Altman et al. 1997; Smith & Roach 1996).

## Community stores and financial services

There is no comprehensive information on Indigenous expenditure patterns and therefore on issues such as the adequacy of income for meeting basic nutritional dietary requirements. It is therefore not surprising that debates about the effect of monopoly (absence of competition) and consumer interests have tended to focus on two broad areas:

- the apparently inefficient nature of community stores (although again, little effort has been made to differentiate between high prices that are explicable in terms of structural factors as opposed to either inefficiency or unconscionable practice)
- the inefficiency and then absence of financial services in remote communities (more recently).

To generalise somewhat, it is probably fair to say that historically the first issue was linked primarily to debates about Indigenous health status in the 1980s. The second was linked to the consequences of the deregulation of the Australian financial system, and its effect primarily on non-Indigenous people in regional Australia in the 1990s. Interestingly, the economic decline in regional Australia in the 1990s has more starkly highlighted for policy makers some of the issues that Indigenous communities have grappled with for decades.

## Major findings

The major findings from this literature search are presented as the annotated bibliography (appendix 1), and this chapter which is an analytical summary of the material contained in the bibliography. The annotated bibliography includes a brief description and critical analysis of the value of the research to this project's terms of reference. Each entry provides a number of key words and also demarcates the jurisdiction where research was undertaken.

While an attempt has been made in developing the bibliography to comment on the overall quality of research undertaken, it is recognised that issues associated with competition and consumer protection are often a by-product of research primarily undertaken on other issues, it is therefore not appropriate to be overly critical. For example, many of the studies that comment on the lack of competition in the retail sector at remote Indigenous communities, and associated problems of consumer exploitation, have been undertaken from the perspective of health and access to healthy dietary options.

The major findings from the literature are presented under key subheadings, which are interrelated. For example, location and transport costs are associated with structural features of remote communities; and these are then linked with health issues, and so on.

### Structural impediments, location and transport costs

Structural features may explain the high prices charged in remote localities. These include restrictions on competition (i.e. closed markets); the nature of enterprises (not for profit and potentially inefficient); and the small populations of many isolated Indigenous communities and associated diseconomies of small scale (Legislative Assembly of the Northern Territory 1999\*).

A major focus of many studies contained in the literature has been the high prices found at remote community stores. This is an issue that is patently obvious to researchers and visitors to these communities. Higher prices are often assumed to be indicative of the remoteness of many Indigenous communities and the additional impost on prices due to transportation costs (note that while frequent reference is made to Indigenous communities, most are in fact mixed and also have non-Indigenous residents and consumers).

There is a general consensus in the literature that costs associated with remoteness exacerbate prices in remote communities. This is generally documented with reference to a basket of goods. Young (1984\*) conducted the most comprehensive study of community stores in the early 1980s. Young's research ranged from the Kimberley to Cape York and south to the Pitjantjatjara lands where she collected comparative data on prices at a number of stores. Others have undertaken similar



studies, for example Crough and Christopherson (1993<sup>\*</sup>) in the Kimberley (see also Leonard et al. (1998<sup>\*</sup>) in Cape York; Sullivan et al. (1987<sup>\*</sup>) in the Kimberley; Tregenza & Tregenza (1998<sup>\*</sup>) in Central Australia).

Each of these studies compares the price of a basket of goods in remote Indigenous communities with prices at nearby or distant urban centres. For example, Sullivan et al. (1987<sup>\*</sup>) show that in some Kimberley communities a basket of goods costs 45 per cent more than it would in Perth. Recently in the Northern Territory the Legislative Assembly (1999<sup>\*</sup>) has inquired into high food prices at remote communities. As a result, the Northern Territory Government's Territory Health Services (2000<sup>\*</sup>) now collects information on prices for a basket of goods at a number of community stores and compares them with prices in Darwin and other regional Northern Territory centres.

Most of these studies raise more issues than they address and have methodological shortcomings in that they engage in analysis based on incomplete data sets. In particular:

- there is an assumption that store expenditure reflects household expenditure and in the absence of HES data there is little attempt to quantify other expenditures
- given that geographic remoteness is identified as a key determinant of marginal cost, there is little attempt to actually isolate the transport cost component of marginal cost (as distinct from just quoting freight charges) vis-à-vis other factors like small markets, inefficiency, poor management practices, and so on.

There is limited effort to contrast costs associated with remoteness (transport costs and costs associated with attracting suitably qualified staff) with a range of factors that may reduce the costs associated with remote stores, like low or non-existent commercial rentals or the economic benefits of monopoly and the high market concentration of consumers.

Focus on how affordable a 'healthy' basket of goods are does not look at Indigenous consumers' actual consumption patterns. Tregenza and Tregenza (1998<sup>†</sup>) and the Northern Territory Government (2000<sup>\*</sup>) did some work on designing a basket of goods to meet the health needs of a family. While useful for nutritional analysis, it does not indicate what people are actually consuming or how much they are paying for a more representative basket of goods.

There is an assumption that high prices at stores have serious implications on the standard of living of Indigenous people in remote communities. In particular, Tregenza and Tregenza (1998<sup>†</sup>) note that people are probably unable to eat a healthy basket of goods as their food costs would exceed an average family of six's income from welfare payments. However, the relationship between income and affordability of goods has rarely been rigorously tested.

Earlier research, for example by Harrison (1991\*), who worked with the Tiwi, challenges the point of view that income levels are an issue. Harrison was of the view that there is sufficient income to purchase healthy food. Rowse et al. (1994\*) show that children do not lack cash for shopping (contra Musharbash 2000\*); it is just that they spend it on food with poor nutritional value. A review of information on Indigenous expenditure patterns by Smith (1991a\*) indicates a disproportionate Indigenous expenditure on the basics of food and non-alcoholic beverages. However, since then there have been efforts to increase Indigenous payment for housing and rental and this has extended demands on Indigenous household incomes.

## Store quality, range of goods, health implications

Health researchers have generated much of the literature about high prices in remote Indigenous community stores. The standard argument is that currently a high proportion of dietary intake is store-based (most often the figure quoted is 90–95 per cent). Consequently it is argued that there is a need for a supply of healthy food as well as consumer education about what food is nutritious. This work is challenged by researchers such as Harrison (1991\*) who suggests that there are more complex cultural reasons for poor nutrition, beyond the supply of food at stores. In addition, other researchers such as Meehan (1982\*), Altman (1987c\*) and Matsuyama (1991\*) argue that there is a far greater contribution to diet from subsistence (non-market) activities than the 5–10 per cent that is generally reported.

The focus of Meehan's, Altman's and Matsuyama's research was Arnhem Land outstations rather than townships or communities formed of Indigenous people who may have been displaced from their traditional hunting areas. However, given improved road communications and networks between town and country it is possible that people in some regions may be less reliant on stores for foodstuffs than is assumed in mainstream health research (Altman & Johnson 2000\*).

The impetus for the recent Northern Territory Legislative Assembly Inquiry (1999\*) was the view that cost influences dietary choice and health status, a view replicated in research on prices at stores undertaken by the Northern Territory Government (1995\*, 2000\*), Queensland Health (1995\*) and Taylor and Westbury (2000\*). In addition, the inquiry was established to examine the perception that prices in remote community stores were higher than properly functioning markets would dictate.

In relation to health matters, there is a body of research that reports that many stores in fact cross-subsidise nutritious foods such as fresh fruit and vegetables to ensure that they are relatively cheap (Young 1984\*). For example, Wells (1993\*) notes that ALPA stores have mixed objectives of competitive pricing and nutrition, with priority given to the cross-subsidising of healthy foods. Similarly Goto (1999\*)

provides interesting information on gross expenditure at the Maningrida Progress Association store in Maningrida, but provides limited analysis of how prices are determined. Store policies such as cross-subsidisation are expressions of the stores' two-fold roles as both commercial enterprises and community services, roles discussed in greater detail below.

## The multiple roles of stores

The absence of other commercial institutions and service providers in remote communities means that stores often take on multiple roles. This is especially the case with stores that have been established as charitable organisations or social clubs and thus have a commitment to return any profits for community benefit. For example, a store will operate as the bank and the post office because otherwise such services would not exist (Altman 1987a\*). In addition, the literature emphasises the role of community stores as the provider of essential services, such as food and drink and banking services, particularly to elderly and less mobile members of remote communities. Writers such as Young (1984\*) argue that the essential services provided by stores include retailing, banking and social operations which fulfil social economic and educational functions and ensure the physical wellbeing of the community.

The multiplicity of services provided by community stores creates difficulties and tensions in the attempt to run commercially viable enterprises: each additional function increases the costs of running a store, and can place enormous pressures on management and staff (Bagshaw 1993\*). Young (1982\*, 1984\*) provides a thorough account of the multiple roles of stores in the 1980s, although more recently, following the introduction of the Rural Transaction Centre Program, there has been a trend towards greater diversity in service delivery agencies. Whether this will mean that stores will no longer have to provide such a multiplicity of functions remains to be seen.

A problem that is often identified with stores is that there is a high turnover of management and staff (Bonner 1988\*). This can be linked to problems associated with a multiplicity of functions. One of these functions can be the use of the store as a source of employment and training for Indigenous staff, which may have negative impacts on efficiency and thus on price levels. There is also a view that having a store which also functions as a bank can be negative (see below) especially in situations where shopkeepers hold bank books, and now credit cards and EFTPOS cards (Centre for Australian Financial Institutions 1998\*).

Economists like Stanley (1985\*) have viewed stores as enterprises that might potentially facilitate community economic development. The Government of Western Australia (1994\*) highlights the fundamental tensions in running a store as a community service or commercial enterprise (as does Young 1984\*). The authors of this government report offer some technical solutions to problems such as

inaccurate billing (or meeting cultural obligations by undercharging kin) and pilfering (see also Bagshaw 1993<sup>\*</sup>; George 1996<sup>\*</sup>), some of which have been adopted in the better managed stores.

## Commerce and culture

The cultural context within which stores are established combined with their corporate structure often creates enormous pressure for them to operate in a way that is not strictly commercial (Bagshaw 1982<sup>\*</sup>). This issue is linked to the multiplicity of roles that stores play (as outlined above) and raises the question: are stores about culture business or money business (Martin 1995<sup>\*</sup>)? Or as the Legislative Assembly of the Northern Territory (1999<sup>\*</sup>) asked, are these commercial or social enterprises? When stores are not privately owned, as is generally the case, the distribution of store profits is a problematic area. Young et al. (1993<sup>\*</sup>) address this issue in relation to ALPA and find that the financial arrangements made ('for the benefit of the community') between ALPA, community councils, traditional owners and the community itself can be complex and confusing.

The tension between the commercial and the social is reiterated in much of the literature, and seems to afflict community stores irrespective of their location and governance structure. It is a dilemma that is addressed indirectly in matters such as alcohol sales (Martin 1998<sup>\*</sup>), cross-subsidisation of healthy food (McMillan 1991<sup>\*</sup>) and the meeting of cultural obligations both by consumers and store staff (Bagshaw 1993<sup>\*</sup>; Young 1987<sup>\*</sup>, 1995<sup>\*</sup>). This issue is closely related to the governance of stores.

## Governance and capacity building

Store management is of crucial significance to Indigenous competition and consumer matters. The Legislative Assembly of the Northern Territory's Inquiry into Food Prices (1999<sup>\*</sup>) lists four different models of store management and draws out the implications for cost structure, and thus prices, which flow from each of these models. Central to this analysis is the understanding that governance structures can have major implications on the prices faced by Indigenous consumers in remote communities. Similarly, George (1996<sup>\*</sup>) notes that while good management can have a positive effect on store pricing, poor management can result in the incurring of debts which are then paid for with higher prices. George concludes that while retail pricing policy is usually set by store management, there are a few factors most likely to influence it. These include the indebtedness of the community, community council intervention, reliance on external advice for retailing practice, and mismanagement which results in wholesalers withdrawing from stores or charging higher fees based on the riskiness of the operation.

In relation to capacity building, even in the 1980s there was a view that Indigenous people needed to get involved in management (Ellanna et al. 1988<sup>\*</sup>). In

the US context, Henson and Nathan (1998<sup>1</sup>) suggest that running stores is an important element of Native American empowerment. Young et al., (1993<sup>2</sup>) criticise ALPA for inadequate involvement of Aboriginal people in management, but their view is based on a somewhat uncritical acceptance of Aboriginal perspectives. From such a perspective, Pearson (2000<sup>3</sup>) advocates Indigenous control over community enterprises, including stores.

Much of the discussion of 'capacity building' focuses on Indigenous management without clearly highlighting the nature of impediments and barriers, or addressing how cultural inhibitors may be overcome. Young (1981<sup>4</sup>, 1982<sup>5</sup>) raises issues about Indigenous capacity to manage stores but there has been limited progress in employing Indigenous store managers in the last 20 years. Much discussion is rhetorical. In addition, there is also an inadequate focus on the question of how governance can impact on the operations of stores, and on the need to train Indigenous boards in matters of corporate governance, especially in situations where board members are also powerful figures in the community. For example, it is not unusual for board members to believe that all responsibility rests with management rather than with the board. Taylor and Westbury (2000<sup>6</sup>) highlight how important it is for boards to work with management.

## Indigenous-specific ACCC investigations

As already mentioned, publicised ACCC investigations in Indigenous communities to date include: the **Norwich, Colonial and Mercantile Mutual Insurance** investigations (1992), the **Collier Encyclopedias** investigation (1995), the **Saunders Sons and Associates Pty Ltd** investigation, the **Baldwin's Tractor and Truck Wreckers** investigation (1999) and the **IBIS** investigation (2000). The insurance investigations concerned the misleading and unconscionable provision of insurance policies to Indigenous people located in remote communities. The conduct involved misrepresentations and inadequate explanation of policies before purchase, and a general failure to assess the needs of policyholders. In many cases the policies sold were 'highly inappropriate for the individuals concerned' (Trade Practices Commission (TPC) 1994: 2). In addition, the TPC (now the ACCC) noted that '[t]he agents appear to have sold policies that generated the greatest commission, rather than the most appropriate benefits to policyholders' (TPC 1994: 2).

Misrepresentations made to Indigenous people during the sales of policies included: that the purchase of an investment policy was necessary because the government would not provide pensions for people when they retired, and that the purchase of a personal superannuation policy was 'compulsory' (TPC 1994). In response to TPC litigation each of the insurance companies involved refunded policy-holders' premiums with interest. Moreover, Colonial Mutual agreed to pay \$715 000 into a trust fund for the consumer education of Indigenous people and Norwich agreed to fund the employment of a community consumer adviser (discussed in greater detail below).

In the Collier Encyclopedias investigation the companies, Family Educational Publishers Pty Ltd and Lyscard Pty Ltd, admitted that they used high-pressure sales techniques resulting in breaches of the TPA. The sales of Collier encyclopedias occurred mainly to Aboriginal consumers located in Ngukurr, Naiyu Nambiyu (Daly River), Borroloola, Elliot, Tennant Creek and Alice Springs. Encyclopedia salespeople were found to have engaged in unconscionable, and misleading and deceptive conduct, and to have made false representations that consumers would get a gift following their purchase. Following TPC investigations the companies involved agreed to offer full refunds for the purchased encyclopedias. In the Saunders investigation a referral and pyramid selling scheme which targeted Aboriginal communities was stopped following Commission intervention. Under the scheme, Saunders claimed that members of the scheme could obtain a car to the value of \$10 000 if they paid \$200 to join, and also introduced others to the scheme.

In the Baldwin's Tractor and Truck Wreckers investigation, it was found that the company attempted to induce a competitor to provide Tia Tuckia, an Aboriginal community in South Australia, with an inflated quote for repairs because Baldwin's had already quoted for the job and did not want to be undercut. Following ACCC investigations Baldwin's admitted that its conduct breached the TPA. Baldwin's also agreed to a court enforced undertaking to:

- never engage in price fixing conduct again
- perform 65 hours of free labour for Tia Tuckia
- pay the ACCC's investigation costs
- apologise in writing to Tia Tuckia and the Aboriginal and Torres Strait Islander Commission
- publish an apology in *The Koori Mail*, a publication circulated nationally among Aboriginal and Torres Strait Islander communities.

Finally, the ACCC brought an action against IBIS for a breach of the price exploitation provisions of the TPA. IBIS operates 14 general stores in the outer Torres Strait Islands and a large supermarket on Thursday Island. ACCC investigations showed that, following the introduction of the GST, prices of some goods at IBIS stores had increased by more than 10 per cent, with the price of some items, including those which should have been GST-free, increasing by 22 per cent. Following ACCC investigations IBIS offered the communities in which it operates refunds and a one-month 5 per cent discount on all grocery items. In addition IBIS placed notices in its stores apologising for its pricing mistake and undertook to institute a trade compliance program to ensure that its future conduct is less likely to contravene the Act.

The seven investigations outlined above seem to indicate that Indigenous people in remote communities may be particularly vulnerable to misleading practices, and

that people or corporations operating in these areas should be particularly aware of their obligations under the TPA. Part IVA of the TPA deals with unconscionable conduct. Under s. 51AA dealings will be held to be unconscionable if one party is at a special disadvantage with respect to another party, and the other party takes advantage of this (*Blomley v Ryan* (1956) 99CLR362, *Commercial Bank of Australia v Amadio* (1983) 151CLR497).

Indigenous people do not, however, constitute a particular class of 'special disability' with respect to unconscionable dealings. The culmination of a series of factors does, however, operate to ensure that a higher standard of probity should exist for transactions that take place with Indigenous people in remote communities. Such factors include low levels of education, literacy and consumer awareness (Amadio), as well as remoteness and the lack of an ability to get independent legal advice (Insurance investigations, Collier Encyclopedias investigation). The conclusion of the TPC in the Collier Encyclopedias investigation was therefore that the companies involved:

took advantage of their stronger bargaining position in relation to the consumers who were in disadvantaged circumstances as persons from non-English speaking backgrounds, living in remote communities with limited education, limited ability to understand written and spoken English and limited exposure to legal dealings and high pressure salesmen.

In conclusion, while the publicised investigations about Indigenous consumers and the TPA are limited, the investigations that do exist indicate that the law can work to protect Indigenous consumers against breaches of the TPA.

## Poor consumer information

In the literature there is a general view that Indigenous people, and particularly those in remote communities, are not aware of their consumer rights (see Aboriginal Consumer Education Project 1994<sup>\*</sup>; Dee 1991<sup>\*</sup>; Department of Fair Trading 1998<sup>\*</sup>; Dodson 1995<sup>†</sup>). Disadvantage and poor literacy (Department of Industry, Science and Tourism (DIST 1997<sup>\*</sup>) as well as limited access to information about finance and cost of finance (HRSCEFPA 1999<sup>\*</sup>) are key barriers to Indigenous consumers exercising their consumer rights. Cultural Perspectives (1998<sup>†</sup>) also suggests that Indigenous people's poor understanding of consumer rights may be coupled with the cultural practice of being non-confrontationist (the public setting of the shop) and this can make them vulnerable to exploitation.

Consumers need to be aware of the TPA and the obligations it imposes on businesses before they can take action if there has been a breach. This is recognised in the ACCC's *Corporate Plan and Priorities 2001–02* which states that the ACCC seeks to achieve compliance with the TPA through, among other things, consumer education (ACCC 2001a: 8). The insurance investigations demonstrated that there may be a very low degree of understanding amongst Indigenous people

about their consumer rights, and the responsibilities of businesses in providing goods and services. A low level of Indigenous consumer awareness is evident in the settlement with Norwich Insurance company which included, amongst other things, five year funding for the employment by the Wujal Wujal Aboriginal Community Council of an adviser to assist people with consumer problems (TPC 1994: 1). It remains to be seen whether Indigenous peoples' awareness of their consumer rights has increased since these investigations took place in 1993–94.

One way of generating a better understanding of their rights is through education. There is enormous variability in the quality of information available to Indigenous consumers. Marks (1995\*) argues for culturally informed provision of consumer education, without expanding on this point to describe what such a strategy might consist of. The authors of the *Grin and bear it* report (Aboriginal Consumer Education Project 1994\*) recognise that orally based information media such as workshops or contact with Aboriginal liaison officers may be the most appropriate means of consumer education.

There is some evidence to suggest that Indigenous consumers may be brand loyal and so not responsive to some forms of consumer education (McMillan 1991\*). Experience from ALPA suggests that the relative inelasticity of demand relating to some items may mean that Indigenous people could fall prey to exploitative pricing on some goods (McMillan 1991\*). However, this evidence can be contrasted with that of Scrimgeour et al. (1994\*) who found that education strategies can influence people into making healthier choices, and Wells (1993\*) expresses the view that people respond quickly to advertising for particular products.

## Specific Indigenous consumer issues

The literature identifies a number of key areas in which Indigenous consumers are vulnerable, and which raise implications for the TPA. These areas include:

- **Taxi services**—the literature contains allegations that taxi drivers overcharge for services to town camps around Alice Springs (Commonwealth Ombudsman 1997\*). It has also been noted that taxi drivers often hold onto bank key-cards (Westcombe 1998\*) which may indicate the presence of a structural monopoly.
- **Alcohol purchasing**—the Commonwealth Ombudsman (1997\*) notes instances of Indigenous people being overcharged for alcohol.
- **Monopoly selling**—there are accounts of Indigenous customers being prevented from shopping at other retail outlets because of their dependence on book-up which may be a reflection of a market structure that inhibits competition (Commonwealth Ombudsman 1997\*).
- **Used-car dealers**—there is evidence of cars being sold at prices significantly above market rates to Indigenous customers (Commonwealth Ombudsman



1997<sup>\*</sup>). Mechanical repairs for cars have also been identified as being priced at above market rates for Indigenous consumers (Cultural Perspectives 1998<sup>†</sup>).

- **Book-up practices** (see discussion below).
- **Door-to-door sales**—the TPA investigations detailed above indicate that Indigenous people may be particularly vulnerable to representations made by door-to-door salespeople.

Areas identified by the literature raise implications for the TPA both in terms of market structures that inhibit competition, and of unconscionableness. While overcharging for goods and services is not a TPA issue, evidence that overcharging is directed towards Indigenous consumers may be suggestive of a relationship of vulnerability consistent with unconscionableness. However, it must be remembered that Indigenous consumers do not constitute a class of ‘special disability’. If it can be shown under s. 51AA that the Indigenous consumers involved in these transactions are at a special disadvantage with respect to the business involved, and the business has taken advantage of this, then the transaction will be unconscionable. Similarly, it may be that the factors to be considered in assessing unconscionableness, as outlined in s. 51AB(2), are present in some of these transactions. Finally, the research identified in these areas seems to indicate that potential Indigenous consumer difficulties stem from both unconscionable practices and monopolistic market structures. It may therefore be that regulatory solutions should not just consider the education of Indigenous consumers but also structural reform to address issues of market failure.

More general consumer issues are also identified within the literature. For example, Aboriginal people are sold items that do not suit their needs because it is assumed that they will not complain (Cultural Perspectives 1998<sup>†</sup>) or being refused service at stores after complaining about high prices (Srivastava 1998<sup>\*</sup>). However, in all of this material little attention is paid to the cultural practices that may inform the choices Indigenous people make about where they shop, or how they consume. Thus there is little analysis of how or why these exploitative practices are taking place, beyond the statement that they occur.

## Access to banking facilities

Following the rapid deregulation of the Australian financial system it is perhaps not surprising that a great deal has been written in recent times on issues associated with banking and access to consumer banking facilities. Banking services are increasingly being considered essential services in rural and remote communities (HRSCEFPA 1999<sup>\*</sup>; McDonnell & Westbury 2001). In the context of a rapidly changing Australian financial sector, evidence is emerging about the declining availability of banking and financial services in rural and remote Australia (HRSCEFPA 1999<sup>\*</sup>; McDonnell & Westbury 2001). The removal of banking services from remote and rural communities has particular implications for the relatively

large and increasing Indigenous population of these communities. Further, the trend from cheque-based to electronic-based welfare payments will further compound these problems (Westbury 1999\*). Problems associated with Indigenous people moving from cheque to electronic-based welfare payments are being addressed in part by a pilot banking project being conducted by Tangentyere Council in Alice Springs (*Land Rights News* 2001\*).

Providing access to credit is viewed by some writers as a means for breaking out of 'the poverty trap' (Stegman 1999). In addition to the problems caused by the general removal of banking services from rural and remote Indigenous communities, Indigenous people may face further barriers to accessing credit. Indigenous entrepreneurs can face problems in accessing loans if they have a limited credit history and no collateral (McDonnell 1999\*). Many Indigenous households are impoverished and lack savings, Commonwealth and state legislation prohibits the use of communal Aboriginal land as collateral, and Indigenous people have few employment opportunities in rural areas from which to earn income and accumulate equity (ATSIC 1998: 22–3).

Additional barriers to the provision of credit are that Indigenous communities often lack the infrastructure needed to support banking and financial services and that there is a high cost in both delivering and accessing financial services in remote communities (Westbury 1999\*: 13). Moreover, some Indigenous entrepreneurs lack the technical literacy to access the range of electronic, telephone and Internet-based banking and financial services that are available. Cerexhe (1998\*) highlights the point that financial literacy training for Indigenous people is urgently required.

It is clear that there is a lack of competition in the provision of banking services to many rural and remote communities, with the major banks withdrawing banking services from these regions. Some writers suggest that the provision of electronic banking services may provide a solution to this problem (Leonard et al. 1998\*; Walker et al. 1997). However, Singh (1999\*) and Westbury (2000\*) note an Indigenous cultural preference for face-to-face banking, a preference that would not be met through the provision of electronic services.

Finally, the lack of access to normal banking facilities has resulted in other institutions like stores and art centres to become alternate credit facilities (Matsuyama 1991\*). While stores and other institutions are clearly providing much needed banking services, the provision of these services by informal, unregulated providers can create relationships between banking service providers and Indigenous consumers that are open to abuse. In addition, the provision of banking services by community stores must increase the cost structure of those stores, which, in turn, may increase the prices paid by all Indigenous consumers.

## Book-up

Book-up is the practice of running up a tab (or book) with a store or merchant. The literature suggests that book-up is a common system of credit provision in regional and remote community stores. Traditionally the security provided on book-up has consisted of stores or merchants having welfare cheques sent to them directly, and operating 'book-up' arrangements, whereby they cash cheques on the basis that the proceeds will be used to buy supplies or pay off part of a book-up loan. This practice is described by the Commonwealth Banking Ombudsman:

There are instances of storekeepers in remote areas in town being the address point for Department of Social Security (DSS) cheques. In some instances this has created a 'capture' situation in that Aboriginal customers are extended a line of credit and storekeepers insisted on signing over DSS cheques to meet accumulated debts. This had led to exploitative pricing of goods by some storekeepers and customers being prevented from purchasing elsewhere ... It appears that social problems are not simply a factor of insufficient or poorly distributed income but also the fact that a significant proportion of income is 'ripped off' (1997<sup>\*</sup>: 11–12).

More recently, as Indigenous people have been switching to electronic banking there is evidence that some storekeepers and other book-up merchants are holding onto key cards and/or PIN numbers as security for book-up loans (Renouf 2001<sup>†</sup>).

Researchers such as Renouf are concerned by cases of book-up where stores are keeping key cards and/or PIN numbers (Renouf 2001<sup>†</sup>, Aboriginal Consumer Education Project 1994<sup>\*</sup>; Commonwealth Ombudsman 1997<sup>\*</sup>). Renouf (2001<sup>†</sup>) argues that the use of key cards as a form of security constitutes exploitation of the consumer's lesser bargaining power because, in part, consumers do not have access to other financial services. There are also numerous accounts of Indigenous customers being prevented from shopping at other retail outlets because of their dependence on book-up (Commonwealth Ombudsman 1997<sup>\*</sup>). In addition, fees charged by book-up providers are often exorbitant.

One interpretation of book-up practices is therefore that they result in exploitation of Indigenous consumers' lesser bargaining position and as such may be unconscionable. For example, in accordance with the factors specified in s. 51AB (2) it could possibly be argued that an Indigenous consumer who enters into a book-up arrangement, who has low level of literacy and education (s. 51AB(2)(a)), and who is pressured into using book-up arrangements on the basis that there are no other financial services available to them and they were hungry and needed food (s. 51AB(2)(b)), and who is required to leave their key card and PIN number as security (s. 51AB(2)(c)) may be the victim of unconscionable conduct. This is particularly so if the fees charged for book-up are exorbitant compared with the fees charged for other financial services (s. 51AB(2)(d)). This last point, however, rests on the problematic assumption that Indigenous consumers—particularly those in remote areas—have access to credit from other financial sources. Another possible interpretation of book-up is that it provides an essential service to

Indigenous people who otherwise would not have access to credit. It is therefore possible that in some cases book-up has the potential to benefit Indigenous consumers.

Renouf (2001<sup>†</sup>) outlines many of the complexities involved in book-up. For example, it can operate as a symbiotic relationship and can be a source of free credit especially in community-owned stores that charge no interest (see Cerexhe 1998<sup>\*</sup>; Srivastava 1998<sup>\*</sup>). The complexities associated with the use of book-up by Indigenous consumers demonstrates the need to identify and analyse any TPA implications in a culturally informed way that addresses the question of why Indigenous people continue to participate in relationships which are, or have the potential to be, exploitative. This question will be taken up in forthcoming research.

Book-up as a practice clearly has a cost for stores in terms of administration of the book-up system and bad debts. For example, Sullivan et al. (1987<sup>\*</sup>) note that book-up was largely eliminated in the Kimberley due to the large debts it incurred to the communities. Young (1984<sup>\*</sup>) notes the problems that book-up creates for store management and some of the ways in which the effect of such problems can be minimised. Finally, Taylor and Westbury (2000<sup>\*</sup>) see book-up as a double-edged sword. On the one hand community members are guaranteed access to foodstuffs and store owners are guaranteed reimbursement, but on the other hand it can perpetuate welfare dependency and provide little incentive for people to develop skills in operating in the cash economy.

## International best practice

Our attempts to interrogate international published literature have been largely unsuccessful, possibly owing to the project time frame and our interrogation methods. One reason for the lack of international material could be that such research as it exists is focused on regional rather than Indigenous-specific issues.

The international comparative material that we have found is of two types. First, researchers in North America dealing with the practices of enterprises and stores in Indian and Inuit communities have reached similar conclusions to Australian researchers. For example, Henson and Nathan (1998<sup>†</sup>) suggest that greater involvement in store management is a means to economic empowerment and Ketilson and MacPherson (2001<sup>\*</sup>) highlight structural, locational and scale-related issues that undermine store effectiveness in Canada.

Second, some Australian researchers, most notably Young (1987<sup>\*</sup>, 1995<sup>\*</sup>) and Young et al. (1993<sup>\*</sup>) compare the Australian and North American experience, and demonstrate the many similarities in competition issues between 'northern' remote regions on both continents. Such similarities can include high structural costs, harsh environments, lack of competition, lack of capital, and cultural norms that may undermine conventional business practice.

Interestingly, we were not able to locate overseas literature that looks at the Australian situation from an overseas comparative perspective.

## Emerging research issues

A key issue emerging from the literature is that as consumers, Indigenous people, especially in remote communities, are disadvantaged both in terms of the prices they pay for goods (and services) and their consumer rights awareness. Much of this disadvantage is structural—reflecting high relative welfare dependence and poverty; and poor socioeconomic status reflected in low educational levels, poor literacy, poor housing and poor health.

Much of the existing research is under-theorised and lacks analytical and methodological rigour. So, while transport costs are highlighted as a major cause of price differential, there is no clear-cut research that demonstrates its actual impact; instead final retail price is often provided as proof per se of high transport costs when many other factors could contribute to high prices. There is, for example, surprisingly little analysis of store mark-up policy, cross-subsidisation, the not-for-profit corporate structure of many community stores or other factors that might influence prices. Some of the most detailed research, for example by Young (1984\*), is in need of updating owing to very different conditions in remote communities today (e.g. better communications, greater competition, and easier travel to competitors outside the community).

Some of the existing mechanisms which can monitor store prices such as those put in place by the Northern Territory Government's 'market basket survey' provide a potentially useful mechanism for the external monitoring of store performance. Unfortunately, individual store survey results are not readily available (owing, perhaps, to concerns about commercial confidentiality) and it is unclear if store management boards receive the feedback on relative store performance which would assist capacity building (as distinct to store managers, who often collaborate in data collection).

Several fundamental issues that dominate economic policy debates more widely, especially from the 1990s onward, appear to be generally overlooked in the literature. First, there is the issue of competition. A brief pilot study by Altman at Maningrida in July 2001 suggests that intra-community competition in the retail sector and extra-community competition in barge transport is having an influence not just on reducing prices but also on improving the quality of services. Countering the potential appeal of competition as an agent of change, are issues associated with economies of scale: there is a need to contrast the potential benefits of each.

A second issue is that of corporate structure. There is a perception in the literature reviewed (and in some government policy) that it is Indigenous engagement with the private sector that is most at risk of exploitation and that the profit motive is somehow linked to unconscionable practice. While there is some reference to Indigenous rent seeking behaviour and unacceptable practices like 'pilfering', these are largely understated as issues for rigorous research. The potential inefficiency associated with not-for-profit corporate structures is similarly under-researched, as is the potential for joint venturing to be an efficient corporate model.

As elsewhere in Indigenous policy there is some tendency to mix policy goals at the community, government and regulatory levels. Hence there is a recognition that suppliers of goods and services at remote Indigenous communities may pursue multiple goals and may even be funded to do so, for example, as employment training schemes or as emerging enterprises. In addition, in a cross-cultural setting all consumers may not be equal, for example some may have special rights and privileges based on customary entitlements that are locally sanctioned but that may disadvantage other consumers. This is part of the reality of contemporary Indigenous community politics and a part of the tension in articulation with the wider Australian society and its institutions.

Most of the literature deals with competition and consumer protection issues coincidentally, being primarily focused on other issues such as the effect of high store prices on health status or the development potential of community stores as enterprises. Much of the research is somewhat anecdotal, describing the store situations sometimes in great detail, but explaining store (and other service delivery) inefficiency in general terms of locational and cultural factors rather than absence of competition or poor governance. Too much of the literature is either detailed and narrowly focused on a particular community, or else wide-ranging but lacking in empirical detail. This suggests that a regional focus, such as that undertaken by CAEPR in central Australia as part of the next stage of this project, might be desirable: it will provide a more comprehensive 'regional' analysis of the issues facing Indigenous consumers.

Finally, discussion of specific consumer issues in the available literature is of limited value. Little attention is paid to the cultural practices that may inform the choices made by Indigenous people about where they shop, or how they consume. There is little analysis of why or how possibly exploitative practices are taking place. A key emerging area of research is therefore the need to identify and analyse prospective breaches of the TPA in a culturally informed way that addresses the question of why Indigenous people continue to participate in relationships which are, or have the potential to be, exploitative.

# chapter 3 Indigenous community stores in the 'frontier economy'

Siobhan McDonnell and David Martin

This chapter is divided into four parts. The first establishes a conceptual framework, termed the 'frontier economy', through which TPA issues relevant to Aboriginal consumers and businesses can be explored. The second part of the chapter explores some of the 'special characteristics' of Aboriginal consumers that potentially increase their vulnerability to commercial exploitation. Moving from consumers to Aboriginal communities, part three examines factors that may inhibit the operation of competitive markets in remote Aboriginal communities, with reference to the operation of community stores. Finally, part four of the chapter returns to the concept of the 'frontier economy' and to the question of Aboriginal agency, and discusses the implications of these for ACCC compliance and education strategies.

## The focus on community stores

A community store is defined here as a store run under Aboriginal control and located in a remote Aboriginal community. A large proportion of stores in remote Aboriginal communities fit this definition, in that they are owned and governed by Aboriginal bodies. Community stores are central institutions in remote Aboriginal communities, for a number of reasons. The store is often the main socioeconomic enterprise in the community (Roberts 1994: 5), and the main provider of food for many people (both Aboriginal and non-Aboriginal) in the community. Moreover community stores are often the only providers of banking services (see Altman, McDonnell & Ward 2001: 11–12). Community stores thus provide an excellent case study for examining the ways Aboriginal businesses operate in an Aboriginal domain and how this may differ from commercially operated businesses in the non-Aboriginal economy. Where appropriate, the operation of community stores will be contrasted with the operation of other types of stores located in or around remote Aboriginal communities, for example, pastoral station stores.

The operation of competitive markets in remote Aboriginal communities is circumscribed by structural impediments, in particular transport costs, problems of

governance, the cultural context, labour costs associated with remoteness, and land rights legislation (see Altman, McDonnell & Ward 2001). All of these factors impinge upon the operation of community stores as economic enterprises, and on competitive markets in remote Aboriginal communities more generally.

Competition theory postulates that where one or more firms exercise substantial market power by raising prices, other firms will be encouraged to enter the market. However, there are a number of cultural and structural factors which militate against the operation of mature competitive markets in discrete Aboriginal communities on Aboriginal lands in the Northern Territory. Effective competition has delivered benefits to most Australians, and the premise might be that it would have the same effect in remote Aboriginal communities. This chapter explores the complex reasons why such a premise is not self-evidently true.

## Methodology

The remote Aboriginal communities visited during fieldwork included Yuendumu, Yuelamu, Mutitjulu and Ntaria (Hermannsburg). Two pastoral station stores were also visited. Interviews were conducted with the managers of community stores and pastoral stations, members of store committees, presidents and clerks of local councils, local business people, representatives from various community organisations, and Aboriginal and non-Aboriginal members of communities. Interviews were also conducted in Alice Springs with ATSIC Commissioner Alison Anderson and a number of other ATSIC staff, George James (Alice Springs, Department of Fair Trading) and Kevin Rolfe (Tangentyere financial counselling officer) as well as employees from a range of accounting firms who provide services to community stores. Additional brief fieldwork was conducted by Jon Altman and David Martin in Maningrida (Arnhem Land) and Aurukun (Cape York) respectively.

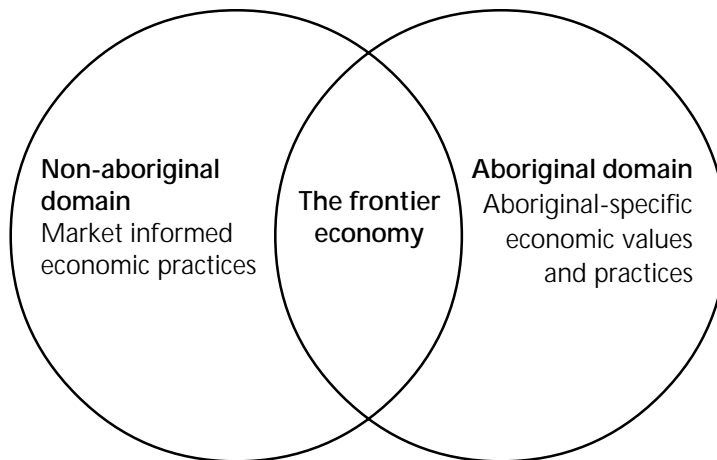
The methodology adopted is designed to provide the ACCC with an in-depth analysis of a particular type of enterprise—the community store. Such research, while limited in scope, elucidates some important conceptual and regulatory implications for the ACCC. For example, one finding of this research has been the diversity of experience and circumstance of Aboriginal consumers and businesses.



## A conceptual framework: the 'frontier economy'

By definition, a frontier marks a boundary or an intersection between two domains. The 'frontier economy' describes the intersection between specific Aboriginal economic values and practices, and those of the general market-based economy (fig. 1). The conceptual space so created is the arena (spatial, social, political and economic) within which the specific economic practices and values of Aboriginal businesses (such as community stores) and Aboriginal consumers interact with those of the wider market-based economy.

**Fig. 1. The frontier economy**



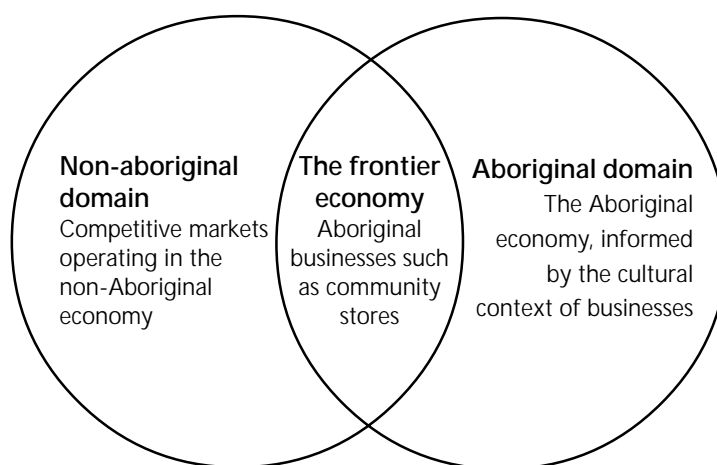
Aboriginal people, in their choices and actions as consumers, bring to bear values and practices that derive their forms and meanings from the Aboriginal domain. The chapter argues that some of the values that inform the choices and actions of Aboriginal consumers are different from those of non-Aboriginal people. A number of specific Aboriginal economic practices are identified and discussed: the contextualisation of money, the establishment of particular forms of dependency, demand sharing and personalised transactions.

An analysis of Aboriginal consumer welfare issues requires an understanding of Aboriginal consumer practices. Any assumption that the behaviour of Aboriginal consumers is the same as that of all other consumers may result in a misunderstanding of the commercial relationships entered into by Aboriginal consumers. In a worse case scenario it could result in an application of the TPA in a way that disadvantages, rather than benefits, Aboriginal consumers. To ensure that the TPA is applied in ways that benefit Aboriginal people, analysis of prospective breaches of the TPA must be made with reference to the agency of Aboriginal

consumers. Factors that may impinge on the agency must also be taken into account. The experience of Aboriginal consumers, and consumers generally, will differ depending on whether they live in a rural, regional or remote area, on their level of education and income, and on whether they are employed or not and so on.

The frontier economy also provides a useful conceptual framework for examining community stores, which operate in the zone of intersection between the Aboriginal and non-Aboriginal domains (see fig. 2). It is argued that the operations of community stores in remote Aboriginal communities must be interpreted with reference to their cultural context. In this section of the chapter, the exploration of the cultural context of Aboriginal businesses includes a discussion of the governance structure of stores. Such discussion is necessary for an understanding of why the frontier economy may operate in a way that is different to the non-Aboriginal economy. Martin (1995) posed the question as to whether enterprises such as stores are primarily concerned with 'culture business' or 'money business'. That is, whether the cultural priorities of an Aboriginal community, such as ensuring that revenue is distributed to traditional land owners on which the store is located, are more important than making a profit.

**Fig. 2. The frontier economy and Aboriginal businesses**



It is important to note at this juncture that the 'frontier economy' is used both as an analytical and as a heuristic device in this chapter to illustrate certain characteristics of the engagement of Aboriginal people and businesses with the wider Australian economy. It is not, however, designed to represent the wider relationships between Aboriginal groups and societies and the general Australian society, since this can be more accurately conceived of in terms of a complex, contested 'intercultural zone' rather than the interaction between two distinct societies (Merlan 1998).

The term 'frontier' is used advisedly, because it has connotations both of regions beyond the settled area, and of underdeveloped areas. The concept of the frontier economy as used in this chapter is not necessarily geographically located solely in remote areas, since distinct Aboriginal economic practices can be found in rural and urban environments as well as in remote regions (see Macdonald 2000). It may be that in identifying Aboriginal TPA-related issues, the particular understandings and values that Aboriginal people bring to bear in their engagement with the wider economy are more significant than their geographical location.

While geographic 'remoteness' is not a defining characteristic of the frontier economy, it may nevertheless be a contributing factor to the specific characteristics of that economy in remote Australia. For example, Aboriginal consumers may be more vulnerable to exploitation in remote as opposed to rural and urban areas, partly because of their lower levels of literacy and numeracy. Additionally, however, government institutions typically have a less effective presence in remote regions, as manifested for example in relatively ineffective law enforcement in remote Aboriginal communities. In the recent Cape York Justice Study, the Uniting Aboriginal and Islander Christian Congress (UAICC) made a submission arguing that in Cape York:

[t]here is a real issue about whether current policing practices and resources are adequate. Overwhelmingly, community leaders have stated that the law is very 'weak' in that community. By this they mean that ... law enforcement is weak (Cape York Justice Study 2001: 180).

It is questionable whether regulation alone will guarantee consumer rights in remote communities. In places where many government institutions are absent and where law enforcement is relatively weak, effective monitoring of regulatory compliance is necessarily compromised.

The argument in terms of the frontier economy is designed to alert readers to the importance of the cross-cultural dimensions of the market's operation in remote Aboriginal communities. Analysis of TPA-related Aboriginal issues requires a culturally-informed understanding of why Aboriginal people may continue to participate in relationships that have the potential to be exploitative. A culturally informed understanding of how Aboriginal businesses operate may suggest that they are as concerned with cultural reproduction as financial viability. However, the fact that businesses operate in the Aboriginal domain and are informed by specific Aboriginal economic practices does not necessarily mean that they do not operate in a competitive and efficient manner. In some instances it may be that the cultural context of a business is an important asset as, for example, in Aboriginal art production or tourism.

## Aboriginal consumers and the market

One specific aim of this research is to identify special characteristics of Aboriginal communities that make individuals susceptible to commercial exploitation, and that should be taken into account in any ACCC compliance or education strategies. This section draws on findings from ethnographic studies of remote Aboriginal groups to outline certain values and practices which Aboriginal people in such areas typically bring to bear on their transactions in the market. A case study of the operations of a remote pastoral station store is used to argue that certain transactions may be **both** commercially exploitative **and** instances of instrumental Aboriginal action, or agency. The implications of this argument for the ACCC's compliance and education strategies are discussed in the final part of this chapter.

### The 'informed consumer'

The underlying principles of the TPA are predicated upon the assumption that a competitive market will benefit consumers in most instances.<sup>1</sup> This is reflected in the Act's stated objective of enhancing the welfare of Australians through promoting competition and fair trading and providing consumer protection.

Markets involve producers of goods and services, consumers of those goods and services, and intermediaries such as wholesalers and retailers. Bruce suggests, in a summary of the operations of the consumer protection aspects of the TPA, that there is a tension between producers of goods and services and consumers. He argues that:

[t]he tension exists because the producers generally want to make the goods or services at the cheapest cost to themselves and make the best possible price return on those products. Consumers on the other hand generally want to choose between as many goods or services as they can and to buy them at the cheapest possible price to themselves.

The indication of this tension is price. Consumers use their buying power to send signals to producers telling them what goods or services they think are worth spending money on. In response to these price signals, producers then alter their production process to put out the kinds of goods and services that consumers are willing to pay for (1999: 4).

Thus a properly functioning market requires not only competition between producers and between suppliers, but also consumers for whom information about price is one of the bases upon which purchasing behaviour is predicated. Ultimately, then, certain assumptions are being made about human nature, or at least about those aspects of it that pertain to the provision and obtaining of market-derived goods.

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<sup>1</sup> There is provision in the TPA for the authorisation of anti-competitive conduct (s. 88), where such conduct would be of benefit to society. Thus the test under this section is

This part of the chapter does not argue that price is irrelevant to the purchasing decisions of Aboriginal people in remote regions. However, it does suggest that it is not enough to understand their typically vulnerable economic position solely in terms of structural features of the market in remote regions, or poor literacy and numeracy skills, or a lack of knowledge of their consumer rights—although these factors are demonstrably present. Rather, it argues that Aboriginal people also bring to their dealings with the market particular distinctive values and practices. That is, the reality of Aboriginal agency has to be accepted in any analysis of competition and consumer issues.

Put another way, it is argued here that Aboriginal people are ‘informed consumers’, but typically much of the knowledge and many of the values which inform their purchases of goods and services may be quite different from those of non-Aboriginal consumers. While the focus here is on remote areas, there is also a body of ethnographic evidence that suggests that distinctive Aboriginal values and practices are not solely confined to traditionally oriented populations in remote areas.

## Cash and consumer goods

In a market economy such as Australia’s, money integrates otherwise disparate processes in a multitude of domains. It not only mediates, but serves to **represent** relations between objects, and to **objectify** relations between persons. However, within the Aboriginal domain in remote Australia at least, money’s capacity to objectify relations in this manner is greatly attenuated, through what Sansom (1988) in writing of Darwin Aboriginal fringe dwellers, aptly terms a resistance to the ‘monetisation of the mind’.

For such Aboriginal people, whether or not cash is exchanged for access to others’ consumer goods, services or labour, and the amounts of cash involved in the transactions, are dependent upon people’s own assessments of the social value and context of the proposed transaction, rather than its formal economic value. As one instance, a number of attempts have been made in past years by Wik individuals and families in Aurukun in western Cape York to start small enterprises, for example through selling candy, soft drinks and cigarettes. In all cases these failed. The common factor was that the cash generated from sales was insufficient to meet the costs of the goods to the enterprise. The overwhelming reason for this was that it was not possible for those operating the enterprises to insist that goods provided or booked down to kin be paid for.

As another example from the same region, whether money is offered, and how much, for the use of another person’s vehicle or a boat for a hunting trip can depend on a range of non-market factors (Martin 1993: 116–29). These include the relationship between the parties (with the expectation and amount of payment tending to increase with the social and kinship distance of the relationship), the relative status of the two parties (particularly as established through kinship),

whether the vehicle or boat owner has social or other debts owing to the other party, and the amount of cash currently held by the person seeking the transport. These exchanges of cash between individuals and groups, and the use of consumer goods such as vehicles and boats, serve in part to establish and reproduce the system of Aboriginal social relations, especially those relationships defined through kinship. This social phenomenon is widely reported in the literature for Australian Aboriginal groups (e.g. Macdonald 2000; Martin 1995; Peterson 1991; Sansom 1980).

In such systems, money is no longer the object of formal calculation governed by the impersonal principles of the market place. On the contrary, it is transformed within the Aboriginal domain, becoming more the subject of contingent social calculation—what Schwab (1995) has aptly termed a ‘social calculus’—and a means through which a distinctive order is stamped upon the world. This ‘cultural logic’ not only operates within the Aboriginal domain, but is brought to bear by Aboriginal people in their dealings with outsiders.

Similar principles operate with regard to consumer goods. For example, Gerrard (1989) provides an analysis of the role of motor vehicles in an Arnhem Land community in the flows of goods and services among kin, and between Aboriginal people and outsiders, through a process of ‘humbugging’ or demand sharing (see below). The assimilation of vehicles to distinctive Aboriginal modes of economy and sociality amongst Warlpiri people of the central desert region has been clearly, and wittily, shown in the *Bush Mechanics* documentary series, screened by the Australian Broadcasting Commission (ABC 2000). These films show that vehicles are without doubt of high social utility, and are purchased from dealers in Alice Springs through market transactions. However, the value Warlpiri men accord them is not constructed against that established by the regional used-car market, but in terms of their roles in primarily Aboriginal masculine pursuits such as hunting, attendance at ceremonies, and visiting kin across a huge region. Furthermore, ‘ownership’ and use of a vehicle is not confined to a single individual or family, even if they were the original purchasers. Rather, vehicles provide focal points around which important aspects of Warlpiri sociality are organised. That is, for Warlpiri people, the value of vehicles is primarily socially determined within the regional Aboriginal society, rather than commercially determined within the regional or national market.

Conversely, there is ethnographic evidence that where possession of consumer goods, even highly valued ones, adversely affects core Aboriginal values, steps may be taken to ensure the primacy of the latter. Martin (1993) notes instances among the Wik people of western Cape York Peninsula where vehicles and other consumer goods are deliberately damaged or destroyed as part of an omnipresent pressure against material and capital accumulation and its potential to establish hierarchies. Similarly, Folds (2001) records instances of video recorders and other such consumer goods being destroyed by their owners to prevent disputation over their use amongst Pintupi people of the Western Desert.

Despite the availability of cash and consumer goods on a hitherto unprecedented scale, the evidence demonstrates that wealth for the Aboriginal people of such regions continues to lie primarily in social forms of capital. This is especially the case with social connections defined through kin and section relationships, and cultural forms of capital, such as connections to traditional country, and ritual status and knowledge. Ultimately that which is accumulated, managed and contested in the Aboriginal domain is not so much material forms of capital as social capital (Martin 1995). Cash and consumer goods have become incorporated into the Aboriginal domain as core means through which particular forms of social capital can be realised. The values and practices that inform that domain are brought to bear in Aboriginal people's transactions in the market. The chapter now briefly turns to explore this issue.

## Seeking dependency

Particular concerns may arise in situations where there is a high degree of inequality between the transactors in a market. This will often be the case for Aboriginal consumers from remote communities, who may have a poor command of English, be largely illiterate and innumerate, and live in relatively impoverished circumstances. In these cases, the Aboriginal consumer may be dependent upon the knowledge, skills, honesty and goodwill of the provider of the particular good or service. These relationships may be long-term, for example between the owners and customers of the pastoral station store discussed below. However, it can not be assumed that such dependency flows solely from the relative inequality in market-relevant skills, knowledge and competence between Aboriginal people and the providers of goods and services. On the contrary, and paradoxically, dependency may itself arise in part at least through Aboriginal agency.

There is a significant body of research which suggests that 'dependency', in terms of a culturally established and validated capacity to demand and receive resources and services from others, is a core principle through which Aboriginal agency is realised in the structuring of social and economic relationships. This principle operates both within contemporary Aboriginal groups and in the intercultural zone between them and the wider society (see discussions in Anderson 1983, 1988a; Finlayson 1991; Martin 1993, 1995; Myers 1986; Peterson 1993; Sansom 1980, 1988; Schwab 1995; Trigger 1992). Objective disparities in power and wealth can be transformed by such Aboriginal agency through a process of co-opting others, often outsiders (including non-Aboriginal people) to become patrons or 'bosses'.

## Personalising 'market' transactions

It has been suggested that within the Aboriginal domain money is, in a sense, personalised. Equivalently, Aboriginal people will actively strategise to incorporate outsiders—taxi drivers, store managers, agency staff working in communities and so on—into the world of Aboriginal 'performative sociality' (Martin 1993). By this is meant a social universe in which relatedness is established through the flows of cash, goods and services between people, and in which Aboriginal people actively resist confining social relationships (including those with outsiders) to the terms of their formal institutional roles.

For the Wik people of western Cape York Peninsula, for example, the term 'customer' does not refer to the market-based relationship of the purchaser of goods or services, but to individuals in dyadic and personalised partnerships involving exchanges of cash such as loans and gambling stakes. Reciprocity and public sociability between the partners are both essential elements. Suggestively, both partners in the relationship refer to each other as 'customers' (Martin 1993, 1995).

By incorporating significant others into their system of social relations, Aboriginal people are attempting to subject them to their own system of obligations constructed in terms of flows of goods and services. Thus, for example, by establishing personalised relationships with a pastoral store manager, or a taxi driver in Alice Springs, an Aboriginal person can (from his or her own cultural logic) offer patronage, respect and amicable relations, and in return gain access to goods, services and credit (through book-up).

A primary mechanism through which the flow of goods and services is realised is what anthropologists (following Peterson 1993) have termed 'demand sharing', and which Aboriginal people in central Australia call 'humbugging'. Much Aboriginal social transaction (particularly that involving access to material resources such as the use of vehicles, food, tobacco, alcohol and cash) arises as the result of demanding rather than of sharing. In demanding, an individual is asserting their personal right (as a son, an aunt, a clansman and so forth) to a response from others, but is also acknowledging, and thus through their actions substantiating, their relationship with the other person (Martin 1995; Musharbash 2000; Schwab 1995).

Such demanding is not confined within the Aboriginal domain. One of the social phenomena which non-Aboriginal staff in remote Aboriginal Australia find the most difficult to deal with is the constant demands for access to resources such as the use of vehicles, cash 'loans', booking down, and so forth. There is considerable ethnography on this dynamic (e.g. Gerrard 1989; Martin 1995; Musharbash 2000; Peterson 1993; Sansom 1980; Schwab 1995), but for the purposes of this chapter it suffices to say that 'humbugging' does not just represent the incapacity of the Aboriginal individual to manage his or her financial affairs, nor does it reflect an



uninhibited desire for material goods as such. Rather, it demonstrates a process through which access to valued resources is established through a particular form of Aboriginal instrumental action where relationships are constructed in personal, rather than market-based terms.

The implications of these arguments can be illustrated in a case study involving a store run by a pastoralist in a remote location in the Northern Territory.

## Case study: a remote pastoral station store

Small stores are operated by pastoralists in many areas of the Northern Territory. In some cases, these stores service permanent Aboriginal populations living on excisions within the station. In others, they provide competition to stores on major Aboriginal communities in their region. While many pastoral stores focus on Aboriginal customers, others also target the passing tourist trade.

A station store that services only the employees of the pastoralist falls under the definition of 'pastoral purposes' as defined in the *Pastoral Land Act 1992* (NT). On the other hand, a store constructed on a main road with the intent of capturing passing trade does not fall within the definition of 'pastoral purposes'. Under s. 86 of the *Pastoral Land Act*, a pastoral lessee who wishes to use part of the lease for a non-pastoral purpose may apply to the Pastoral Land Board for permission to do so. Once a store becomes a successful stand-alone commercial enterprise, it is expected that the pastoralist will apply to excise land from the lease as an alternative tenure, a term Crown lease with a right to freehold upon completion of development. An application for such an excision can be made by a third party, with consent of the pastoral lessee. Relevant future act provisions of the *Native Title Act 1993* (Cth) have to be followed.

Information from the Northern Territory Cattlemen's Association (B. Lee, pers. comm.), suggests that permission to establish a store, as a non-pastoral purpose, is not always formally sought. In any event, in contrast to the situation on Aboriginal lands held under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (ALRA), the legislation as such does not appear to raise structural impediments to the establishment of small retail operations on pastoral lease lands.

The following case study concerns a pastoral store in a remote area of the Northern Territory. A pastoralist and his family supplement their income from their pastoral enterprise in relatively marginal cattle country, through operating a store alongside the gravel road running past their homestead. They have established a reasonably well-stocked store in quite substantial premises. The store provides an income for the pastoralist without which, he stated, the viability of his overall operation would be compromised. Almost all the trade at this store involves Aboriginal customers. No Aboriginal

people live on the freehold land where the store is located, so Aboriginal people are travelling from three or four major communities (with stores) located within a radius of several hundred kilometres, with some customers travelling from outside the Northern Territory. This prompts the question: why are Aboriginal people prepared to travel such long distances to use the store?

At the time of our visit, no prices were marked, either on the goods themselves or on the shelves. The store operated an EFTPOS system through the till, and we observed that a significant number of keycards were held behind the counter. We were also advised that the store held PIN numbers for some of the cards. The store manager readily acknowledged that this created considerable potential for exploitation, and that the probity of the system depended upon the honesty of himself and his family. The store also operated a book-up system, with a sliding scale of charges according to the amount purchased on credit. A sign above the till stated the charge as \$9 for up to \$50 credit, \$11 for up to \$100 credit, and thereafter \$9 for each additional \$100 credit.<sup>2</sup>

Certain of these practices would seem to be undesirable, and some may even fall under the 'unconscionable conduct' provisions of the TPA. Bruce (1999: 28) has identified two themes underlying case law on the unconscionable conduct provisions of the TPA:

- an unequal relationship exists in the sense that one of the parties is under a special disability by virtue of age, infirmity, illiteracy or lack of education
- the stronger party is aware of the disability and then exploits it to his or her advantage.

It could be argued that these elements are present in the situation outlined above. However, there is another set of factors in this complex situation, which relate to the question of Aboriginal agency; that is, the instrumental actions of Aboriginal people in accordance with particular values and understandings.

The store does not have a captive market. All consumers travel large distances to use the store and, further, this store is competing with the

<sup>2</sup> Until recently such fees may have fallen outside the Uniform Consumer Credit Code (UCCC) provided that they did not cover lending for a period of less than 62 days. However, the code has just been amended to cover pay-day lending (i.e. lending a small amount of money repayable on the customer's next pay-day). It may be that these provisions may also cover the fees on borrowing charged by community stores.

larger ones operating at all of the communities from which its customers come. Far from being a disincentive for reasons of high fuel costs and the time involved, travel itself can involve other valued activities such as visiting country, hunting, and maintaining contact with relatives over an extended region. Also, people can exercise some choice as to who travels with them to the pastoral store, and thus reduce the demands from relations on their cash while actually shopping (see also Musharbash 2000: 59–60). By leaving their keycards with the storekeeper, Aboriginal people can avoid the all-pervasive ‘humbugging’ for cash from relations, particularly on those days when wages or pensions are known to be deposited electronically into accounts, and they may also accumulate savings. The store’s customers are thus clearly exercising choice.

Furthermore, this particular pastoralist has lived in the area for some fourteen years, and knows most Aboriginal people of the region by name. While pragmatic in his attitudes, he also appeared to demonstrate knowledge of, and respect towards, particular distinct Aboriginal values and practices; for example, by his own account, he took active steps to protect Aboriginal people passing through on ceremonial business from unwanted scrutiny by outsiders.

It transpired that there were no Aboriginal customers at the store at the time of our field visit, and so it was not possible to ascertain directly their own views of the situation. Nonetheless, it would be reasonable to assume, on the evidence available to us, that Aboriginal customers have established a particular form of mutuality with the storekeeper and his family, in which they structure certain of their financial and purchasing dealings through personalised rather than market-derived relationships. The store therefore arguably operates in a complex ‘intercultural space’ (Merlan, 1998), in which **both** Aboriginal agency and (possibly) undesirable or even unconscionable sales practices are features.

## Competitive markets in remote Aboriginal communities

The purpose of the TPA is to enhance 'the welfare of Australians through the promotion of competition and fair trading and provision of consumer protection' (s. 2, TPA). Competition can be defined as the pressure that firms exert on each other when acting independently to achieve the maximum amount of profit. The degree of actual or potential competition in a market determines the market power of firms.<sup>3</sup> Corones (1999: 85) notes that '[m]arket power, whether possessed by a single firm or firms acting collectively, is a measure of the ability of firms to harm consumers through excessive prices, inferior products and poor service'. Thus a market may be non-competitive if there are only one or two firms in the market such that each can exercise a large degree of market power. In addition, barriers to entry to the market will also restrict competition. These may include legislative barriers that place restrictions on entry into the market, and structural barriers such as the high start-up costs of entry. Finally, differential access to information on the part of the buyer and seller of a good in a market, termed 'asymmetries of information', can also result in markets operating non-competitively.

In standard economic theory, a number of benefits flow to consumers in a market which is competitive. Competitive markets are viewed as efficient 'in terms of producing goods and services at the lowest average cost of production and producing the goods and services that consumers value the most' (Corones 1999: 5). Recognising the benefits that flow to consumers in a competitive market, the TPA includes a number of provisions designed to promote competition (in particular Part IV s. 45–50). Acquiring market power is not illegal in itself, but misuse of market power for anti-competitive purposes is (s. 46). However, the ACCC may authorise conduct which may otherwise breach its anti-competitive provisions on the basis that it is of public benefit (under s. 88).

One aim of this research is to identify special characteristics of Aboriginal communities which inhibit competitive processes from delivering benefits enjoyed by other communities (market failure), and which should be taken into account in ACCC compliance or education strategies. As the key enterprises in remote Aboriginal communities, community stores provide an excellent case study for examining the operation of competitive markets. Factors that have been identified as barriers to the operation of competitive markets in remote Aboriginal communities, as exemplified by community stores, are:

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<sup>3</sup> The definition of a market is contained in s. 4(E) of the TPA, which provides that: '[a] market means a market in Australia and, when used in relation to goods and services, includes a market for those goods and services and any other goods and services that are substitutable for, or otherwise competitive with, the first mentioned goods and services.'

- structural impediments, and in particular high transport costs
- the limited number of stores in remote areas in general, and Aboriginal communities in particular
- problems of governance which prevent the efficient operation of stores and may also operate as a barrier to the entry of new stores
- the cultural context of community stores (see Altman, McDonnell & Ward 2001)
- high labour costs in remote communities
- land rights legislation which may also operate as a barrier to entry of firms onto Aboriginal land.

The following section will discuss each of these factors in general terms, before focusing on the fieldwork conducted on remote Aboriginal community stores.

## The market power of community stores

The higher prices charged for goods in some community stores could be indicative of a number of factors.<sup>4</sup> It could be that higher prices reflect structural impediments or other problems in the operation of stores (discussed below), but it is equally possible that they reflect, at least in part, the market power of community stores. While higher prices are not, in and of themselves, a breach of the TPA, abuse of market power is (in accordance with Part IV, s. 46).

Most community stores have a high degree of market power either as the only provider, or as one of a few providers of goods to their community. Even where there is more than one store in a community they are not necessarily acting as competitors. For example, in Yuendumu there are two stores. Food and goods are purchased mainly from the larger community store. Another much smaller corner

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<sup>4</sup> Prices charged for goods are the focal point for most discussions of the operation of remote community stores. Both Aboriginal and non-Aboriginal people often express concern at the prices charged at their local community store. Wells (1993: 160) notes that 'pricing policy is an especially important issue at a broad based community level'. There are numerous accounts of the high prices charged for goods in remote communities relative to urban centres (Crough & Christopherson 1993; Sullivan et al. 1987; Leonard 1998). Recent studies conducted by the NT Government's Health Service indicate that the cost of a basket of goods in most remote community stores in the NT relative to the equivalent basket of goods purchased in Darwin was 28 per cent higher (THS 2000: 8). While there are a number of limitations in these studies (see Altman, McDonnell & Ward 2001: 5–6) there is a substantial body of evidence that prices in remote communities are higher than in urban centres.

store also provides some food and a limited number of goods. Competition between the two stores is minimal. While the smaller corner store has seen an increase in demand for its goods, mainly because its prices are lower than the larger community store, its small physical and stock-handling capacity mean that it is unable to meet the needs of a population of some 800 people. Moreover, fieldwork indicated that even where there are two stores operating, agreements may be made between them so that they do not operate in direct competition with each other over certain products. Thus, for example, in one community there is an understanding between store managements that one store will handle sporting goods, shoes and clothes, while the other will handle petrol and stock goods for tourists. While this may not be an explicit 'arrangement' it may lead to a lessening of competition in markets for certain products and as such it may be considered an 'understanding' which contravenes s. 45 of the TPA. On the other hand, it may be argued that in situations where (as is typically the case) community stores have a limited operating capital base, certain public benefits may be served by ensuring competition in the supply of essential items such as foodstuffs, and limiting it in relation to other non-essential goods. This will particularly be the case where the curtailment of such arrangements would result in the closure of one store, leaving a monopoly.

Market power is also defined in terms of access to other markets, both spatially and over time (*Australian Meat Holdings v TPC*; *Re Queensland Co-operative Milling Association Ltd*; *Re Defiance Holdings Ltd*). In terms of the TPA definition of a market, the geographic scope of a market takes into account whether consumers can access another market. For example, the distance to the next store would be a relevant factor. If a community store is the only store within a 500-kilometre radius, access to other stores is unlikely to be a constraint on its market power. Sheer distance confers a monopoly; without access to other markets a population will become dependent on purchasing goods from the community store. Monopoly in its turn allows the charging of high prices, some component of which may also reflect the increased transport costs associated with distance from major centres.

The limited access of remote Aboriginal communities to markets is also seasonally dictated: this is a temporal dimension of market power. For example, Yuendumu, Maningrida, Ntaria and Aurukun are all isolated by flooding at certain times of the year, so that basic goods either have to be flown in or, for the coastal communities, brought by barge. Thus stores in most of these markets operate as the only providers of goods for certain times of the year.

The market power of community stores is also indicated the dependence of certain sections of the community on goods provided by them, particularly the elderly and those with limited access to transport. For those groups the community store becomes an essential provider of basic goods including food, water, clothes and blankets. They constitute, in effect, a captive market. The failure of the community

store to meet these basic needs, as well as increased prices on basic foodstuffs, can impact seriously on vulnerable sections of the community.<sup>5</sup>

Aboriginal people in remote Aboriginal communities appear to be more dependent on community stores than local non-Aboriginal people. Interviews conducted during the fieldwork indicate that non-Aboriginal people, with their generally higher socioeconomic status, can afford to order food and goods directly from distant service centres, and have them freighted or flown in. This practice is noted by Altman (2001) in Maningrida, where local non-Aboriginal residents often buy items from Darwin and have them delivered by air or barge. Finlayson (1997: 11) notes that in one remote Queensland community, '[i]nstead of shopping locally on a needs basis, each [non-Aboriginal] household organises a three-month "bush order" of fresh fruit, vegetables and meat, together with dry goods to be delivered by barge from a regional centre'. One of the reasons that non-Aboriginal people are able to shop in such large amounts while Aboriginal people tend not to is that:

[a]ll non-indigenous houses had domestic freezers ... By contrast, few Aboriginal houses had refrigerators, let alone freezers and most domestic cooking was replaced by daily buying of food from the community 'take away' (1997: 11–12).

Based on her research Finlayson concludes that:

almost without exception, no non-Aboriginal staff shop at the community store ... In this way they were able to avoid the high prices and questionable quality of goods in the community store (1997: 11).

Access to transport is another reason that non-Aboriginal people may be less dependent on community stores than the Aboriginal population in remote communities. Most non-Aboriginal people in communities either have their own car, or have access to a car by way of their occupation. This allows them to visit other stores within a region, as well as the regional service centre. For Aboriginal people connections with non-Aboriginal locals, and particularly those with access to a car, becomes an important resource. There are non-Aboriginal service staff who make frequent visits between service centres and remote communities, and non-Aboriginal residents of communities can, and often do, take advantage of this. For example, a non-Aboriginal woman employed in the medical centre in Yuendumu made the comment that she often asked colleagues coming from Alice Springs to pick up pre-ordered packages of groceries for her.

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<sup>5</sup> How much it will impact on a community will depend, in part, on the degree of self-provisioning activities, such as collection of bush foods, that community members engage in (see Altman, McDonnell & Ward 2001: 6). It will also depend on the ability of community members to obtain provisions from other stores outside the region, either directly themselves, or through family members.

## Demand inelasticity

One indicator of the dependence of the community, and in particular certain sections of the community, on goods provided by stores can be seen in the inelasticity of demand for some items. If demand for a good is inelastic then increases in the price of a good will not proportionally affect the quantity of the good that is demanded. For example general consumer demand for cigarettes is relatively inelastic. A large body of anecdotal evidence exists to suggest that Aboriginal demand for some items may be relatively inelastic (see Martin 1993, 1998). For example, Wells quotes McMillan, the director of the Arnhem Land Progress Association (ALPA) between 1988 and 1992, as saying:

The Aboriginal customer will pay almost anything for something they want. Conversely if they do not want something you cannot give it away. A recent example in one of our shops was a table of dresses to clear at \$2.00 each, without one sale—this would never happen in the urban centres of Australia (1993: 160).

During interviews a number of store managers commented on the relatively inelastic demand for certain items. For example, store managers at Yuelamu described the demand for 'mink blankets' as so great that they 'could charge anything' for them. Part of the reason that demand is so high is that in addition to their obvious uses, in many Aboriginal communities around central Australia blankets have an important ceremonial role in 'sorry business'.

Inelastic demand for certain items may make the Aboriginal populations of remote communities vulnerable to price exploitation. This vulnerability is compounded by low levels of literacy, which lead to dependence on the pictorial, brand-label representation of certain goods. McMillan notes that:

Brand loyalty is very high, but this is probably a reflection of literacy levels rather than product preference. If tea comes in a blue packet you don't buy it in a yellow one. The fact that one is Bushells and one Liptons is beside the point (1991: 283).

During interviews a number of store managers detailed experiences of products no longer selling because companies changed their packaging. They also considered that Aboriginal customers were less likely to buy the generic brands of some products because of loyalty to particular brands, an experience supported by McMillan (1991: 283) who states that, '[I]literacy and product recognition by colour limit [ALPA's] ability to market generic house brands'.

McMillan's ALPA experience suggests that the relative inelasticity of demand for some items may mean that Aboriginal people could fall prey to exploitative pricing on some goods (McMillan 1991). Advertising may in some cases reinforce brand loyalty; Wells (1993) expresses the view that people respond quickly to advertising for particular products. Advertising seems particularly evident in Aboriginal consumers' preference for brand name items. During fieldwork it became apparent



that many Aboriginal consumers, like consumers generally, were particularly attracted to 'high status' brand names. Brand-named clothes such as Nike and Adidas are popular amongst young people as well as clothes that depict black stars (like the rap artist Tupac). Amongst older men Levi jeans, RM Williams boots, Moleskin pants and Akubra hats are popular. While these clothes were relatively expensive, given people's generally small incomes, other non-brand clothes were seen as markedly inferior or 'rubbish' clothes.

## Structural impediments to competition

The key question is whether the higher prices charged in community stores are indicative of structural impediments rather than a reflection of market power. The primary reason given in the literature for the failure of markets to operate competitively in remote communities is the role played by structural impediments. For example, the high prices found in remote community stores are often attributed to high transportation costs. Another impediment identified in the literature is the small populations of many isolated Aboriginal communities and associated diseconomies of scale (Legislative Assembly of the Northern Territory 1999).

There are obvious links between high transport costs and a lack of competition in transport services to rural and remote communities. Young argues that:

On the whole store managers have little chance of reducing their freight costs by bargaining with rival firms because few operators serve their region. On the contrary, managers may have to go to some length to persuade carriers to come out to them, and may have to accept terms with little argument (1984: 44).

During fieldwork most store managers indicated that they were dependent on a single transport provider, and this is suggestive of an uncompetitive freight market. By contrast, competition among transport providers clearly has a positive impact on the cost of freight. Recent fieldwork conducted by Altman (2001) suggests that the increase from one to two barge operators to Maningrida, has fostered a higher level of competition and resulted in lower transport costs and cheaper prices in Maningrida's community stores.

Data collected during fieldwork suggests that while transport costs may be an impediment to the efficient operation of community stores it is not particularly significant. A more important impediment may be the governance structures of stores (discussed in greater detail below). The importance of governance, as opposed to transport, to the efficient operation of community stores is evident in data which details the cost structure of community stores handled by Deloitte Touche Tohmatsu (henceforth Deloitte) in Alice Springs. In the years 1995 and 1998 Deloitte provided accountancy services for 11 stores, and by 2000 this number had increased to 15. The information detailed by Deloitte represents a

benchmark, or average, cost structure for all community stores handled by Deloitte in central Australia.

According to Deloitte the average community store operates on a cost structure that is only nominally profitable (see table 1). For example, in 2000, community stores in the Deloitte sample with an average turnover of \$1 038 619 returned a net profit of only 3.5 per cent. In addition, while the expected gross profit for businesses is usually one-third of turnover (or 33 per cent), the community stores in the Deloitte sample recorded a gross profit of between 29.8 per cent (in 1998) and 30.5 per cent (in 1995). The Deloitte accountants attributed this to managers who failed to process or receipt goods that had been taken from the store, unrecorded stock spoilage, and the provision of loans to community store committee members.

Between 1995 and 2000 freight charges accounted for between 2.3 per cent and 3.8 per cent of costs relative to annual turnover. Store managers interviewed during fieldwork estimated the cost of freight at between 2 and 5 per cent of annual turnover. This can be contrasted to the mark-up policy detailed to us by store managers and accountants of community stores, who indicated that most stores mark up the price of goods by between 60 and 100 per cent, depending on the type of good. This policy seems to indicate that the costs of freight are minimal in the overall cost structure of most stores and do not seem to justify the generally high prices that are found.

## Store governance

In the context of this chapter, 'governance' refers to the processes and structures through which communities and organisations are controlled and directed, and necessarily involves questions of power, influence, and accountability. There are two levels at which governance is relevant to this study. The first is the wider structural level, as mediated through statutory regimes and institutions such as the ALRA (see discussion below), and the Aboriginal community government system established under Part V of the *Local Government Act 1993* (NT). The second is at the level of the stores themselves.

Governance has long been identified as an issue of importance in relation to community stores (see for example the Legislative Assembly of the Northern Territory's Inquiry into food prices 1999; George 1996; Young 1988, Young et al. 1993). Community stores are typically operated by incorporated associations with Aboriginal boards (referred to as 'store committees'). A study of remote stores conducted by the Territory Health Services (THS) of the Northern Territory (2000) shows that the majority (66 per cent) of surveyed stores were owned either through community-based associations or through other forms of Aboriginal corporation (see table 2). In addition, community stores are often under Aboriginal management to some degree. Table 2 indicates that of the stores surveyed nearly half (48 per cent) had a store committee.

**Table 1. Average cost structure of remote central Australian Aboriginal community stores 1995, 1998, 2000**

Account	1995		1998		2000	
	Av. (\$)	Av. (%)	Av. (\$)	Av. (%)	Av. (\$)	Av. (%)
Sales	1099427	100.0	1051392	100.0	1038619	100.0
Cost of sales (excluding freight)	764063	69.5	737958	70.2	724785	69.8
Gross profit	335364	30.5	313435	29.8	313835	30.2
<b>Other income</b>						
Interest received	2164	0.2	2680	0.3	2332	0.2
Other income	38056	3.5	6380	0.6	4654	0.4
<b>Expenses</b>						
Admin. fees	964	0.1	266	0.0	140	0.1
Advertising	404	0.0	240	0.0	69	0.0
Audit & accounting	14652	1.3	15394	1.5	15004	1.3
Bad debts	3218	0.3	2956	0.3	6721	0.3
Bank charges	2373	0.2	3727	0.4	3307	0.2
Committee costs	1485	0.1	1659	0.2	1157	0.1
Depreciation	24294	2.2	36272	3.4	35056	2.2
Distributions & donations	38580	3.5	16788	1.6	14686	1.4
Electr., gas & water	13901	1.3	15914	1.5	14147	1.3
Freight	42228	3.8	24165	2.3	42228	3.8
Insurance	8113	0.7	8033	0.8	7403	0.7
Interest	2476	0.2	352	0.0	625	0.2
Legal costs	934	0.1	192	0.0	34	0.1
Manager's expenses	5789	0.5	731	0.1	2315	0.5
Recruitment	375	0.0	-	-	553	0.0
R & M	19014	1.7	12030	1.1	10790	1.7
Security	1031	0.1	556	0.1	342	0.1
Staff amenities	895	0.1	899	0.1	2088	0.1
Stock written off	2535	0.2	2288	0.2	4830	0.2
Superannuation	3683	0.3	6459	0.6	8072	0.3
Telephone, fax	4740	0.4	3494	0.3	4903	0.4
Travel & accomm.	2874	0.3	3662	0.3	4443	0.3
Wages & salaries	131644	12.0	123548	11.8	131491	12.0
Other expenses	12031	1.4	18227	1.5	27176	1.4
<b>Total expenses</b>	337300	30.7	293958	28.0	305343	30.7
<b>Net profit</b>	38284	3.5	28537	2.7	15478	3.5

Source: Data supplied by Deloitte Touche Tohmatsu in 2001.

**Table 2. Ownership and management structure of remote stores in the Northern Territory, 2000**

District	Darwin	Katherine	East Arnhem	Alice Springs	Barkly	Total no. of stores
<b>Ownership</b>						
Community owned	9	10	3	4	2	28
Privately owned/leased	1	10	0	1	6	18
Aboriginal corporation	4	1	3	0	1	9
Not stated				1		1
<b>Management</b>						
Store committee	10	9	4	3	1	27
<b>Total stores surveyed</b>	14	21	6	6	9	56

Source: THS 2000.

While the corporate structure of most community stores seems to indicate that there is a high degree of Aboriginal management, in actuality community stores are often run by non-Aboriginal managers. Young et al. write that while the decisions relating to the five stores operated by ALPA were made, in theory, by an Aboriginal board of directors, in practice this was not the case:

[i]n reality, technical matters such as those concerning stock ordering systems, dealing with the transport services ... developing training curricula and the methods for delivering these, supervising the work of non-Aboriginal store managers and running the financial and accountancy services, are dealt with by the Executive Director and head office staff. Most of these are non-Aboriginal. Thus Aboriginal control in ALPA's day-to-day operations ... is limited (1993: 7).

One of the reasons why Aboriginal community boards may fail to play a direct role in the day-to-day running of stores is that they lack the necessary skills. Young et al. write that the 'Aboriginal/non-Aboriginal split in responsibility for policy and technical matters is unlikely to change until Aboriginal people have been given the opportunity to acquire the necessary technical skills' (1993: 7). Technical skills are important to the legal operation of community stores, and there may be a role for the ACCC in educating store committees about the operation of the TPA (see below).

Most community stores are operated by small corporations whose membership is drawn from the community, and whose boards (typically called 'store committees') are elected from that membership. While sound investment principles would suggest the need for substantial reinvestment of profits in the business, store committees are under considerable pressure to disburse the profits to community

members. Whether or not the community store profits are distributed, and to whom, is often a contentious issue in communities. The store committee's difficulties in balancing cultural obligations with obligations to the wider community become evident. Wells (1993: 156) writes that '[t]he dispersal of store profits is probably one of the more problematical areas of store operation and management'. In particular, this is a problem if large amounts of Aboriginal community members' money goes into the store (as is inevitably the case), and this money is syphoned off to benefit only a few people. Wells writes:

In many cases, the store is the only independent economic enterprise in the community and, because of this independence, can be used as a means to enhance the political status and power of a particular family, clan or individual within the community (1993: 157–8).

Further, Wells adds that in this context:

[i]t is fairly unrealistic to expect that any profit arising from the business will not be utilised by a small number of people (which is then distributed to their families) who feel that they have some 'right' to these resources (1993: 158).

Other examples of the use of profits are community store-funded mini-buses or barges (see Povinelli, 1993) and the use of profits to build a swimming pool or to fund other local infrastructure. Elsewhere, store profits are paid directly to community members as an annual dividend. For example the Yuelamu community store distributed \$500 to every Aboriginal adult member of the store during the summer period, and \$100 to every Aboriginal adult and child member of the Yuelamu community at Christmas.

Dissent over distribution of profits, compounded by the high prices paid for food and goods, has led to some stores looking at alternative pricing models. For example, in 1992 the ALPA board of directors were presented with the option of lowering profits and reducing prices, rather than distributing profits to the various communities (Wells 1993: 170). A similar policy is currently being pursued by the community store in Mutitjulu. The Mutitjulu community owns and operates the highly profitable cultural centre enterprise located at Uluru (Ayers Rock). Recently the Mutitjulu Council has directed that profits from the cultural centre be used to cross-subsidise the price of goods in the community store. However, at present it is unclear how successful this strategy has been, with fieldwork indicating that many prices in the Mutitjulu community store remain higher than those in the supermarket located at the nearby Yulara Resort.

One of the reasons that distribution of profits remains such a contentious issue in remote communities is that there is often little or no accountability by the manager to the store committee. In addition, there is often a lack of transparency in the way the store is operated. For example the store committee and the general community are often ignorant of the cost structure implemented or the profit made by the

store. It may also be that some members of Aboriginal store committees receive money in the form of indefinite 'loans' from the manager. Thus a symbiotic relationship may arise between the store committee and the manager of the store, which benefits the few while resulting in increased prices for the many. Deloitte's data (see table 1) indicate that in 1995 the average amount of money paid by community stores in 'distributions and donations' was \$38 500. However, between 1995 and 2000 there has been a decline in this amount, and it is possible that, with the increased accountability of stores associated with the introduction of the GST, payments in 'distributions and donations' may continue to decline. Another cost related to store committees is 'committee costs' or sitting fees paid to members of the store committee, and 'bad debts'. Deloitte's data indicate that these costs are, however, quite nominal, amounting to an average cost of approximately \$7000 in 2000.

The wages and salaries paid to the store manager and staff are also relevant to a discussion of governance. Under the kind of symbiotic relationship discussed above, store managers who have given a large number of 'loans' to committee members have leverage to ensure that they have generous terms detailed in their contracts. A lack of accountability and transparency in the operation of the store, when combined with a store committee whose members have a poor understanding of non-Aboriginal corporate governance requirements, can lead to confusion over the salaried amount actually paid to staff. For example, in an interview conducted during fieldwork, the chair of a store committee said that he had no idea what the manager of the store was being paid, or even if a contract between the store manager and committee existed. The manager has been working in the store with a large staff of non-Aboriginal people for almost two years, during which time all of the staff must have been paid. That the chair of the committee, as the employer of these staff, is unaware of the amounts they are being paid, is a demonstration of the stark contrast between the supposed legal corporate governance structure of store committees and the way that most operate in reality.

### **Governance and 'culture'**

The difficulty of balancing Aboriginal cultural obligations with the legal obligations imposed under the general Australian legal system is a problem that plagues many store committees. One example, detailed above, is the problems encountered in the distribution of profits from community stores. Recognition of the need to balance Aboriginal cultural and non-Aboriginal legal obligations can be seen, for example, in the 1992 ALPA Annual Report which discusses the need to find an appropriate 'culture' in which ALPA stores can operate:

We have now developed to a stage where it is difficult to decide whether ALPA is operated by 'Balanda' [white] culture or 'Yolngu' culture. There is no doubt in the minds of the directors and staff that ALPA is controlled by Aboriginal people for the benefit of Aboriginal people, and just who those people are. The dilemma comes when it is

necessary to structure ALPA in a form that complies with Balanda law ... One of the responsibilities we have as a board of directors is to work out a 'Business culture' that runs a business with balanda skills where necessary, but for the benefit of Yolngu people at all times ... the struggle to find an authentic ALPA culture continues, and is a constant challenge before us (Rawnsley 1992).

There are a number of reasons for the gulf between Aboriginal cultural and non-Aboriginal understandings as to how stores should operate. First, the lack of accountability and transparency in the operation of many community stores poses a number of difficulties, as discussed above. Second, committees often do not understand their rights and responsibilities under non-Aboriginal law, in particular with respect to the accountability of store managers. Third, it appears that often Aboriginal community members do not understand that they have rights as members of the corporation that operates the store.

In theory, the corporate governance structures under which most community stores operate ensure that members could take action over the ineffectual management of a store. However, in reality, such action is unlikely to occur. Wells writes that most Aboriginal people consider the operation of the ALPA stores to be 'Balanda' business over which they have no rights: 'attempts to make community residents aware that they all, theoretically, control the Association and that ALPA is working for Aboriginal people have not been entirely successful' (1993: 169). One reason for the lack of awareness about members' rights may be that in the past many community stores were owned and controlled by non-Aboriginal people (Wells, 1993: 169). As a result of this historical legacy:

The store has always been seen as a European institution, and ownership groups continue to view it in that way, taking close notice of the ideas of European advisers who work with them (Young 1984: 73).

Given this historical context it is not difficult to understand why many Aboriginal people feel that they lack rights in the control of the store.

Aboriginal members of a community store may not feel entitled to exercise their members' rights because, in terms of customary law, the rights of traditional owners (discussed later) should prevail. Often the latter are considered paramount in the operation of businesses in Aboriginal communities. Wells notes that: 'there is a perception among Aboriginal people that they do not have a right to speak for or control resources, be it a store, land or another enterprise, if they do not have traditional rights/ownership to it' (1993: 169). The governance structures of community stores may take account of these obligations to traditional owners by, for example, paying rent to them or appointing them to the store committee. However, recognition of these traditional owner's rights may further confuse the issue of Aboriginal members' rights.

Finally, it may be that customary law concepts of access to knowledge also influence Aboriginal people's understanding of who has rights in relation to community stores. Rights in Aboriginal society are often conferred on the basis of differential access to knowledge. Personal authority, the authority of elders and the integrity and autonomy of Aboriginal groups often depends on the control of land-related knowledge through restrictions on its dissemination (Bird Rose 1994: 2). Thus in some communities it may be thought that people with control over stores have possession of certain knowledge that is not freely available to all. Wells writes that:

there are particular 'rights' associated with having access to this [store] knowledge, to being employed in the store, to becoming a director ... ultimately it is the ALPA Balanda hierarchy (which includes local store managers) who possess the most knowledge and therefore power. There is a perception among Aboriginal people that Balanda are hanging onto secret stories, that there is a 'behind story' which storeworkers and the community in general do not have access to (1993: 169).

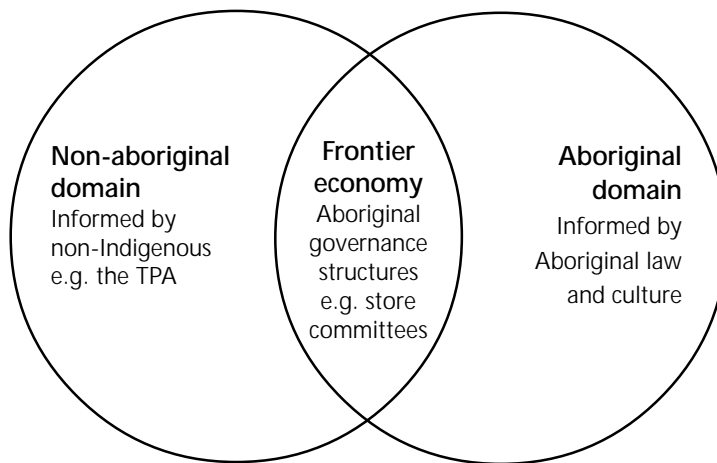
Wells' account is supported by Harper, as quoted by Wells, who states that: 'there is a perception in the community that Yolngu do all the jobs but they don't get the underneath knowledge' (Wells, 1993: 169).

It may be that lack of access to 'store knowledge' causes Yolngu people to feel that they cannot control the store. The framing of 'store knowledge' as 'restricted knowledge', if Wells is correct in her analysis, suggests that Aboriginal members of ALPA neither understand their rights as members nor feel empowered enough to exercise those rights.

The gulf between Aboriginal and non-Aboriginal understandings may be framed in terms of the frontier economy. Located within the frontier economy, Aboriginal governance structures such as store committees and local councils have to balance the obligations imposed upon them by the two domains of which they form the intersection—the Aboriginal and the non-Aboriginal. They must thus meet the demands of their Aboriginal constituency—the community elders, traditional owners and their kin—and also those of the non-Aboriginal bodies to whom they are accountable—auditors and accountants and a variety of statutory agencies. While these obligations are not always conflicting, their import must be recognised before any changes can be made to the way store committees currently operate.



**Fig. 3. Aboriginal governance structures such as store committees**



The argument that competition, in and of itself, can overcome the problems of governance in community stores, fails to take account of the cultural context in which they operate. This is not to deny the importance of introducing or maintaining a degree of competition in remote Aboriginal communities, but TPA provisions on anti-competitive behaviour do not provide the full answer. Some of the more pressing problems of governance in community stores clearly lie outside the purview of the TPA, but unless the governance structures of community stores are improved, competition amongst stores cannot fully enhance consumer welfare. Well-run community stores can have a positive impact on pricing, but poorly managed and governed stores can result in consumers paying higher prices than they would otherwise.

### **The socio-cultural context of stores**

The practices of community stores must thus be interpreted with reference to their cultural context. The continuing strength of Aboriginal social formations, and the values that underpin them such as the importance accorded to kinship, have led to a series of specifically Aboriginal economic practices. These values have far-reaching impacts on the ways in which individual and household expenditure, labour and business are viewed. In the Aboriginal domain the amount of money exchanged for consumer goods or labour is often not dependent on their economic value but rather on a contextual assessment of the social worth of the proposed transaction (see above). Thus Aboriginal communities may evaluate the success of a business less in terms of its commercial viability and more in terms of its ability to generate social capital by, for example, enhancing social and political relationships. Accordingly, resources are invested in enterprises that generate social rather than material capital. Aboriginal business enterprises that are interpreted as

failing in commercial terms, may work to produce wealth in the form of social relationships and alliances (Martin 1995: 7–17).

The practice of demand sharing can also have a number of impacts on the operation of Aboriginal businesses. Pressure is placed on business owners to share not only their earnings but also any assets and equipment, such as cars, that the business might own.

Demand sharing can also have implications for the Aboriginal staff working in businesses such as community stores. Young et al. wrote that:

Aboriginal employees in stores can easily acquire the necessary technical skills but they have to be able to use these in a situation where they are frequently subjected to pressures of a more social nature. The difficulties which Aboriginal check-out operators in Australia face when confronted by relatives with supermarket trolleys filled with goods which they cannot afford to pay for is only one example of such pressures (1993: 8).

A further example of pressure being placed on Aboriginal staff is offered by Ellanna et al.:

Young women are particularly vulnerable in this way, both because of age and gender. Loss of stock in Aboriginal retail stores, where most check-out operators are young women, can be partly attributed to older men taking advantage of their powerful position in the community (1988: 60).

A number of community stores have developed strategies for helping staff to deal with demand-sharing pressure. Wells (1993: 163) reports that ALPA has developed a system, called 'family law', in which at the request of an Aboriginal staff member or manager the staff member is removed from the check-out and given other duties while their family is in the store. In addition, the presence of in-store video cameras which record check-out transactions, such as are found in the Maningrida stores, can stop pressure being placed on staff by family members.

Aboriginal hierarchies of power and authority may at times conflict with the business hierarchy of the store, as when the authority held by elderly family members (and based on traditional knowledge) is used to over-rule the business decisions of younger, more commercially educated, kin (see Young 1988: 184–7). Ellanna et al. also refer to this type of conflict:

[s]ince many of those involved in the financial and management sides of enterprise operation are younger, more highly educated members of the community it follows that their authority may frequently be over-ruled by their older kin, and they may feel obliged to hand on benefits to the detriment of the commercial side of the business (1988: 60).

Conflicts affecting the practice of Aboriginal business can also arise from the relationships between individuals or groups and areas of land. The traditional owners of an area of land often have the responsibility and right to control activity within that area. In recognition of these rights the Aboriginal owners of the land that a business is located on often receive 'royalty' or 'rent' payments. This is an established practice particularly in the Northern Territory (and is discussed in greater detail below).

Relationships to land are also significant in determining the appropriate management structures for businesses, not only in obvious examples such as cattle stations, but also for any enterprise located on Aboriginal land (Young, 1988: 184–7). In practice the result can be the domination of the business by land-owning groups, or the creation of irreconcilable conflicts that result in the replacement of Aboriginal business owners with non-Aboriginal operators (Peterson 1985: 90).

### Land rights legislation

It can be argued that land rights legislation forms one, albeit not determinative, statutory barrier to the operation of fully competitive markets in remote Aboriginal communities. For example, in the Northern Territory many Aboriginal communities are located on Aboriginal land that is inalienable freehold title granted under the ALRA. The following discussion will concentrate on the ALRA, since it is currently the most extensive form of land rights accorded to Aboriginal people in Australia. Under s. 23 of the Act a land council must consult with traditional owners and other affected Aboriginal people before it can approve a grant of interest in Aboriginal land, including for the establishment of a business on Aboriginal land. This can be contrasted with the situation of pastoral station stores (detailed above), in which there seem to be few legislative barriers to the establishment of stores.

Land rights legislation may represent a significant legislative barrier to entry for certain types of business. In accordance with the Act, different legislative requirements must be met, depending on the type of business. If the business involved requires simply entering Aboriginal land, as in the case of the sale of insurance premiums, then a permit to enter Aboriginal land will be required (see s. 70 ALRA). This permit requirement applies to all people visiting Aboriginal communities for work or any other purpose, on a short or long term basis (Central Land Council (CLC) 2001). Permits are provided through regional land councils that seek approval for permits from the community councils. Governance issues are thus significant in decisions about the granting of permits and leases.

There have been cases in the Northern Territory where a community council, becoming dissatisfied with a store manager's performance, has revoked that person's permit and required them to leave Aboriginal land. During fieldwork a number of store managers expressed dissatisfaction at the uncertainty of working in an environment where they could be forced to leave in this way. The provisions of the ALRA may thus work to discourage good quality applicants from accepting

employment in Aboriginal communities (but they may also work to discourage those who would seek to exploit Aboriginal communities).

If the business involved requires a permanent location in a community then this will require that a lease be entered into with traditional owners (in accordance with s. 19, ALRA). Usually this lease will also include a provision for payment of rent to traditional owners whose land the business is located on. For example, Altman (2001) reports that in Maningrida both the Maningrida Progress Association and Bawinanga Aboriginal Corporation stores pay rent to traditional owners via the Northern Land Council, in recognition of their location on Dekurdiji clan lands. Similarly, when the community store in Ntaria was built, the business entered into a contract for a 20-year lease, agreeing to pay rent to traditional owners. Rents paid to traditional owners vary, and are arrived at through bargaining between traditional owners and the store committee. Fieldwork data suggest that amounts paid to traditional owners are often quite nominal in absolute terms, but may be substantial in the light of people's extremely low incomes. For example, in Ntaria the rent paid to all traditional owners amounts to \$4500 per clan group per year. In Maningrida amounts paid to traditional owners, in the form of subsidised rent (traditional owners on CDEP pay only \$4 per fortnight rent, as opposed to other CDEP participants who pay \$20 per fortnight), are more generous but still amount to only \$416 per person per year.

Finally, evidence suggests that traditional owners have rejected applications from a number of prospective businesses. For example, the Central Land Council has indicated that a number of tourism proposals have been rejected by traditional owners on the ground that they were culturally inappropriate (pers. comm. Tony Keyes). The right of traditional owners to reject applications is a potential barrier to competition. In communications with the CLC, it was indicated that traditional owners who were already receiving rental payments from a community store might not be supportive of the idea of another store acting as competition to it (pers. comm. Tony Keyes). It is admittedly not uncommon in many jurisdictions (even cities) to have to obtain necessary permits prior to operating a particular business on certain land. However, in general the process of the granting (or otherwise) of a permit in such jurisdictions is expected to follow reasonably transparent and codified principles, such as those contained in planning laws. This is not the case in remote Aboriginal communities.

Even where community stores are established and have been in operation for an extended period of time, they can face a number of difficulties in relation to rent paid to traditional owners. Wells offers an example of the problems faced by a number of ALPA stores with rental payments. She notes the comments made at the 1984 ALPA annual meeting:

Traditional landowners, by the law, are entitled to some rent, and this must be fixed once and for all, so that everyone is happy with what is happening. We have talked

with NLC [Northern Land Council] on what is a fair rent to pay. This committee must try and work out a plan that is fair to ALPA ... there [are] a number of skills that Aboriginal people have which Balanda do *not* have, and deciding on rent to landowners is one of those skills (Wells 1993: 164).

The meeting resolved that rent would be paid to traditional owners (for the land) and the Council (as owners of the store building), and would be distributed by community councils (Wells, 1993: 164-5). However, problems with payments to traditional owners continued. Wells reports that while ALPA has been honouring its lease agreements since 1985, money often does not reach the traditional owners (1993: 165). She notes that councils have been in the invidious position of not having enough money to provide services and yet being in charge of distributing money to traditional owners. As a consequence payments to traditional owners were often not made. Moreover, in some communities there is a conflict as to whose land the community store is actually on, making distribution of rent to traditional owners even more difficult (1993: 165).

### **Labour costs**

Another factor that may affect the cost structure of businesses in remote communities is the cost of getting qualified labour. These supposedly high labour costs are used to justify high prices. Deloitte's data indicate that the direct wage and salaries costs faced by stores in their sample was approximately 12 per cent of average annual turnover. In addition to stipulated wage costs managers also incur 'additional expenses' and 'travel and accommodation' costs although these are reasonably small relative to average annual turnover. Together these costs, in addition to the costs of wages and salaries, bring the labour costs of an average community store in the Deloitte's sample to 13.2 per cent of average annual turnover in the years 1995, 1998 and 2000 (see table 1). However, data gathered during fieldwork indicate that in some cases wage costs associated with community stores may be much higher, and in one case made up as much as 40 per cent of annual turnover. Such high labour costs may reflect overstaffing or may indicate that some managers of stores with a large degree of market power inflate staffing costs by paying themselves (and often other family members) large salaries, and then either increase prices or return a lower profit to the community.

Part of the labour cost associated with the operation of community stores may be in the hiring of Aboriginal labour. Community stores are an important source of employment opportunities for Aboriginal people located in remote areas. In relation to this point Young et al. write:

The issue of Aboriginal employment in the stores, particularly at those levels demanding higher levels of skill and more responsibility, is of key importance ... Store work ... gives people skills which are transferable to other key areas, such as working in the council or school office, or running another type of business (1993: 8).

It appears that a number of remote stores utilise Aboriginal labour. Table 3 details the employment characteristics of community stores in the Northern Territory in 2000. Of the 56 stores surveyed, only ten reported that they did not employ any Aboriginal staff. Further, the stores in the survey reported that approximately 60 per cent of all staff employed were Aboriginal.

**Table 3. Employment characteristics of remote stores in the Northern Territory, 2000**

District	Darwin	Katherine	East Arnhem	Alice Springs	Barkly	Total no. of stores
Stores with no Aboriginal employees	1	5	1	0	3	10
Aboriginal employees	97	55	67	6	12	237
Total employees	133	106	96	16	46	397
Total stores surveyed	14	21	6	6	9	56

Source: THS 2000.

In spite of the level of Aboriginal employment detailed in table 3, none of the stores surveyed during fieldwork in central Australia appeared to employ Aboriginal workers. During interviews a number of store managers express reservations about using Aboriginal labour. These included that Aboriginal workers did not turn up for work and, in particular, that they were tardy or often absent from shifts or away from work on ceremonial business for long periods of time. In addition it was commented that 'training was an ongoing problem because Aboriginal people were not really interested in working in the store', and that cultural obligations (such as the demand sharing obligations discussed above) also presented problems when hiring Aboriginal workers.

## Key findings

The key findings of this chapter that have implications for ACCC compliance and education strategies are as follows:

- Consumers need to be aware of the TPA and the obligations it imposes on businesses before they can take action if there has been a breach. The fieldwork and literature review indicate that neither Aboriginal consumers nor Aboriginally operated businesses have much understanding of the TPA and how it operates. This suggests that a directed consumer education strategy may be needed. In addition, the ACCC may wish to become more involved in proactive monitoring of TPA breaches that impact upon Aboriginal consumers.

- Another finding of this research has been the diversity of experience of Aboriginal consumers and businesses. This must be taken into account when designing consumer education materials for Aboriginal people.
- Community stores are the main socioeconomic institution in many remote Aboriginal communities. The way in which community stores are operated, and their corresponding pricing policy, have a dramatic impact on the welfare of their host populations. For this reason it is strongly recommended that the code of conduct developed for community stores be supported both through monitoring and through TPA compliance education for store managers.
- Governance is identified as a major issue for enhancing Aboriginal welfare in remote communities. While not an ACCC responsibility, the way stores and Aboriginal communities are governed has clear implications for consumer rights and the general welfare of Aboriginal consumers. For this reason this chapter recommends that the ACCC become involved in developing a TPA-related education program for store committees and other peak Aboriginal governing bodies.
- The ACCC must recognise that there is a gulf between Aboriginal cultural and non-Aboriginal legal understandings and expectations about how stores should operate. Store committees and local councils have to balance the obligations imposed upon them by both the cultural context in which they operate and the general Australian legal system. While these obligations are not always in conflict, they must be recognised before any changes can be made to the way store committees currently operate.
- The cost of freight and labour may not be major impediments to the operation of stores in remote Aboriginal communities. By contrast, it appears that the ALRA may present something of a legislative barrier to the operation of competitive markets in remote Aboriginal communities. However, there are very strong public interest arguments that militate against the erosion of existing land rights legislation.
- Market sharing arrangements may be taking place amongst community stores in remote Aboriginal communities. This seems to indicate the need for TPA compliance education to be directed specifically at store managers.
- Understanding of Aboriginal agency must inform any action taken by the ACCC for breaches of the TPA. It is important to recognise that it is not necessarily through lack of education that Aboriginal consumers are participating in what are perceived by others to be exploitative transactions.

## Implications for ACCC compliance and education strategies

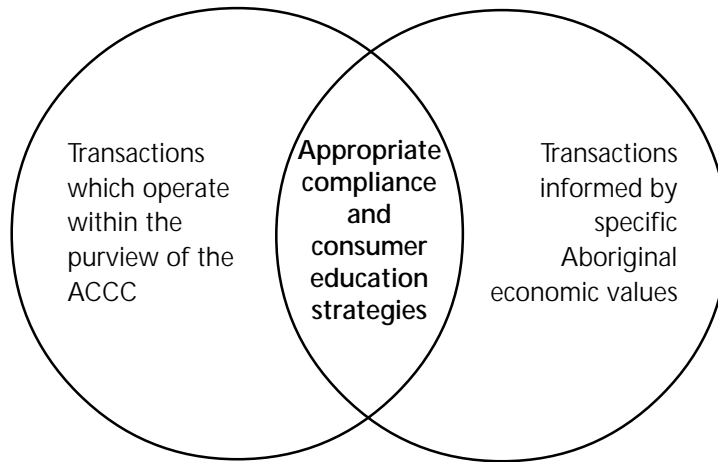
Questions remain as to when the ACCC should take action over breaches of the TPA that impact upon Aboriginal consumers. A suggestive analogy may lie in the operations of the Northern Territory Liquor Licensing Commission in remote areas. There are numerous analyses of Aboriginal alcohol consumption patterns which suggest that some of the underlying factors relate to particular distinctive Aboriginal values and practices (e.g. Brady 1991; d'Abbs et al. 1994; Martin 1998). The Commission has adopted a highly proactive and best-practice program, in consultation with community organisations, in order to reduce harmful drinking practices by a variety of mechanisms. Measures include limiting opening times to avoid periods when people receive their pays or pensions, restricting takeaway sales in various ways, negotiating voluntary agreements with publicans, and instituting local and regional controls over the times and types of alcohol sales. That is, the Commission has recognised the particular vulnerability of Aboriginal people—both drinkers and non-drinkers—to the problems occasioned by excessive alcohol consumption, even from sales practices which are not in technical breach of the relevant statutes.

The analysis in this chapter suggests a number of options that the ACCC may wish to consider so as to further enhance the welfare of Aboriginal people in remote communities. We return now to the concept of the frontier economy, defined as the zone of intersection between the Aboriginal and non-Aboriginal domains (see fig. 1). This chapter has attempted to take account of specific economic practices of both Aboriginal businesses (exemplified by Aboriginal community stores) and Aboriginal consumers. In accordance with the research aims of this project, these economic practices inform the 'special characteristics of Aboriginal communities which ... should be taken into account in any ACCC compliance and education strategies'.

Details of possible breaches of the TPA in remote Aboriginal communities are contained in appendix 2. Evaluation of prospective breaches of the TPA requires a culturally informed understanding of why Aboriginal people may continue to participate in relationships that have the potential to be exploitative. Designing appropriate compliance and consumer education strategies requires an understanding of specific Aboriginal economic values and the way these values may inform market transactions (see fig. 4). Sales practices that might be potentially unconscionable in terms of the TPA, for example, might result in part from Aboriginal agency, or suit particular Aboriginal purposes. The case study detailed in relation to this point was that of a pastoral station store. An important question that arises from this analysis is what the role of the ACCC should be in such circumstances. If particular sales practices suit Aboriginal customers, should they be left as they are?



**Fig. 4. Designing appropriate compliance and consumer education strategies**



## Proactive monitoring and intervention

In a recent article on the sale of alcohol using book-up, a journalist noted that 'it's difficult to get people to make complaints because they are complicit in the whole thing' (Martin 2002). Similarly, the small number of publicised investigations of TPA breaches in remote Aboriginal communities is not indicative of the fact that no TPA breaches are occurring (see appendix 2), but rather the fact that such breaches may go unreported. The Chairman of the ACCC, Professor Allan Fels, himself noted at a recent conference that he is aware that Aboriginal people seldom complain to bodies like the ACCC: 'There are reasons for this related to disadvantage, culture and access' (Fels, 2002: 4). Possible reasons include a lack of awareness of the TPA coupled with the difficulty in accessing a phone in remote communities, and low levels of literacy. To some extent these factors must impede on the operation of the TPA in remote Aboriginal Australia.

In the long term the measure of the success of ACCC programs directed to Indigenous Australians may be the number of complaints received from Indigenous people. However, in the short term, if reliance on complaints and feedback from Aboriginal consumers is unlikely to be effective, then this suggests a need for alternative strategies. In particular it suggests that the ACCC should become more proactive in monitoring and intervening in Aboriginal TPA-related issues. Many remote communities operate in a legislative vacuum, away from the purview of the law. In this context it becomes increasingly important for regulatory agencies to develop ways of monitoring the activities of firms and individuals, particularly with respect to consumer rights issues. Ideally this would involve direct field monitoring. While it is recognised that state and territory fair trading agencies generally deal

with localised consumer matters, fieldwork would suggest that these departments are not funded to proactively monitor matters arising in remote communities. In addition, it appears that a number of Aboriginal consumer issues, such as unconscionable used-car and door-to-door sales practices and letter scams, are of concern in a large number of Aboriginal communities. Such systemic problems seem to indicate that a federal approach, or a federally directed approach, is needed. It may therefore be that direct field monitoring is best performed by agents of the ACCC. There are, however, obvious resource implications from such an option.

## Strategic linkages

One way of avoiding some of the costs of direct monitoring of TPA breaches in remote Aboriginal communities would be to develop strategic linkages with key Aboriginal agencies. This would allow potential breaches to be reported by these agencies rather than via Aboriginal consumers themselves. While some linkages between ATSIC and the ACCC have already been established, it is important that regional linkages are also explored. Regional Aboriginal agencies are best placed to collect information relating to prospective breaches of the TPA in remote Aboriginal communities. Thus the ACCC may wish to pursue linkages with various ATSIC regions as well as other regional Aboriginal agencies such as Land Councils and Aboriginal legal aid organisations. Consumer education strategies should also be directed towards these agencies.

The ACCC may also wish to consider taking a more proactive coordinating role in the activities of the various state and territory fair trading agencies with respect to issues of concern to Aboriginal people. At present there seems to be a large degree of duplication in Aboriginal-related issues and in the materials being developed by the various agencies. In addition, while many agencies have identified some key issues that impact upon Aboriginal consumers, for example the sale of used cars, they have not developed any strategic programs, beyond limited education of Aboriginal consumers, to avoid such problematic transactions occurring in the future. Further, many of the key Aboriginal consumer protection issues identified in the Appendix to this chapter, such as the sale of used cars and door-to-door sales, are issues that have also been identified by a number of state and territory fair trading agencies. It is clear that these issues extend across state borders, indicating that there may be a role for the ACCC in coordinating a federal response to consumer protection measures in these areas.

## Consumer education

Another aspect of the coordinating role that the ACCC may wish to pursue is the development of Aboriginal-specific consumer education material. Much of the material that is currently aimed at Aboriginal people is inaccessible to them, in that

it is written in complex English. None of these materials appear to have been developed in consultation with Aboriginal people or communities. Nor does it appear that any of agencies concerned conduct extensive oral workshops on consumer education in communities.

The key to an understanding of Aboriginal agency is the realisation that it is not only through lack of education that Aboriginal consumers participate in what are perceived by others to be exploitative transactions. The argument made in this chapter would suggest that while general consumer education materials in appropriate formats may have utility, it would be far more effective to provide targeted information to, for example, the committees and boards of community stores, community councils, and other relevant Aboriginal organisations. Peak Aboriginal governing bodies have little or no understanding of how the TPA operates. One way of ameliorating this problem may be to conduct a corporate governance program with these bodies that includes, among other things, a section on the operation of the TPA.

Another group that the ACCC may wish to consider targeting for TPA training are the store managers of community stores. Since most store managers are non-Aboriginal and literate there would probably be no need to develop specific competition and consumer materials. This training could be viewed as important to ensuring compliance with the competition and consumer provisions of the 'store charter' (detailed below). Further, the presence of market-sharing arrangements in community stores also seem to indicate the need for TPA compliance education to be directed at store managers. Materials could be provided to accompany the store charter and the ACCC could take steps to ensure that store managers understood what they were signing on to.

By contrast, the preferred model for the delivery of general TPA competition and consumer education material for Aboriginal groups is orally based communication in the context of workshops, ideally given by an Aboriginal person who travels to the community (Aboriginal Consumer Education Project 1994). Pictorial representations are essential given the high level of Aboriginal illiteracy, and where English is used it should be plain and concise. More generally, the ACCC may also wish to look at employing a radio media outlet (such as Warlpiri Media) to design a consumer education program. Such a program would have the advantage of being a reasonably inexpensive and highly accessible means to raise awareness in remote Aboriginal Australia. Finally, if a telephone line is to be the point of contact for people accessing information from either the ACCC or various state fair trading agencies, as is usually the case, then the number should be a 'freecall' number and staff should be trained to use plain English. The ACCC may also wish to investigate the idea of employing Aboriginal liaison officers to follow up complaints from various communities. This would be in keeping with the idea of proactive monitoring detailed above.

## Governance issues

Governance of stores is identified as a major issue for enhancing Aboriginal welfare in remote communities. While not denying the importance of introducing or maintaining a degree of competition, in and of itself competition cannot fully enhance consumer welfare while governance structures remain as they are.

While it is not a ACCC responsibility, the way stores are governed has clear implications for consumer rights and the general welfare of Aboriginal consumers. Key to the governance problems faced by most community stores is a lack of accountability. One possibility for improving accountability is the development of Memoranda of Understanding (MoUs) between the ACCC, the regulatory authorities of the various statutes under which stores are incorporated and possibly ATSIC, to develop systematic education and monitoring processes for store committees. Thus, the ACCC has had an MoU in place with state and territory fair trading agencies and ASIC for some time. A further such alliance has also been pursued in relation to the development of a 'store charter' (discussed below). These alliances may prove useful in both educating other agencies about the work of the ACCC as well as developing mechanisms to better monitor the operation of community stores.

## Codes of conduct

Development of a code of conduct by which stores operate may be useful in ensuring that a minimum standard of service and perhaps quality of goods is maintained. Such a code of conduct, termed a 'store charter', has recently been drafted by the ACCC in conjunction with a group consisting of the Banking Industry Ombudsman (Colin Neave), the Northern Territory Anti-Discrimination Commissioner (Tom Stodulka), the Northern Territory Department of Industries and Business CEO (John Carroll) and ATSIC regional staff. Fieldwork investigations seem to indicate that a number of stores do not display prices for goods. Thus it is particularly important that the code requires that prices be included either on goods or on the shelves where goods are stored. This is recognised in the store charter which states that, 'stores will clearly display the price of all items available for sale' (ACCC 2002: 4).

The development of a voluntary code of conduct may be ineffective if not accompanied by both monitoring and the education of store managers in TPA compliance. If after a period of time the voluntary code of conduct is deemed ineffective then a mandatory code may be necessary. The dependence of large sections of the community on the services provided by community stores seems to indicate that the provision of these services should be regulated so as to ensure that minimum standards are maintained. This is particularly the case where community stores exercise a large degree of market power such that entry into a voluntary code of conduct does not provide a competitive advantage in a market.

Some evidence suggests that in a situation of market power customers who do complain about, for example, higher prices, are refused service at the store (Srivastava 1998). In the long run, a mandatory code may be the only means of enabling Aboriginal consumers to exercise their consumer rights. However, even a mandatory code would be ineffective if it were unpoliced. For example, despite the existence of detailed health regulations there is still anecdotal evidence to suggest that some community stores continue to sell stock that is unfit for human consumption. Finally, if a mandatory code is established there must be some way of attempting to ensure that it does not further increase the prices paid by consumers at community stores. Without such an assurance it may be that consumer welfare in remote Aboriginal communities will be further eroded.

# chapter 4

## The Indigenous visual arts industry

Jon Altman, Boyd Hunter, Sally Ward  
and Felicity Wright

This chapter focuses on how competition and consumer protection issues might be relevant and apply to a key Indigenous industry. In discussions between the ACCC, ATSIC and CAEPR it was agreed that a focus on the Indigenous visual arts and crafts industry was desirable for a variety of reasons:

- it is more distinctly Indigenous than any other ‘industry’
- it has a high public profile
- it is of social and cultural significance both to Indigenous and other Australians
- it is of economic significance.<sup>1</sup>

However, it should be noted at the outset that, for a variety of reasons, many of the arts organisations that assist in the marketing of Indigenous art, especially art from remote communities, also undertake a variety of non-market activities on behalf of Indigenous producers. These organisations have social as well as economic functions—in many cases they have been established because of market failure.

This chapter begins with a general description of the Indigenous visual arts industry and the nature of competition within it. It then outlines the sections of the TPA that would appear, a priori, to apply to this industry. A discussion follows, based on the available empirical evidence of the likely points of articulation between the TPA and the industry. Both anecdotal and published case material are considered. The chapter ends by considering areas where the ACCC might play a role in ameliorating some of the competition and consumer problems that might arise for this industry. It should be noted that the discussion and analysis presented here is preliminary. It will become apparent that there is very limited statistical information about the industry.

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<sup>1</sup> Throughout this chapter reference to ‘Indigenous visual art’ will refer to Aboriginal and Torres Strait Islander art.

Many of the issues raised are not new and many have been previously documented. There is a substantial body of literature that deals with authenticity, cultural integrity, copyright, pricing, the market and the structure of the industry. Of particular significance is the ATSIAC-sponsored *The Art and Craft Centre Story* (ACCS) (see Wright 1999, 2000a; Wright & Morphy 2000), and the earlier review of the industry, *The Aboriginal Arts and Crafts Industry: Report of the Review Committee* (Altman 1989) (see also Altman & Taylor 1990; Janke 1998; Loveday & Cooke 1983; Mercer 1997; Pascoe 1981).

It became clear early in the research that the lack of general information about Indigenous arts necessitated a focus on some particular aspect of this broad-ranging industry. Consequently, the focus throughout has been on the visual arts, sometimes termed 'arts and crafts' or handicrafts. Boundaries in the arts are difficult to demarcate clearly and one of the issues canvassed was manufactured product that has Indigenous design but may involve non-Indigenous collaboration.

## The policy context

The Indigenous visual arts industry has a relatively short history dating back to the early 1970s. The establishment and growth of the industry has been discussed in some detail elsewhere (Altman 1988; Altman 1989; Altman 2000c; Peterson 1983). One salient issue for this research has been to provide some explanation of the somewhat ambiguous and still unresolved role of government in the establishment and maintenance of the industry.

In the late 1960s and early 1970s there was a recognition in the formulation of policy that Indigenous (then Aboriginal) arts and crafts might provide a means to combine cultural maintenance with economic activity for both Indigenous and national benefit. This was linked to an increase in art and craft production by Indigenous people, and in part to a growth in domestic and inbound tourism and a demand for 'authentic' Indigenous cultural product. Since much of this was produced in extremely remote communities inaccessible to tourists, there was a recognition and acceptance that collecting and marketing entailed such high transportation (transactions) costs that the industry required government assistance. Most remote communities lacked institutional mechanisms for collecting and distributing such a product, so new institutions—community-controlled art centres—were established. At the same time, government sponsored a wholesaling and retailing enterprise, Aboriginal Arts and Crafts Pty Ltd. At its peak, this company had a warehouse in Sydney and retail outlets in Sydney, Perth, Melbourne, Alice Springs and Darwin (see Altman 1989; Peterson 1983).

Initially, much of this industry support was provided by the newly established Australia Council and its Aboriginal Arts Board under the cultural policy umbrella, but increasingly in the 1980s the federal Aboriginal affairs bureaucracy also

subsidised the industry through an unspecified amalgam of cultural and economic policy. In the early 1990s, ATSIC established a special program, the National Arts and Crafts Industry Support Strategy (NACISS) to support the industry, with the Australia Council now taking a secondary role. The government-supported wholesaling and retailing operation was wound down, but NACISS saw a more substantial and consistent support of about 40 community-based art centres (Altman 2000a; Mercer 1997; Wright 1999).

The policy rationale underlying the provision of industry support changed somewhat in the context of a major review of the industry undertaken in 1989 (Altman 1989). This review argued that there were sound economic and cultural reasons for government to support this industry since it had demonstrated rapid growth between the early 1970s and 1988. This view was reinforced by other policy reviews and initiatives around that time, including the Aboriginal Employment Development Policy (Commonwealth of Australia 1987), a review of the Aboriginal Homelands movement (Blanchard 1987) and the Royal Commission into Aboriginal Deaths in Custody (Johnston 1991). The important link between cultural maintenance and economic opportunity was recognised by all these inquiries.

These policy framework issues are important. While the industry has grown very rapidly over the past three decades according to available statistics, very few community-controlled art centres have become financially independent. This is partly because transaction costs remain high despite improvements in communications, and partly because few art centres are of sufficient size to sponsor the costs of collecting and marketing from operating surpluses. Those few art centres that have become financially independent are located adjacent to robust tourist destinations (and markets) such as Alice Springs or Uluru (Ayers Rock). Uncertainty over whether government industry support is cultural or economic (or both) still persists. To the extent that the support is economic in nature, it is unclear whether it is based on the rationale of 'infant industry' or 'market failure' (or both).

The continuing subvention of community-controlled art centres raises important issues that will be discussed further below. These include the relationships between producers and 'their' art centres, and the potential for or desirability of competition within communities where market failure arguments have resulted in government subsidisation of arts collection and marketing.



## The value of the industry

There are no comprehensive data on the Indigenous arts industry as a whole, and the limited statistical data that do exist are too incompatible to provide the basis for an accurate understanding of the market. This is partly because there is no instrument that is appropriately structured to collect such information, but it also reflects the contested definition of Indigenous art. There are debates about whether the ethnicity of the producer or the cultural form of the product is more important to its definition, and about where the boundaries of the category lie within a broad spectrum that has 'fine art' at one extreme and 'tourist art' at the other.

ATSIC's Cultural Industry Strategy (ATSIC 1997) estimated an annual total value of about \$200 million for the industry, but this figure is unsubstantiated. More recently, the Australian Bureau of Statistics (ABS) has estimated commercial sales of Indigenous art at \$36 million (ABS 2001: 3), but this has been challenged on a number of grounds as a probable underestimate (Altman 2001a). The figure is probably somewhere between \$100 million and \$300 million. The more conservative estimate is based on the commercial galleries survey (ABS 2001) and the less conservative estimate on adding to and updating surveys of international visitors and domestic consumers undertaken in 1997 (Hoegh-Guldberg 2002: 5). These figures can be compared with the past estimated scale of the industry (based mainly on the activities of community-controlled art centres). Pascoe (1981) estimated an industry of \$2.5 million in 1979–80 and Altman (1989) made an estimate of \$18.5 million in 1987–88.

The Indigenous visual art industry is much more complex than the statistical data suggest (Altman 1989). Licensing arrangements and collaborative efforts with non-Indigenous artists, factors such as the array of outlets involved, and distinctions between 'fine art' and 'souvenirs', and 'hand-made' and 'manufactured' art, all add to the complexity (Hoegh-Guldberg 2002: 5). It is also clear in statistical data from surveys that individual respondents' subjective notions about categories and definitions can influence the results. This is of particular concern in the international visitor survey data.

## Functional levels

There is a high degree of variability in the number of functional levels in different parts of the industry. Indigenous arts may be retailed in one or more of the following ways: directly from community art centres, directly from advocacy groups (an extremely rare practice), and through retail galleries (both specialist and non-specialist), souvenir shops, gift shops, markets and email sales (Hoegh-Guldberg 2002: 26–7).

There are three main components of the commercial sector (Altman 1989). There are specialist outlets that sell only, or mostly, Indigenous art. There are generalist outlets (including souvenir and gift shops) selling a small amount of Indigenous art amongst other product (Altman 1989: 74). The third component of the industry is focused around the reproduction and licensing of original artworks for value-added products such as cards and clothing (Rockchild & Wright 1997: 2).

Besides community-based art centres there are other wholesalers of hand-made product including commercial galleries and private dealers. An Indigenous arts advocacy organisation, Desert in Alice Springs, operated as a regional wholesaler but is currently insolvent. A private sector operator in Sydney, Rainbow Serpent, operates a wholesale warehouse, but mainly for its wholly owned Sydney airport outlets.

There are several different ways in which commercial galleries interact with their artists. Many just deal in art, either buying it through art centres or wholesalers, or putting on shows of works owned by other galleries or dealers. Others also deal directly with a stable of one or more artists, and may effectively operate as their exclusive agents (with or without contracts). Many of the artists in this situation are from remote areas that are not serviced by art centres, and it is therefore not an issue of 'private dealing' (discussed below). In some ways, such galleries emulate the role of a community-based art centre, not only dealing in the artists' work but also providing or organising ancillary services such as accommodation, meals, transport and health care. This is a function of the way in which Indigenous people perceive the production of art—as holistic. Some galleries have their artists on a retainer, others pay on performance and/or negotiate goods (e.g. cars or food). Such relationships are not always harmonious, but many are functional. The artists in such situations can produce huge quantities of work (far more than in an art centre context) and are heavily promoted by the dealer, who often commands resources unavailable to a community-controlled art centre.

There are few Indigenously owned commercial galleries and specialist outlets, although a number are attached to Indigenously owned cultural centres in key tourist destinations such as Uluru and Kakadu National Parks; and there are Indigenously owned commercial galleries in Darwin and Alice Springs. These galleries do not appear to have market advantage because of Indigenous ownership. At times they appear disadvantaged because of lack of commercial expertise and the absence of a working capital base.

It would be a mistake to suggest that the industry is only comprised of community-controlled art centres, commercial galleries and outlets that market Indigenous art and craft. There are also myriad other players in the industry. These include Indigenous people who operate as self-represented artists, many of whom have art school qualifications; Indigenous artists who are directly represented by agents or commercial galleries; Indigenous artists who are contracted as designers or who are sole traders or joint venturers in arts manufacturing enterprises; Indigenous artists who are shareholders in an arts marketing company (e.g. Papunya Tula

Artists); and itinerant Indigenous people who produce art for sale, often informally and on an occasional basis. At times, a particular Indigenous artist might also sell their art in a number of ways, for example, via a community-controlled art centre as well as to a private dealer or even directly at a market stall. Unfortunately, the overall significance of individual and informal modes of selling art are extremely difficult either to monitor or to quantify. Hence the focus here is on formal institutional arrangements.

## The role of community-controlled art centres

The ATSIAC-sponsored ACCS research project surveyed 39 community art centres in remote Australia. Just over half of the art centres surveyed in ACCS are independently incorporated and the remainder operate under the auspices of another community organisation such as a community council or outstation resource agency (Altman et al. 1998; Wright 2000c: 19). As institutions, these art centres have no analogue in the mainstream arts industry; they have been structured in such a way as to meet the particular needs of Indigenous artists. The remote location of most centres in communities that lack opportunities for education, employment and training, means that they operate in difficult conditions and play an important sociocultural and economic role.

Membership is made up of community artists. Art centres are Indigenously owned and controlled, though perceptions about what this actually means varies between centres. Some see the hiring of Indigenous staff as important, while others attach more importance to Indigenous control of decisionmaking and governance (Wright 2000b: 67). The role of the art centre manager, whether Indigenous or not, is crucially important. Some commercial galleries go so far as to state that the quality of the art work can depend on the quality of the coordinator (Rockchild & Wright 1997: 29).

Art centres are found in a wide variety of social, geographical and cultural settings, and the roles that they play at local and regional levels and in the broader market also vary. Art centres deal in a variety of products, from 'fine art' to 'tourist art'. They undertake a wide variety of tasks. While Mercer (1997: 77) refers to art centres as 'production houses', they are in fact collecting agencies; most also function as wholesalers and retailers. Others operate as regional art advocacy agencies and artists' agents and, at times, in the absence of robust community infrastructure, might also assist with other roles such as being suppliers of transport services for 'return to country' trips and suppliers of food and other goods. Many art centres pursue mixed objectives: 'they are neither entirely cultural nor entirely commercial enterprises; each is a unique and highly variable amalgam of the commercial and cultural' (Wright & Altman 2000: 6). The nature of the services that art centres provide (e.g. as intercultural mediators) means that they are creating value for consumer benefit.

In general terms, 'the primary obstacles to operating art centres as efficient businesses are structural, geographical and cultural: the impact of the demands placed on art centres by producers who, to a greater or lesser extent, own and control them [are significant]' (Rockchild & Wright 1997: 23). As Wright notes:

an artist is not serviced by an art centre solely in terms of their productivity, but as a whole person. An artist also has health, education, nutrition and support needs, which they often bring to the art centre. There is a strong argument for art centres being key contributors to the wellness of a community (2002: 9).

The diverse services provided by art centres (often owing to cost shifting by other agencies), compounded by their remote locations adds to the cost of marketing arts and this in turn lends support to the 'market failure' arguments for subsidisation by ATSIC under NACISS.

## Auction houses

In the mid-1990s leading auction houses began to specialise in Indigenous fine art auctions, usually on an annual basis and initially in conjunction with sales of 'tribal' art. The growth of the secondary Indigenous art market has hastened the recognition of contemporary Indigenous fine art as investment art (Altman & Taylor 2000). There has been some controversy in recent years concerning auction sales of Indigenous art. Prices are increasing, often dramatically, but because there are no *droite de suite* (resale royalty) statutes in Australia the artists receive no proportion of these returns. In secondary sales 'the sale of paintings for tens of thousands of dollars (or more) for which an artist originally was paid perhaps \$100 (or less), are common' (Altman & Hinkson 1999: 17). The entry of auction houses into the Indigenous art market has raised some interesting issues in relation to pricing and consumers. Since auction houses deal in secondary markets, art centres, as dealers in primary markets, would not expect to present work for sale at auctions—although at times they do.

In 1999 and 2000, in the run-up to the Olympics, Deutscher-Menzies held annual specialist Indigenous art auctions. They ceased this practice in 2001. Recently Sotheby's, currently the only auction house to hold specialist auctions in Indigenous art, has emerged as the dominant player in the prestigious auctioning end of the Indigenous art market. The dominance of Sotheby's often gets significant media attention, especially when a new record auction price is attained. This may partially reflect their high profile. At times, however, this issue is conflated with the debate about the absence of *droite de suite* legislation in Australia and the frustration experienced by living artists who have seen their works escalate hugely in price in the secondary market in a relatively short period of time.

## Numbers of artists and geographical regions

Historical information on numbers of Indigenous producers and their geographic distribution suggests that they number in the region of 5000–6000 (Altman 1989), although a much higher estimate of 20 000 has been made in the context of lobbying for a national authenticity label (see below). The recent commercial galleries survey (ABS 2001) enumerated 5681 Indigenous artists represented by galleries, although this figure is qualified by the fact that a small number of artists are represented by more than one gallery (ABS 2001: 7). The figure also reflects only the 'fine art' sector of the industry. In general terms, art and craft production 'is a market activity that Indigenous Australians appear willing to embrace: the nature of production, indirect social engagement, (and) expertise all combine to give them a distinct competitive advantage' (Wilson 2001: 6).

Since most community-based art centres are in regional and remote Australia, the majority of artists are also located in these regions. This distribution accords with market perceptions that more 'traditional' Indigenous people live in the more remote regions and that 'authentic' Indigenous art is produced in these places. There is in fact a growing urban Indigenous arts sector producing both fine and tourist art. Information on distribution is limited, with little or no disaggregation of data by (or within) states and territories. Certain regions are known to be more prolific than others; and several of the more remote regions are known for the particular style of art produced. For example, the Western Desert region in central Australia is known for its dot style of painting in acrylic, while cross-hatching styles using natural ochres and pigments are produced primarily by Arnhem Land artists.

The high mobility of many Indigenous artists adds to the difficulty of ascertaining precise numbers of participant artists. It is also difficult to quantify precisely the number of outlets. The 39 art centres in the ACCS survey represented some 4500 member artists (Wright 2000c: 18). The figure of 31 art centres mentioned in the ABS commercial galleries survey is incorrect (Altman 2001a; Hoegh-Guldberg 2002: 13). At present there appear to be about 70 Indigenous art centres in central Australia and the Top End of Northern Territory, South Australia and Western Australia, representing between \$10 million and \$10.5 million-worth of art-work sales. Of this revenue, some 60 per cent goes to the artists (Hoegh-Guldberg 2002: 11). Art centres represent a much larger number of artists than do artists' agents.

On average each art centre in the 1997–98 period serviced 175 producers, returning each one an estimated \$1049 (Altman 2000a: 84). The ACCS survey emphasises, however, that there is no 'typical' art centre. Some may deal with ten or so artists, while others service over 200; and while most centres operate locally, some are regional in their scope (Wright & Altman 2000: 18).

There is no estimate of the number of outlets that actually market Indigenous art and derivatives or imitations (often side-by-side), but it is likely to be in the hundreds or more Australia-wide. Altman found at least 160 retail outlets and

mainstream galleries selling Indigenous art (Altman 1989: 69), and more recently Hoegh-Guldberg (2002: 11) enumerated 270 retail outlets based on a *Yellow Pages* search (several of which were also listed as art centres). An unpublished report (Rockchild & Wright 1997) within the ACCS project surveyed 87 outlets operating in the commercial sector of the industry. The Indigenous Art Trade Association (discussed below), which was formed in the late 1990s, has a membership of about 50 specialist commercial outlets as well as a number of art centres. There are no firm data on numbers of tourist shops, non-Indigenous galleries or unlicensed individuals selling Indigenous art and craft.

## Product differentiation

Indigenous visual art and crafts are produced in numerous forms. Information from just one region identifies bark painting, carving and sculpture, pottery, fibre objects such as woven bags, instruments, tools, regalia such as armbands and necklaces, painting on paper and prints (Altman 1999a; Hoegh-Guldberg 2002: 26). A general but imprecise distinction is made in the industry between 'fine art' and 'tourist art', analogous in some ways to the distinction made between 'art' and 'craft' in the mainstream industry. 'Tourist' art generally encompasses boomerangs, didgeridoos, small to medium-sized paintings and trinkets, souvenirs, and clothing. However, from the point of view of the producer, the category can also embrace larger and more expensive works. For example, in Cairns, local artists are well aware of the popularity of central desert 'dot style' paintings among tourists and exploit this to their advantage. From the perspective of these artists a relatively large and expensive art work will still be considered 'bread and butter art' for the tourist market if the dotting technique is used (Anderson 2001: 179).

Manufactured and collaboratively produced products form a proportion of the market that is difficult to quantify. Products include T-shirts, fabrics and clothing which can be produced in a variety of ways. 'Blanks' of some sort (e.g. fabric, garments, or didgeridoo tubes) are generally produced by non-Indigenous manufacturers (and often imported from overseas) and subsequently painted, carved or printed upon by Indigenous artists and sold as Indigenous products (Altman 2000b; Hoegh-Guldberg 2002: 25). Such practices raise concerns about product labelling, consumer education and authenticity which are discussed below.

## The degree of vertical integration

There is limited vertical integration in the Indigenous arts industry, although there is some growth in concentration of industry activity. As a general rule community art centres are both wholesalers and retailers. They sell wholesale to commercial galleries and other outlets. Retailing occurs on site, and also via the Internet and other direct selling to consumers.

There is an increase in collaboration between artists and print makers. Two important but very different participants are Northern Editions in Darwin, based at the Northern Territory University, and the Australian Art Print Network in Sydney. In the former there is active collaboration between print makers and artists, either at the artists' communities or else in Northern Editions' Darwin studios. Ownership and sale of prints is negotiated, and print runs are usually split in some proportion between print makers and art centres, with artists being remunerated when sales occur. The Print Network in Sydney markets prints, dealing variably with a number of established print makers or with community art centres.

Some art centres engage in local screen printing: local designers may be employed as print makers and may also earn income from sales of printed T-shirts or fabric. A good example of such an enterprise is Tiwi Designs at Nguui on Bathurst Island. As a general rule, printed T-shirts are wholesaled to commercial outlets.

There is a high demand for cheap, portable art for the tourist market, but there are few artists willing to undertake repetitive work for relatively little return. There are two options open to art centres wanting a slice of this market: they can either produce their own licensed or value-added product or they can enter into licensing agreements with manufacturers. There is a strong argument for art centres to engage in licensing since, if they do not, manufacturers will appropriate or devise 'Indigenous' themes and motifs with no financial returns to centres or artists (Wright 1999: 127). It is also preferable that licensed designs are reproduced on culturally appropriate products and that the artists themselves fully understand the way in which their designs will be used (Wright 1999: 128). About one-third of art centres in the ACCS survey had one or more current licensing agreements.

Desart took an active role in brokering and promoting relationships between manufacturers of licensed product and art centres between 1998 and 2001. The result is a range of licensed souvenir products such as T-shirts, postcards, playing cards, watches and key rings that all carry or are accompanied by information about the artist and Desart documentation of their authenticity. At the time there was a strong push for Desart to be developed as a 'notable' brand. However, with the demise of Desart's commercial activities this may not be pursued.

At Walkatjara Art Centre at Mutitjulu (near Uluru), a market evaluation exercise led to a reclamation of the souvenir market by local artists. As a result of the repositioning of the art centre through market research, local artists began to produce items in new media such as ceramics that they are proud to see in tourist shops. Designs were selected as 'market favourites' and sold under licence to appear on T-shirts, key rings, prints and magnets. In this way, local artists are increasing the potential audience for their work, protecting their intellectual property and ensuring the cultural integrity of souvenirs sold both locally and nationally (Wright 2000a: 181–85).

## How art is sold and distributed

The path from the artist to the consumer can be direct, or it can be complex and indirect. At one end of the spectrum is direct dealing between an artist and the final consumer, as occurs in informal trading in the Todd Street Mall in Alice Springs. In these dealings there is often considerable producer agency (e.g. desire for a quick cash sale) and consumer compliance (e.g. desire for a bargain). At the other end of the spectrum are the government-subsidised art centres that are often both wholesalers and retailers. It is possible for a work of art to be purchased by an art centre, then wholesaled to a commercial gallery that may in turn wholesale the work to an overseas gallery or public art institution.

Art centres were originally established to facilitate the collection and sale of art from remote localities, especially outstations. Art centre staff are invariably intercultural mediators between the artists and the market; however the circumstances of this mediation vary widely. Some artists live at outstations that are extremely remote and seasonally inaccessible; others live in urban centres such as Alice Springs, Darwin or Sydney. Consumers visiting art centres include 'local people, visitors who have come specifically to the art centre, tourists, wholesalers, retailers, collectors, [representatives of collecting] institutions, and academics' (Wright 1999: 99).

## Payment and pricing structures

Art centres use a wide variety of payment methods including up-front payment (the most used method), advance payment, and payment on consignment, as well as several arrangements involving the Community Development Employment Projects scheme (CDEP). The price of a work is usually negotiated between artists and staff though there are many factors involved in deciding what price will appear on an art work. These include the artist's reputation, aesthetic judgments, the cost of production, the financial position of the centre, and the market in which the item will be sold (Wright 2000c: 32).

Tensions over prices paid are not uncommon and there are several factors contributing to artists' (mis)understanding of pricing, such as culturally informed expectations that differ from market valuations and a poor understanding of cumulative mark-up processes. Some art centres, for example Warmun Arts in the east Kimberley, only deal with artists on a consignment (pay-on-sale) basis, which personalises the exchange and is culturally appropriate in this context. Commercial galleries are similarly varied in terms of their purchasing structures, with just over half those surveyed stating that they liked to have the option of purchasing either on consignment or outright as it allowed for greater flexibility (Rockchild & Wright 1997: 10).



Just over half of the art centres in the ACCS survey offer discounts. These may be offered to people making large purchases, to first-time buyers, to local people from the community, to good customers (particularly as a reward for prompt payment) and on sales made in the off season (Wright 1999: 102). The offering of discounts makes the occurrence of collusion unlikely (this point is discussed further below). The majority of art centres do not have a tiered system for pricing that reflects retail and wholesale market prices (Wright 2000c: 32).

There is huge variability in the pricing structures implemented by art centres and a wide range of factors that influences pricing policy. For fine art, the influences include market forces and demand, prices being charged by competitors, scarcity or glut of work by a particular artist, quality, whether the artist is elderly, healthy or deceased, value built into artist's work from previous marketing, and proximity to good markets (Altman 1989; Wright 1999).

There is also a high level of variability in perceptions of what is deemed a fair return to artists. The ACCS survey found that, as a percentage of sale price, payments to artists ranged from 25 per cent to 80 per cent and mark-ups ranged from 20 per cent to 200 per cent depending on the centre and the product (Wright 1999: 97). Centres that give a higher return to artists are generally financially constrained in their ability to conduct marketing and other essential activities (Wright 2000c: 32). Issues of mark-up are less prevalent with tourist art which is generally sold outright and marked up by between 100 and 130 per cent (sometimes inclusive of freight, sometimes not). Mark-up practices in the arts industry receive considerable media attention from time to time. The situation has been further complicated by the introduction of the GST, which leads to a conflation of taxation issues with returns to artists.

A distinction needs to be made between goods that are sold by producers outright and those that are sold on consignment. The number of stages in a distribution chain and a lack of vertical integration can result in the final retail price of a work being several times the return to artist. Artists become aware of this when, for example, they participate in exhibition openings in southern capital cities.

As a general rule, there is a 40 to 50 per cent sales fee for art provided on consignment; that is, if a painting sells for \$100 the return to the artist (or art centre) will be \$50–\$60, paid after the item is sold. However, if an art centre has been an intermediary and has itself marked up by 50 per cent (which is common practice) to cover some of its costs, the artist may only receive \$40 instead of \$60. Outright sales can be problematic, especially in cases where a commercial gallery has held onto a work for several years (or has been unable to sell it) and an artist becomes more popular in the meantime. In such cases, the value of the art held by the gallery increases markedly. This is similar to the process that occurs when an auction house sells a work for many times the original payment to the artist. This is, of course, not unusual in the arts industry generally. However, the value of Indigenous fine art has increased rapidly in a relatively short time.

## The market

Art centres may apply different levels of mark-up to different art forms; for example, bark paintings may attract a higher mark-up than baskets because they require a higher standard of conservation while they are in stock (Maningrida Arts and Culture (MAC) 2002). In some centres there is also cross-subsidisation between popular and less popular artists, introducing distortions that financially penalise the very best artists and benefit the apprentice or mediocre artists (Morphy 1983: 42). If art centre staff are not legitimately empowered by the membership (the artists) to implement such variable mark-up policies; if not, they may be vulnerable to complaints of exploitation or possibly even unconscionable conduct. Even if such a policy is enshrined in the constitution of the centre, it may not accord with artists' perceptions of the fairness of individual transactions. As a general rule, variable mark-up policies are a response to factors of supply and demand. Given that works purchased outright will not necessarily be sold, there is a risk premium for art centres, which needs to be recognised when evaluating mark-up policies.

Art centres face unique risks in that they tend to have a responsibility to market the work of all artists in the community, not just those who are better established (Wilson 2001: 8). Thus the industry is 'production pushed rather than market driven' (Collins Anderson Management 2001: 7). The following comment, made by an art centre staff member, reflects what may be a general problem for the marketing and promotion of Indigenous arts:

We have an excess of generic (but good quality) art by young/unknown artists, or old stock sitting which is desperately hard to move especially given isolation. Supply outstrips demand, and on the other hand we have incredible demand for a handful of artists' top rate work—we can only meet about 20% of the demand for this top level work. We need more staff to market and to spend time with the artists to increase quality (Hoegh-Guldberg 2002: 11).

There is a need to acknowledge the enormous significance of financial pressure as a force driving the production of much Indigenous art, both in the souvenir and fine art realms. Financial pressures stem from poverty and the demands of extended family, higher costs of living in remote communities and, at times, alcohol dependence and substance abuse. For some artists producing art is a means to an end: generating income to sustain addictions—either their own or those of close family members. Artists with substance abuse problems may be at greater risk of unconscionable conduct (see below) on the part of unscrupulous dealers.

Many commercial dealers believe that the commercial sector, especially when operating in southern capital cities, is best positioned to market and locate buyers (Rockchild & Wright 1997: 3, 41). Some in the commercial sector have voiced concern about the general lack of market direction and communication in the

industry, noting in particular that art centres and commercial galleries needed to improve their relationship so as to operate more strategically and collaboratively in the fine arts market. The commercial sector of the industry perceives a need for art centres to further develop their marketing skills. In particular some art centres are thought to be passive and lacking a general understanding of the need for aggressive marketing. However, the marketing abilities of art centres are becoming more sophisticated over time and the direct marketing efforts and enhanced professionalism of art centres may lead, in the long run to an increase in their share of the market, to the detriment of the commercial galleries.

## Protecting Indigenous property rights

Indigenous cultural and intellectual property rights refer to Indigenous peoples' rights to protect their heritage, defined by Janke as 'the intangible and tangible aspects of the whole body of cultural practices, resources and knowledge systems developed, nurtured and refined by Indigenous people' (1998: xvii). Two Commonwealth laws which may help protect Indigenous intellectual property rights are the *Copyright Act 1968* and the *Designs Act 1966*.

### Design and copyright

Design legislation protects both two and three-dimensional designs. Under the Designs Act individuals may apply to register a design which, if the criteria are met, then becomes protected from obvious or fraudulent imitations (Janke 1998: 64). Copyright is a set of particular rights granted to the creator of art (and other) works based on three main criteria: that the work is original, can be reduced to a material form and has an identifiable author. There is a range of possible copyright infringements, from overt illegal unlicensed reproductions to the rather grey area of 'Aboriginal-inspired' designs (Anderson 2002: 8). The appropriation of designs conceived as generically Indigenous, such as dots or cross-hatching, is a particular concern in the tourist market, where such designs are commonly reproduced on manufactured goods such as coffee cups or tea towels (Altman 1989: 288).

In relation to Indigenous art, copyright law has been relatively effective in that several prosecutions have been made involving a breach of the TPA. In the 'carpets case' of 1996 (discussed in 'TPA issues of relevance to the Indigenous arts industry') the traditional imagery of several Indigenous artists (some of whom are now deceased) was reproduced on carpets made in Vietnam and imported into Australia without the artists' permission. Not only did the court find that copyright had been infringed, but part of the award was given in consideration of the damage done due to the culturally inappropriate way in which the reproduction was made (Janke 1998: 63).

Historically, since the 1970s, some artists have been represented by the Aboriginal Artists Agency (Altman 1989). Today, an increasing number of Indigenous artists are represented by Viscopy, (the Visual Arts Copyright Collecting Agency), a non-profit organisation established by the federal government in 1995. Viscopy's role is to protect artists' intellectual property and related contractual rights by enforcing copyright law. It can arrange (on a fee-for-service basis) to seek permission from artists or their agents to reproduce images (Mellor 2001a: 47). Viscopy currently represents about 1,000 Australian artists (Viscopy 2002) a number of whom are Indigenous, including artists from Yirrkala, Balgo and Ramininging (Janke 2001: 82).

There are several mechanisms in place, aside from Viscopy, that are intended to help police cases of copyright infringement. For example, in the 1990s Vivien Johnson and her sociology students at Macquarie University created the 'House of Aboriginality' project. The project includes a website that contains a virtual 'house' filled with unlicensed, Aboriginally 'inspired' product. The site is designed to support Indigenous artists in attempting to curb the activities of the so-called 'imitations industry'. Individuals are encouraged to become 'copyright detectives' to help expose 'fakes' and those who deal in them (Johnson 2002).

The Australian Indigenous Art Trade Association Ltd (AIATA; otherwise referred to as Art Trade) is a national voluntary association for individuals and organisations experienced in the business of Indigenous art. It promotes the ethical trade of Indigenous art and attempts to foster consumer confidence in those dealing in Indigenous art (AIATA 2000). In 2000, Art Trade arrived at a determination about the use of exclusive contracts. It does not encourage the use of such contracts because it sees them as a restraint on trade. Moreover, they do not take into account the artists' day-to-day circumstances, and they are prejudicial because language and cultural barriers disadvantage the artists. However, Art Trade will honour contracts if they are for a maximum of two years. After that they are renegotiated if a local language speaker and/or artist's advocate is present during negotiations, and if there is no legal duress brought to bear on the artist if they breach the contract.

## Authenticity labels

Authenticity labelling and statements of provenance are specific to the Indigenous arts industry and their existence illustrates one of the fundamental differences between buying art or craft produced by mainstream artists and purchasing an item produced by an Indigenous artist. The issue is one of cross-cultural communication. Consumers can approach a non-Indigenous artist (or their heirs) directly if they have any concerns about provenance and their conversation or correspondence will (almost invariably) be in English. Indigenous artists from 'the bush' rarely have access to mainstream media such as newspapers and magazines that may draw their attention to provenance issues, many are illiterate and would have difficulty understanding comments made in English about their art practice and subject matter.

Many consumers are now aware of the need for some form of documentation to verify provenance. Consumers frequently express the view to art centres and galleries that they want to buy genuine product made by Indigenous artists, and want to know that the artist was paid fairly for their work.

After tentative industry support the National Indigenous Arts Advocacy Association (NIAAA) launched the national authenticity label in November 1999. The label is a certified trade mark intended to deter the sales of 'rip off' products and to inform consumers of the ethnicity of producers. The introduction of the label is intended to benefit Indigenous artists and their communities, the broader art community and the tourism industry. Artists and businesses apply to the Label of Authenticity Registry for permission to use the tags and stickers on their products. Once applicants have been approved (the definition of an Aboriginal and Torres Strait Islander person is in line with the Commonwealth Government's three-pronged definition—ancestry, self-definition and community acceptance) they pay an annual fee to register (NIAAA 2001). To date a limited number of artists are participating in the scheme and art centres and regional organisations operate competing authenticity labels.

Few community-based art centres (or their member artists) have registered for NIAAA's label. The reasons include the cost and administrative complexity, the existence of alternative documentation produced by the art centres themselves, and a degree of antipathy on the part of many artists, especially those from remote regions, to the requirement to provide proof of Aboriginality.

Regional authenticity certification, such as the Gooren Mulla label in Cairns has also been developed. Desart launched the Central Australian Indigenous Art certification, which represents a shift in the industry away from the notion of policing the market and a move towards an emphasis on the education of consumers and the promotion of best practice (Congreve 2000). With regard to certification, the objectives of Desart and NIAAA are different. While the NIAAA label focuses on the identity of the producer, Desart aims to ensure that 'the provenance of a work, the materials used and the returns to artists are correctly documented, and that the use of standard and equitable contracts between artists and retailers is encouraged' (Congreve 2000: 87). The national label is intended to be used alongside, rather than in competition with, regional or art centre labels. There has, however, been little, if any market research on the question of how consumers will react to being faced with products bearing two or three different swing tags (Altman 1999b: 6). In Cairns, the majority of artists and business owners believed that regional labelling is more proactive, more effective and easier to monitor than a national label (Anderson 2002: 4).

It is NIAAA's hope that 'as a marketing tool, the Label of Authenticity will greatly increase the participation of Indigenous artists within the Indigenous arts and cultural economy and increase the financial benefits to both artists and communities' (NIAAA 2001). However, the evident lack of support from most rural

and remote artists for the label raises the question of its viability. The argument has been made that financial resources expended on the label might be better spent on establishing and underwriting additional art centres and further developing regional authentication systems (Wilson 2001: 15).

The ACCS survey identified that, for commercial operators, a major advantage in dealing with art centres was certainty about the authenticity or integrity of the product (Rockchild & Wright 1997: 16). Many art centres dealing in fine art have created their own mechanisms for documenting provenance. When art works are sold, documentation is provided to the consumer, with an archival copy being kept by the art centre for future reference. Documentation may include the artist's language group, the cultural 'story' of the artwork, a catalogue number, the media used, a copyright statement and a photograph of the art work. Such documentation confirms and promotes authenticity, as well as providing a means of maintaining cultural records. Warlukurlangu Artists in Yuendumu and Maningrida Arts and Culture provide best practice examples (see Wright 2000a: 101–10).

While NIAAA states that 'the Label of Authenticity should not be confused with defining what is 'modern', 'traditional' or 'real' Aboriginal and Torres Strait Islander culture' (NIAAA 2001), this has been a real concern for artists and perhaps one reason why so few have registered. The NIAAA label has been criticised because it provides no safeguard against the appropriation of region-specific art styles, a question of particular concern to artists from central and northern Australia (Wilson 2001: 8). The concern is that the label conflates the issue of Indigenous authorship with that of authenticity (Altman 2000b: 92). The Indigenous arts industry 'need(s) to ... recognise that the Pan-Aboriginal identity does not extend to a homogenised Indigenous culture' (Wilson 2001: 8). The national label cannot, as it is presently constituted, limit copyright infringement or, in itself, directly stop imitations. All the label can do is provide consumers with information about the ethnicity of the artist (Altman 1999b: 3).

Anecdotal evidence suggests that commercial gallery operators may remove NIAAA's label from art works before exhibiting them. Galleries do not want to display a range of items carrying several pieces of documentation. Nor do they wish to have a mixture of labelled and unlabelled items on display, because it might be confusing to the consumer and might imply that unlabelled products were not authentic. One of the strongest concerns emerging from discussions about the label is the question of whether artists who choose not to register are placed at a disadvantage in the market and potentially treated as suspect by consumers. At the time of the 2000 Olympics, the Customs Department issued information to people entering Australia stating that unless an artwork had the NIAAA label on it, the product was not genuine. At the time, the NIAAA labels had not yet been printed. A new leaflet was subsequently published stating that NIAAA's label was only one of a number of ways of determining authenticity.

The distinction between fine art and mass-produced items is again important in relation to labels of authenticity. Generally speaking, those operating in the fine art arena have been reluctant to register for the national label, believing that their own signature, label or document of authenticity should be enough to verify the authenticity of their work in the national or international arts arena. It is at the cheaper end of the art market that NIAAA's label could be most effective, assuring consumers that items they purchase have been properly licensed (this applies particularly to manufactured product like T-shirts, see Altman 1999b). However, this too is a potentially problematic area because a number of artists directly sign agreements with manufacturers and at times themselves produce highly derivative designs. NIAAA states that 'tourists do not want to fly all the way to Australia ... to purchase art or cultural product that looks of Aboriginal and Torres Strait Islander origin but is not' (NIAAA 2001). However, most 'rip-offs' occur in the cheap tourist art sector, which is particularly price-sensitive (Altman 1999b: 3). It is debatable whether tourists would be willing to pay more for 'authentic' tourist art and feedback from retailers strongly indicates that price is often more important than provenance to souvenir hunters.

## Approaches to consumer and producer education

National and regional advocacy bodies attempt to ensure the cultural integrity of Indigenous art through consumer education strategies. Many art centres produce promotional material such as brochures to inform potential consumers about the role of the centre, profiles of artist members, and the cultural background and types and styles of art they produce. NIAAA, the Association of Northern Kimberley and Arnhem Aboriginal Artists (ANKAAA) and Desert all use the Internet to promote their organisations and artists. Maintaining the integrity of product and style is best achieved closest to the source of the works and individual art centres are active in this realm (Wilson 2001: 7). The Cairns-based Gooren Mulla authenticity label is an attempt on the part of artists and businesses to both educate the public and pressure local outlets not to sell 'fake' art (Anderson 2002: 14).

Maningrida Arts and Culture (MAC) has been encouraged by the success of their website in educating consumers. In 1998 the website was averaging between 7000 and 10 000 hits a week from around the world (Wright 2000a: 223). People interested in purchasing art can access the site to gain a more in-depth understanding of styles of work available, and when requests are made MAC is able to sell works after sending digital images to consumers (Maningrida Arts and Culture 2002: 11–12). Recently, MAC was successful in securing a grant under the Commonwealth Government's OzeCulture: Making IT Work Program to further develop the web as a core element of MAC's marketing operations.

## The nature of competition within the industry

There seems to be a healthy level of competition at all functional levels of the industry, notwithstanding that a few art centres have exclusive access to some geographically defined art styles. There may be an element of 'monopsony' (supply monopoly) in the relationship between a sole agent and a particular artist or set of artists, but the generic art style will have many competitors. Similarly, some outlets have monopolistic commercial concessions.

Some community councils have a (formal or informal) policy of discouraging or preventing other individuals or organisations based in the community from trading in Indigenous art, unless they are also Indigenously owned and controlled community organisations (Wright 1999: 123). In Yuendumu, there were two art centres but their products were aimed at very different markets so as to avoid direct competition (Wright 1999: 124). This issue is addressed in 'Barriers to entry and other competition issues'.

While artists are, in theory, free to sell to whomever they choose, most trading in remote areas is done through art centres (Altman 1990: 7; Wright 1999: 123). Art centre operations may therefore appear to be fertile ground for exclusive dealing. However, there are provisions in the legislation for authorisation of certain conduct in cases where it is of public benefit (discussed later). Regional advocacy organisations such as ANKAAA can apply for collective authorisation.

Wright found that 46 per cent of the art centres surveyed in the ACCS project had to contend with private dealers accessing the artists in their region. A 'private dealer' is understood here as a person who regularly approaches artists with an offer to buy product directly from them. Private dealers rarely, if ever, purchase any work through the art centre. They may be a visitor, or resident in the community; they may be operating a shopfront gallery or may wholesale to other galleries.

A recent issue of *Australian Indigenous Art News* (the Art Trade journal) carried a letter to the editor from Craig Herbert, manager of Marrawuddi Gallery in Jabiru (Northern Territory). He raises concerns about 'poachers' at both Marrawuddi and Injalak Arts (50 kilometers away):

these two art centres ... are suffering ... the problem we both face is that some independent art dealers are using highly unethical behaviour to obtain paintings from artists ... also it is art centres that foster the young upcoming artists that many of you have little interest in, until such time as they start to get a 'name'. It is then that these ... operators move in to claim the benefits and dismiss art centres ... (Herbert 2001: 2).

The higher the value of the art produced, the more likely it is that art centres will have to compete with private dealers. Whereas art centres are responsible to



members, their constitutions and the broader community, private dealers are only responsible to themselves. Private dealers acquiring art from a certain region may be supplying the same market as the region's art centres and thus operating in direct competition to them. For art centres, this may result in difficulties at a number of levels and it may ultimately undermine their commercial viability. Private dealers can take advantage of the promotional activities of art centres (as free-riders); and may purchase works made with materials paid for by art centres (Wright 1999: 125). At times, however, art centres may benefit from the provision of material to 'their' artists by private dealers.

There may be several reasons why artists deal with private dealers including the form of payment, pressure from family for money, substance addiction or a desire to hedge bets. Desire for a quick cash sale is one key reason why artists may sell to private dealers rather than to an art centre, and this can result in the market being flooded by hastily produced, sub-standard work that is then overpriced. About half of the commercial galleries surveyed in the ACCS survey had dealt with private dealers (Rockchild & Wright 1997: 37). Advantages cited (contradicting the statement above) included quality, range of selection and price as well as general convenience (the remoteness of art centres is a barrier for some).

It is vital for art centres to maintain good relations with commercial galleries. Because of their isolated locations, few centres can survive solely on direct retail sales to the public: 'good relationships with commercial outlets provide financial stability to the centres, the potential for growth, and valuable market feedback' (Wright 1999: 120). Some people operating commercial galleries take advantage of the remote location of art centres, to the financial detriment of the centres. Areas of particular concern include slow payment or non-payment of debts, unreasonably high mark-ups on art centre stock, the giving of false or misleading information about product origin or authorship (later discussed in more detail), and delays or refusals to provide information about sales or stock held (Wright 1999: 120–21).

Some commercial galleries actively avoid dealing with art centres that have artists who work for other galleries in the same city. There is a belief that: 'there is not enough room for the multiple dealing of one artist, so not wanting to cause problems for other galleries, some dealers claimed to stay clear of each other's turf' (Rockchild & Wright 1997: 42). This is particularly the case with more popular artists. Rockchild and Wright also found that some commercial outlets believed that art centres that operate to make a profit cause problems because they are competing directly with commercial outlets.

Art centres are increasingly recognising that they operate in a competitive commercial environment (Altman 2000b: 91). There is no evidence that art centres collude in price fixing; the market appears very effective. There are some cases of exclusive dealing with particular commercial galleries, but such decisions are usually based on commercial or moral grounds—for example, experience with

other galleries of slow payment or non-payment or excessive mark-ups or culturally inappropriate display.

## Competition from imports and non-Indigenous sources

Cheap imitations are often available in the tourist market, although the significance of their impact on sales of genuine items is difficult to assess. In some cases the product may never enter Australia, for example when items are manufactured in Asia and then exported to Europe where they may be sold as genuine Indigenous Australian product (Hoegh-Guldberg 2002: 23). At times, Indigenous community art centres like Tobwabba in northern NSW arrange offshore manufacture on a licensed basis to take advantage of cheaper labour costs. The status of the resulting products is ambiguous: they are licensed by an Indigenous organisation, and so are no more classifiable as 'imitations' than any other licensed product, but they are manufactured in similar manner to outright imitations. The extent to which imitations are being passed off as Indigenous product is unclear (personal communication, Susan Congreve, ANKAAA), although Hoegh-Guldberg speculates this to be a 'very significant trade' (Hoegh-Guldberg 2002: 23). In 1994, imported plastic replicas of wooden coolamons made by Mutitjulu people were being sold alongside the authentic product, but at a cheaper price. While the imported goods had stickers on them stating the country of origin, these were easily removed or lost (Janke 1998: 38). The 'carpets case' previously referred to involved carpets with unlicensed Indigenous designs imported from Vietnam (Janke 1998: 39). There have been numerous complaints from Darwin about bamboo didgeridoos made in Indonesia, the identity of the importers remains a mystery. The instruments have no labels stating that they are made by Aboriginal people, but they are painted in derivative Arnhem Land and Central Desert designs (personal communication, Susan Congreve, ANKAAA). This may be a case of misrepresentation by silence; consumers may assume that the 'fakes' are authentic given their design and the lack of labelling stating otherwise.

## TPA issues of relevance to the Indigenous arts industry

The primary task of this project is to identify potential TPA issues in the Indigenous arts industry. In this section we introduce the relevant sections of the TPA and pose some questions that attempt to illuminate some trade practices issues. The most relevant parts of the TPA for the Indigenous arts industry are Part IV (anti-competitive practices), Part IVA (unconscionable conduct) and Part V (fair trading and consumer protection). Note that TPA authorisation of otherwise prohibited conduct (Part VII) can be sought for many breaches of Part IV of the TPA—except those involving a misuse of market power (Part IV, s. 46). Since conduct may be

authorised if it otherwise enhances the welfare of the community, it is entirely possible that many potential transgressions might be allowed in an industry that is firmly embedded in Indigenous culture and hence Indigenous welfare. However, the process of authorisation can be complex, and the cost of \$7500 may dissuade individuals or groups from applying.

Several breaches of the TPA (including exclusive dealing, misleading or deceptive conduct, and false representations) are confined to circumstances where the conduct complained of has been engaged in 'in trade or commerce' (see Miller 2001: 66). An employee works under the direction of an employer (who may be engaged 'in trade or commerce') and may be distanced from the conduct in question. Thus one issue concerns the number of artists who could be considered sole traders (i.e. independent operators or contractors) rather than employees.

The academic debate on the status of CDEP scheme workers may shed some light on the status of Indigenous artists. The operational definition of an employee (as opposed to an independent contractor) for tax purposes turns on who controls either the tools used or general working arrangements. This distinction is important in the Indigenous context because the employment status of CDEP scheme participants is ambiguous in many respects.<sup>2</sup> Many artists in the CDEP scheme have no superannuation coverage, they control the tools used in their work and they receive little direction from management.<sup>3</sup> However, the main debate over the status of CDEP scheme workers focuses on whether they are welfare recipients or employees, not whether they are sole traders or employees (Morphy & Sanders 2001).

Another issue to be considered in determining the nature of the relationship between CDEP scheme and artists, is whether a worker is producing for the tourist market or creating fine art. Arts and craft in the tourist market is more likely to be produced in a manufacturing paradigm with limited opportunities for creative input from workers. Artists producing fine art may work in the CDEP scheme but their unique skills may mean that they have some 'market power' in the relationship with their employers and therefore may have some special arrangements, informal or otherwise, whereby they have some control over their artistic output. In these circumstances, it is arguable whether these artists are employees. It should also be noted that the growing numbers of individual Australian workplace agreements means that the nature of the employee-employer relationship is changing, with the distinction between employees and contractors becoming increasingly blurred.

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<sup>2</sup> For example, the ABS treats CDEP scheme workers as employed for statistical purposes, but other important aspects of an employee/employer relationship are often missing.

<sup>3</sup> Ironically, the Tax Act currently treats CDEP scheme workers as welfare recipients as they are eligible for the beneficiary rebate.

If one was forced to classify CDEP scheme workers, the majority would be considered employees because they are covered by worker's compensation and are subject to potential direction to do specific jobs by management. However even in such circumstances, the TPA may be relevant since it applies to organisations (including CDEP organisations) that trade in art work. Consequently, conduct by employees may bind the organisation if it is done within the employee's actual or apparent scope of authority (s. 84). More generally, a person may be considered to be a secondary offender if they are involved in some way in a contravention of the TPA (e.g. by aiding and abetting, inducing others to contravene, being in any way knowingly concerned, conspiring with others) (s. 75B). For example, if an artist and an organisation were to arrange to create and then sell a forgery of another prominent artist's work, then the TPA may cover the misrepresentations that arise. Obviously, there is a considerable grey area in the relationship between CDEP organisations and artists on CDEP, and the TPA may apply to some artists employed in the scheme.

The TPA may also be relevant for Indigenous artists not associated with the CDEP scheme. Indeed, if the CDEP artists only supply a small part of the market, the TPA may affect many of the remaining Indigenous artists. The following discussion focuses on the TPA issues for such artists, the rest of the Indigenous arts industry and consumers.

## Anti-competitive practices

Part IV of the TPA prohibits practices such as anti-competitive agreements, misuse of market power, exclusive dealing and mergers. Anti-competitive agreements include those that result in, or are intended to result in, a substantial lessening of competition within the market. Note that price fixing agreements are prohibited outright.

Exclusive dealing is an arrangement under which a retailer or wholesaler contracts to purchase from a supplier on the understanding that no other distributor will be appointed or receive supplies in a given area. One form of exclusive dealing prohibited per se is 'third line forcing'. It involves the supply of goods or services on condition that the purchaser acquire goods or services from a particular third party or a refusal to supply because the purchaser will not agree to that condition (s. 47(6)). Otherwise, exclusive dealing is only prohibited if it has the purpose or effect of substantially lessening competition (Part IV, s. 47).

Sellers sometimes engage in price fixing and market sharing to earn 'supra-normal' profits. The TPA is therefore 'suspicious' of resale price maintenance, tie-in contracts, territorial restraints in joint ventures and mergers, horizontal price agreements not linked with market power, and any vertical restraints (i.e. restrictions or conditions imposed on the seller or buyer of an item). The following discussion gives some examples of such practices to illustrate the main TPA issues that may arise in the context of the Indigenous arts industry.

Resale price maintenance occurs when suppliers, manufacturers and wholesalers are prohibited from specifying a minimum price below which goods or services may not be resold or advertised for resale. Resale price maintenance is also known as 'vertical price fixing'. It is targeted by the TPA because it is thought to diminish intra-brand competition (Part IV, ss. 48, 96–100). Examples of resale price maintenance include: inducing resellers not to discount (e.g. by giving special deals to resellers who agree not to discount) and threatening resellers by refusing to continue to supply them.

A supplier may recommend a resale price provided that the document setting out the suggested price makes it clear that it is a recommended price only. Suppliers may specify a maximum price without infringing the resale price maintenance prohibition. Note that, in our assessment, putting an art work on consignment means that it is reasonable to place a reservation price on it. However, if a work is sold outright, then the resale price maintenance provisions would come into force.

Exclusive dealing can reduce intra-brand competition, but can enhance inter-brand competition by preventing free-riders who have not made any investments in the image and reputation of products (as in the case previously discussed, of some private dealers who take advantage of the promotional activities of art centres). To have a meaningful discussion on the effect of exclusive dealing it is necessary to have an operational definition of what constitutes a 'brand' (e.g. individual artists, art centres or 'regional styles'). In the fine art market, Indigenous artists are associated with a 'regional style'. A definition of 'brand' based on regions presupposes an adequate definition of a 'region', and this is not easily achieved. For example, Arnhem Land is often disaggregated into subregions such as Western, Central, and Eastern Arnhem Land (Ryan 1990; Sever 2001).

Arguably, the abstract concept of 'brand' may be defined in relation to the excellence of the individual artist. However, the situation is complicated by the fact that many artists do not individually own the designs they use. The ownership of a design may be vested in a clan or other social grouping

Even if it is possible to arrive at a functional definition of 'brand' for Indigenous fine art, it is important to recognise that the concept has less relevance in the tourist art market where there are few meaningful distinctions between artistic styles. Exclusive dealing and other vertical constraints are unlikely to affect the level of competition in the tourist market where the vast majority of firms are small relative to the overall size of the industry.

Some art centres make a point of recommending that artists get their supplies from particular establishments. Given that there is, to our knowledge, no instance of a refusal to supply retail or wholesale services when artists do not purchase their supplies from such sources, this cannot be considered as third line forcing. Such recommendations should be characterised as art centres informing artists about market conditions.

## Barriers to entry and other competition issues

What can be classified as a barrier to entry is highly contestable. Bain (1956) defines a barrier to entry as anything that allows incumbent firms to earn excessive (or 'supra-normal') profits without threat of entry. Stigler (1968) offers an alternative definition based on cost asymmetries between incumbents and entrants. A barrier to entry is a cost of producing that must be borne by a firm which seeks to enter an industry but is not borne by a firm already in the industry (and implies a distortion in the allocation of resources from the social point of view).

Factors that prevent competitors from entering a particular industry may be innocent, for example an absolute cost advantage on the part of the firm that dominates the market, or deliberate, such as high spending on advertising to make it very expensive for new firms to enter the market and establish themselves. Other entry barriers may result from a firm's technological advantage, often protected by patents, or from a firm's existing access to end users as a result of its control of the distribution network. Barriers to entry reduce the external threat of competition in a market, thereby enabling incumbents to charge higher-than-competitive prices. The concept of barriers to entry is complex and may involve a number of dimensions: existing firms may manufacture a product more cheaply because of economies of scale, may have built up a strong brand loyalty, control the supply of raw material, or own the patent rights to all or part of the production process (Bannock et al. 1998).

Miller (2001: 270) describes barriers to entry as the ultimate determinate of the existence or absence of market power. The case, *ACCC v Boral Ltd* (1999), is used to clarify what is meant by the term in the context of the TPA: barriers to entry exclude economic circumstances which make it unattractive, irrational or impossible for a new entrant to enter the market. The same case is used by Miller to list several matters to be considered in determining whether a barrier to entry existed in the relevant market.<sup>4</sup>

The TPA takes into account the 'height' of barrier to entry when evaluating whether a substantial lessening of competition has occurred (Part IV, ss. 50 and 50A). The process of assessing whether a substantial lessening of competition has occurred is described in detail in Miller (2001: 212–3).

Given the complexity and an element of imprecision, in the standard definition of barrier to entry, it is necessary to focus our discussion on specific issues in the

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<sup>4</sup> The appeal of the **Boral** case to the full Federal Court further 'clarified' the issue by indicating that dynamic market behaviour by incumbent firms to exclude rivals by a variety of uncompetitive practices was as much a barrier to entry as any structural condition in the market.

Indigenous arts industry. Under Bain's definition the authenticity label may provide a barrier to new entrants if it is costly to join the label and consumers have a strong loyalty to the label ('brand'). Clearly however, given their approval for NIAAA's registration of the trademark, the ACCC found that there was no problem of this kind.<sup>5</sup> The role of economies of scale will be introduced briefly in the section that provides an overview of the Indigenous arts industry. Control over the supply of raw materials will be explored in the context of the discussion of the potential for 'exclusive dealing'.

## Unconscionable conduct

Part IVA of the TPA deals with unconscionable conduct both in commercial dealings (ss. 51AA and 51AC) and consumer transactions (ss. 51AA and 51AB). The term unconscionable conduct has come to refer in common law to circumstances that have the following elements (Bruce 1999):

- an unequal relationship—in the sense that one of the parties is under a special disability, for example by virtue of age, infirmity, illiteracy or lack of education
- the stronger party is aware of the disability and then exploits it to their advantage.

The TPA provides a non-exhaustive list of specific considerations and situations which, arguably, may help to define unconscionable conduct without the need to demonstrate a 'special' disability (ss. 51AB and 51AC). This 'statutory unconscionability' goes beyond s. 51AA and appears to cover conduct that would not otherwise be found to be unconscionable within the meaning of the common law.

Obviously, there is a potential for such issues to arise in the context of both consumer transactions as well as between artists and commercial galleries or community-based art centres. The role of asymmetries of bargaining power and information sets (e.g. about the value of the art) are discussed at length below, and illustrated in several anecdotes provided in interviews of current industry participants.

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<sup>5</sup> While NIAAA's arrangements originally held some anti-competitive and consumer effect concerns for the ACCC (such that it considered that s. 45 and/or s. 52 of the Act may apply), the areas of concern were allayed through amendments to the rules governing use of the mark, and through further clarification of the manner in which the arrangements are to be administered (ACCC media release: MR 213/99, 4 November 1999, 'No objection to Indigenous certification trade mark').

## Misleading and deceptive conduct

Part V of the TPA deals with fair trading and contains provisions aimed at protecting consumers and ethical traders. Of particular relevance here are s. 52 (misleading or deceptive conduct), s. 53 (false or misleading representations), and ss. 55 and 55A (misleading the public as to the nature or characteristics of goods and services).

Section 52 of the TPA contains a general prohibition that ‘a corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive’.

Section 53 of the TPA specifically prohibits false claims about:

- the standard, quality, value, grade, composition, style, model or history of goods and services
- the price of goods and services (e.g. that it is less than a competitor’s price)
- the place of origin of the goods.

Other specific prohibitions potentially relevant to the Indigenous arts industry, include:

- misleading the public as to the nature or characteristics of goods and services
- bait advertising (of goods which cannot be supplied in reasonable quantities at that price for a reasonable period)
- accepting payment without intending to supply.

The NIAAA authenticity label may involve certain TPA issues surrounding the term ‘misleading and deceptive conduct’. There is potential for an authentically licensed product to misrepresent the extent to which it is the work of an Indigenous artist if, for example, the artwork was authenticated despite only being partly produced by Indigenous artists or if it was created by Indigenous artists without customary authority to produce the particular style (Fair Trading/Unfair Practices covered in TPA, Part V, ss. 51–65A, see ACCC 2001b).<sup>6</sup> Note that some TPA issues may overlap with offences under the Fraud and the Crimes Acts, and various state/territory fair trading acts.

While the authenticity label could be characterised as a direct attempt to curtail misleading and deceptive conduct on the part of non-Indigenous artists who pose as Indigenous artists, it may also involve other TPA issues (e.g. it may be a barrier to entry if it is expensive or difficult for new Indigenous artists to get authenticated—see the discussion of NIAAA in the previous section).

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<sup>6</sup> Note that the NIAAA documentation does not specify whether an art work was created by Indigenous artists with customary authority to produce the particular style.



## Harassment and coercion

Section 60 of the TPA prohibits the use of physical force, undue harassment by a corporation in relation to the supply of goods or services to a consumer, or in relation to payment by a consumer for goods and services. While this section is of potentially wide application, it has received little judicial scrutiny (Miller 2001: 467). When the TPA was introduced the section was limited to the use of force etc. at a place of residence, but this limitation was removed in 1986. Unlike the common law tort of intimidation, there is no requirement that harassment or coercion involve a threat of an illegal act, only that the conduct is undue.

Miller (2001) claims that the term 'undue' is likely to be given its ordinary dictionary definition of 'unwarranted; excessive; too great'. In the context of the Indigenous arts industry where intercultural transactions are the norm, the term 'undue' may be particularly difficult to define. This ambiguity, in combination with a possibly unequal relationship between the parties involved, may mean that some 'harassment and coercion' may resemble the unconscionable conduct described above. Also, given that s. 60 of the TPA focuses on consumers, artists may not be classified under this section unless they are interpreted by the courts to be consumers. An artist, in effect a producer, may be considered to be a consumer if the transaction with a supplier does not exceed \$40 000.<sup>7</sup>

## How the TPA might articulate with the Indigenous arts industry

In this section, we revisit those parts of the TPA outlined above and discuss, in more detail, how they may be relevant to the Indigenous arts industry.

### Anti-competitive agreements

The possibility of collusion and cartel appears limited in the primary art and craft market. Historically, a number of art centres cooperated in 1987 to boycott a government-funded company, Aboriginal Arts Australia, an action that led to the formation of the peak body ANCAAA (then the Association of Northern and Central Australian Aboriginal Artists, see Altman 1989). This move was

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<sup>7</sup> Note that s.4B of the TPA defines a consumer as someone (including a corporation) who purchases goods (that are both not for resale or use in a production process) where the price of the goods did not exceed \$40 000; or, where that price exceeded the prescribed amount, the goods were of a kind ordinarily acquired for personal, domestic or household use or consumption or the goods consisted of a commercial road vehicle.

unchallenged by the Trade Practices Commission but if it were to occur today it might be challenged by the ACCC. It is, however, unlikely that such action would be possible today, particularly given the lack of unity among representative bodies within the industry and the absence of a government-sponsored company.

There have been anecdotal suggestions of collaboration between commercial galleries and staff of public institutions to promote individual Indigenous artists' careers and increase the value of art works owned or traded by dealers. The mainstream arts industry benchmarks for establishing that an artist has achieved significant career success is to be featured in non-selling exhibitions and included in the collections of public institutions. Some commercial galleries appear to have cultivated relationships with institutional staff in order to secure major exhibitions for artists they represent. Some of the paintings included in retrospective exhibitions are owned by dealers, and additional value is created through their being presented in a major exhibition.

There are situations in which competition may favour some parties to the detriment of others, or where an apparent short-term advantage to a party may contribute to their long-term disadvantage. A case in point is where the activities of private dealers compromise the viability of a community art centre, to the ultimate disadvantage, of the artists who depend on the centre.

An ATSIC subsidised community-controlled art centre, Injalak Arts located at Oenpelli community, western Arnhem Land faces competition from a number of other agents operating in the same community. These competing agents are either non-Indigenous entrepreneurs or else have formed informal business associations with local Aboriginal people. As an incorporated community organisation Injalak is fully accountable for its activities and financial performance, whereas the activities of these other agents are far less transparent. While artists' agency is clearly a factor such competing arrangements, the viability of Injalak Arts is potentially jeopardised by such activities and there is also a risk of unconscionability in relations between artists and such private dealers.

## Exclusive dealing

This section of the TPA may be relevant to the industry in situations where the distribution of a collective body of regional artwork is restricted in some way by the actions of an art centre, commercial outlet or private dealer. There are almost no exclusive relationships between art centres and artists. However, there may be exclusive dealing scenarios with private dealers where artists are trapped into producing art for a certain individual (often away from their communities), though this is more likely a matter of unconscionable conduct (see 'Unconscionable conduct and the nature of Indigenous "disability"').

One of the few known cases in which an artist has entered into exclusive contracts with dealers concerns the Ngukurr artist Ginger Riley who made complaints to Darwin police in relation to art works being sold in his name. The claim relates to 40–50 paintings created in a workshop organised by Fred Torres. Mr Torres was aware that the artist was under an exclusive contract with Beverly Knight of Alcaston House Gallery. Knight alleged that the paintings were fakes and that Riley had been coerced into producing the works (McDonald 2000: 35).

## Resale price maintenance

As indicated, suppliers may specify a maximum price without infringing the resale price maintenance prohibitions. However, the issue in the Indigenous arts industry is rarely about preventing retailers from going below a certain price, and more often about encouraging them to desist from over-inflating the price. Most artists and art centres (and presumably galleries that wholesale and retail), who sell their paintings to dealers recognise that they cannot place restrictions on the retail price of the artworks. On balance, there is no evidence that resale price maintenance is a problem in the sector.

## Barriers to entry

Barriers to entry for commercial galleries and agents can result from restrictions on access to Aboriginal land, although in practice this is a law that can be breached. It is difficult to monitor and is in any case outside the jurisdiction of the ACCC. Community councils can put mechanisms in place which prevent or discourage unauthorised individuals or organisations from trading in art. Such policies, if effectively policed, could potentially be characterised as barriers to entry. However, fewer than half of the centres surveyed in the ACCS were able to operate as monopolies in the local community.

In dealing with ‘poachers’, artists are exercising their freedom to choose with whom they deal. An artist might desire a quick cash transaction, but may also be aware that they may receive lower returns than they would do when dealing with the government-funded community art centre. The activities of private dealers can considerably undermine art centres. ‘Poachers’ target big-name artists, including artists that art centres rely on to subsidise the support of emerging artists. The very existence of ‘poachers’ and independent dealers provides *prima facie* evidence that barriers to entry are not problematic in the overall industry.

A related point is that most of the wholesale and retail outlets are reasonably small relative to the overall size of the industry. While it is possible that there are unexploited economies of scale, especially among art centres, the political,

geographic, and cultural constraints of rationalising operations across several communities means that any such economies are unlikely to be realised in the near future. In any case, the cost savings of larger operations might be offset by the difficulties involved in managing artists from a range of communities, cultures and language groups.

A potential barrier to entry is associated with the label of authenticity although it is far from clear if this has proven an effective barrier. The low take-up rates of NIAAA's label means that it is extremely unlikely that non-participants will be disadvantaged by the label. The only possible exception was the debacle at the time of the Sydney Olympics (previously referred to, that probably lost sales across the whole industry. The failure of the label to garner support amongst artists, their agents, and consumers means that the label will not constitute a barrier to entry for the foreseeable future. In any case, the NIAAA and other authentication labels are all voluntary schemes.

## Unconscionable conduct and the nature of Indigenous 'disability'

In the case of the Indigenous arts industry in remote Australia, artists may be 'disabled' by poor literacy, numeracy, substance abuse, their general lack confidence in cross-cultural interactions, and poor understanding of unfamiliar and relatively abstract concepts such as the 'market'. If art dealers take advantage of these 'disabilities' they may be in breach of the TPA.

There are anecdotes in the industry about artists being invited to work for a dealer and being trapped physically, emotionally or through their lack of knowledge about how to extricate themselves from the situation. Artists appear especially vulnerable when they are in an unfamiliar place, for example in an urban centre.

An artist who was in Sydney working for a dealer rang his relative in central Australia telling the relative he was sick of being in Sydney, and that the dealer would not let him leave and was refusing to arrange for him to return to his community. Since the artist did not have the private means for a flight home, he was now ringing relatives in an attempt to arrange to pay for a flight. The plan was to surreptitiously catch a taxi to the airport to get home.

An artist was visiting Darwin as the guest of a privately organised festival of weaving. She had been promised an airfare and a fee, but had arrived in Darwin to find she was being hosted in the organiser's house and was not going to be paid a fee. She did not have any money and felt trapped, being unable to organise anything independently.

Certain art centres that are otherwise successful, face problems because their key producers have a dependency on alcohol that private dealers are more than willing to exploit by supplying alcohol and/or money to artists and their families as well as arranging transport into town. Such exploitation debases the artists (and often threatens the integrity of their art work), undermines the art centres, and demoralises the art centre staff and other artist members.

A prominent and successful artist, who was promoted internationally by an art centre for more than a decade, was encouraged to work on site for a dealer in an urban centre in 2000. He did this for a period of months before being 'poached' by another dealer. To the first dealer's irritation, the new arrangement was exclusive. It is rumoured that the second dealer provided a number of 'encouragements' to the artist who has multiple substance dependencies.

There are instances where artists have been provided with art materials by private dealers, and have then been coerced to deliver a finished product. The most difficult situations occur when the private dealers have been residing in the community and are employed either in community organisations or in running (non-arts related) businesses. The fact that the dealers are on site means they have easy access to artists and can visit them in their homes or places of work to monitor output or to pressure artists to complete works. The activities of such informal rent-seeking entrepreneurs raises ethical issues about people being granted permits to live in an Indigenous community to undertake a specific task, and then deciding that they will take advantage of their proximity to world-renowned artists to begin dealing in art.

There is anecdotal evidence that when a prominent artist was in physical decline associated with old age, her camp was visited by a range of dealers who had supplied art materials with a view to securing her completed works. The behaviour of some individuals was described as 'coercive'. This was despite all visitors being asked by her relatives and community staff to desist from visiting because of her age and ill health. Her fragility and lack of English language skills, plus her inherent cultural aversion to rudeness, would have made it exceedingly difficult for her to assert her rights to privacy.

## False or misleading representations

Sections 52 and 53 of the TPA may be particularly relevant to the Indigenous arts industry. For example, one of the key problems for art centres in dealing with the commercial sector is the promulgation by the latter of false and misleading information about artists and/or their products (Wright 1999: 21). There are many

unpublished examples of galleries presenting art works with deceptive or misleading information relating to materials, traditional use and the significance of the objects.

In a gallery in Alice Springs a sales assistant was overheard telling customers that an Arnhem Land painting on what appeared to be manufactured 'Arches' paper (imported from France) was created '100% by Aboriginal artists' and was painted on 'paperbark paper' made by the artists themselves. To our knowledge no artists in Arnhem Land make their own paper, although many paint on Eucalyptus bark—an entirely different material to paper. The customers were also informed that the product was painted entirely in ochres when the background was in fact gouache (watercolour). On another occasion the gallery director was heard to tell customers that a patchwork rug made from lambskin was a 'traditional piccaninny blanket'.

There is potential for the manufacturers of an authentically licensed product to misrepresent the extent to which it is the work of an Indigenous artist if, for example, the artwork was only partly produced by Indigenous artists or it was created by Indigenous artists who did not have the customary authority to produce the particular style (Fair Trading/Unfair Practices covered in TPA, Part V, ss. 51–65A, see ACCC 2001b).

One case relating to potential misleading representation (ss. 52 and 53) concerns the production of didgeridoos in South Australia. Indigenous people (supposedly) harvest raw woods in the Northern Territory which are then trucked to Adelaide, where non-Aborigines strip the 'blanks' and fit mouth pieces. The didgeridoos are then distributed to Indigenous painters (from all over Australia) living in Adelaide who are paid a flat fee per item. The instruments are then marketed as 'Aboriginal made', which to a limited degree they are (Janke 1998: 39).

The carpets case previously discussed involved a breach of the TPA as well as copyright law. Justice Von Doussa found that the label attached to the carpets incorrectly stated that the carpets were produced with permission of the artists and that royalties were being paid to the artists. He made the judgment that misleading consumers in this way was an infringement of ss. 52 and 53 of the TPA (Janke 1998: 94).

In relation to false claims about authorship it is important to note the complex nature of collaborations between Indigenous artists. The issue of authorship has been problematic for dealers, art centres and the market because Indigenous artists and their communities have a different concept of 'ownership' of designs to those

held by the encapsulating culture. Rights to paint certain images and 'dreamings' belong to a group rather than an individual. Indigenous artists, unlike most mainstream artists, work collaboratively on arts projects, and this practice has continued with the introduction of paintings created for the market. The participation in collaborations is determined by rights and responsibilities under Indigenous law and is rarely random. The role of each participant in a collaborative work varies depending upon rights and responsibilities of the participating individuals. It may involve significant input to the content of the painting or may be 'decorative'.

In the case of Kathleen Petyarre and her former husband Ray Beamish, and the painting that won the Telstra National Aboriginal and Torres Strait Islander Art Award in 1996, it was strongly argued by a number of people that it was not necessary to acknowledge the collaboration because the subject matter of the painting belonged to Petyarre. This was vindicated by a panel convened to investigate the affair. The Chairman of the Board of the Museums and Art Galleries of the Northern Territory 'went on to note that while it was not in dispute that Ray Beamish has assisted with some of the dotting, ultimately this was not material to the decision in terms of what constituted authorship of the painting' (Nicholls & North 2001: 27).

There is a motivation for art centres and galleries to promote the work of individual artists, rather than collaborations. The fine art consumer generally has the expectation that artworks will hold or increase their value as investments. The long-standing western practice has been for the works of individual artists to be deemed collectable and for their works to steadily appreciate in value. Dealers have articulated the view that the investment art market is not receptive to collaborative works, even if they are culturally appropriate in the Indigenous domain. The industry concern with multiple authorship has not been satisfactorily resolved and no industry-wide protocol has been developed to date. A Melbourne based art dealer and artist was taken to court by members of Injalak Art Centre in 1994. An Adelaide dealer had been approached by the first dealer who was selling paintings by specific Kunwinjku artists as well as works from Central Australia. The Adelaide dealer forwarded photographs of the paintings to the art centre for verification, whereupon the artists acknowledged authorship of some works, but rejected others. The disputed paintings were of poor quality, derivative of the Western Arnhem Land style, and the subject matter was not necessarily owned by the artists. The paintings that the artists acknowledged authorship for were created during a residency undertaken at the Melbourne dealer's home organised directly with the artists some months earlier. According to the artists, they all painted in the dealer's studio and produced a number of paintings on Arches paper during

the residency. At the same time they gave the dealer lessons in their traditional painting style as an expression of their respect and gratitude to him as host. They were paid both in cash and in-kind for the paintings they produced. The dealer did some painting under their supervision but did not indicate his intention to sell his artwork, neither did he indicate his intention to continue painting in the Kunwinjku style after their departure, nor his intention to attribute their authorship to his own derivative paintings.

An employee of a Cairns artefact shop has been caught on video claiming genuine Indigenous didgeridoos are inferior to fake Indonesian imports. The local Indigenous community is calling for government action over claims that cheap imported didgeridoos are flooding the million-dollar artefact market while Indigenous people are being edged out by dealers. They say that workers in Indonesia are paid at cheap rates to make the didgeridoos and Aboriginal artists are being ripped off, being paid \$50–\$60 for genuine didgeridoos which are then retailed for up to \$800. ATSIC Cairns and District chairman Terry O'Shane said that federal legislation was needed to protect Aboriginal artwork. 'Aboriginal authenticity must be protected by law because our people are being hoodwinked and this reflects badly on the integrity of Australia in terms of culture,' he said. A spokesman for Fair Trading Minister Merri Rose said an artefact's country of origin must not be misrepresented. Fines of \$40 000 for individuals and \$202 000 for corporations could be implemented (Reid 2002).

## Conclusions and implications for practice

The research reported here has focused on the Indigenous arts industry as a case study of how competition and consumer protection issues might apply to an industry dominated by Indigenous Australians. We found that this industry is extraordinarily complex, especially given its relatively small overall size. This is partly because a large proportion of producers (artists) reside in remote localities and in circumstances that are culturally very different from the mainstream. Consequently, there is often a considerable physical and cultural distance between producers and consumers, with all the complications that such intercultural exchange entails. The sheer diversity of the industry, in both production and marketing, means that it would be extremely difficult to rigorously regulate, even in situations where such regulation might be warranted.

The main policy response to this situation by government over the last 30 years has been the gradual establishment of a network of community-controlled art centres as subsidised intercultural mediating institutions—as the collectors and initial marketers of Indigenous art. This policy instrument has most recently been used by



ATSIC since the early 1990s as the major plank of its NACISS (Mercer 1997). These established organisations operate most effectively as monopolies, primarily because of market failure associated with remoteness, small size and dispersed artist populations that are expensive to service. Paradoxically, it may be in the artists' best interests to be serviced by these monopolistic organisations. This is partly because of the poor track record and performance of many private dealers, with much of the anecdotal evidence indicating conduct that might border on the unconscionable. Counter-intuitively, perhaps, it could be argued that competition per se may not assist the industry, at least as it is currently structured.

It is entirely possible that the ACCC may receive complaints from consumers, producers or dealers within the Indigenous arts industry. It is our hope that this chapter will assist the ACCC in understanding the complex nature of the industry and particularly the nuances that need to be considered when looking at potential articulation points between the industry and the TPA.

The approach taken in this research has been diverse: it has used the existing literature, the research and experiences of the authors and an theoretical economics framework that meshes with the intent of the TPA. This approach has shortcomings. In particular, on the collection and marketing side—the supply side—there is too much emphasis on formal institutions primarily because these are most visible, both statistically and in the literature. To some extent, our findings replicate many already historically reported in the literature (see e.g. Altman 1989) and in some recently completed projects (see Janke 1998; Mellor 2001; Wright 1999; Wright & Morphy 2000). Where this research primarily differs from others is in its use of a trade practices legislation lens to focus on the Indigenous arts industry.

The trade practices issues that we have highlighted are, in order of their estimated significance to the Indigenous arts industry, unconscionable conduct and false or misleading representations.

Unconscionable conduct can occur in situations where private dealers are in a stronger bargaining position than the Indigenous producer of art. The very fact that such intrusion and conduct occurs, even in situations where there are established community-controlled art centres, suggests that it is an actual and potentially greater problem in more informal settings where arts collecting institutions are absent. This issue has been evident since the establishment of the modern Indigenous arts industry in the early 1970s. It should be noted though that because artists are engaged in an exchange relationship they are rarely passive parties in the transaction, although they may experience special disability especially in those situations where they might experience extreme financial deprivation or alcohol or drug dependence. In such situations they are especially vulnerable. There is clearly a need for unconscionable conduct to be reduced or eliminated, although it is problematic when individual artists make informed choices to use dealers over established channels.

False or misleading information can emanate from artists, art centres, retail outlets or commercial dealers. It is important that consumers are confident, when they make a purchase in either the fine or the tourist market, that they are getting product made by Indigenous artists and, in the case of fine art, by a prominent artist. The issues of authorship and authenticity can be distinguished. While there are many situations where collective authorship of an artwork is culturally appropriate, it is important that this is clearly documented to ensure that the consumer is accurately informed. It is especially important that the authorship is correctly recorded for works destined for the expanding fine art 'investment' market, where knowledgeable investors are prepared to pay a premium for the work of recognised artists. The issue of authenticity is also complex. It encompasses appropriation of certain geographically based styles, collaboration between Indigenous and non-Indigenous artists, and competition from imported and locally produced unlicensed 'fakes'. All these issues exacerbate the potential vulnerability of the Indigenous arts industry which, in many situations, represents the main private sector option for economic development for Indigenous communities.

We turn now to the question of what action the ACCC might contemplate in respect to the trade practices issues identified.

There are no ready solutions to the problem of unconscionable conduct except, perhaps, education of artists that encourages strong allegiance to accountable and well-governed arts organisations. This in turn suggests that a broadening of the network of community-controlled art centres might prove beneficial, but this is a policy response that is clearly outside the ACCC's ambit. It is also important to emphasise that the governance issue here extends well beyond community-controlled art centres—there may be systemic and deeply ingrained community governance problems that make artists vulnerable to private dealers, some of whom may be employed within communities. Nevertheless, the ACCC may wish to keep a watching brief for interactions that might be classified as unconscionable conduct, or as coercion or harassment under the TPA.

There are labelling statutes in force (e.g. through customs), particularly for imported goods which must state country of origin. In recent years, documentation strategies undertaken by many art centres and reputable commercial galleries have improved markedly, but there is still competition from non-Indigenous products, particularly in the tourist art sector. Fortunately, national and regional initiatives to document art thoroughly and appropriately are contributing to enhancing consumer confidence and have the potential to limit opportunities for unauthorised fine art or imitation tourist art. There is a potential role for the ACCC here in supporting art centre, regional and national initiatives especially in the problematic tourist sector of the industry.

In April 2002 the ACCC and ATSIC signed an MoU which provides a framework for cooperation between the agencies (ACCC 2002a). The ACCC, in consultation

with ATSIC could play a constructive and proactive competition and consumer role by assisting in the provision of producer, art centre, dealer, and consumer information in particular in relation to issues of authorship, authenticity, copyright, pricing policies and unconscionable conduct. A simplified guide or charter for producers and consumers of Indigenous art might prove very useful in generating producer and consumer benefit and industry growth. In April 2002 the ACCC released *Storecharter—a service charter for stores serving remote and Indigenous communities* (ACCC 2002b). A similar 'Arts charter—a service charter for the Indigenous arts industry' might prove appropriate, especially to facilitate **both** producer and consumer information, so as to reduce the risk of unconscionable conduct and false or misleading conduct. The arts charter could be appropriately developed with national arts advocacy or commercial galleries associations or, with an eye to devolution, with regional arts advocacy organisations like ANKAAA or Desart that more directly represent the community-controlled art centre constituency.

# chapter 5 Conclusion

Jon Altman, Boyd Hunter and Sally Ward

The research reported here has examined competition and consumer issues for Indigenous Australians in three ways:

- by a survey of the literature, both in Australia and overseas
- by examining TPA compliance and consumer protection issues in remote Indigenous communities
- by looking at a specific Indigenous industry, the visual arts industry, as a case study of industry-related competition and consumer issues.

This research has not been undertaken in complete isolation. The ACCC has sponsored this work at CAEPR and the Australian Securities and Investments Commission (ASIC) had commissioned Gordon Renouf to undertake a project on 'book-up' (or informal credit arrangements) with a final report published in March 2002 (see ASIC 2002); as well as to conduct some work on consumer education.

The research in this volume was undertaken by a number of researchers, from various disciplines, on an agreed set of TPA-related issues as they impact on Indigenous Australians. In this brief conclusion, an attempt is made to draw together some common threads across that body of research. This conclusion supplements more specific observations and recommendations made at the end of chapters 2–4.

We begin with two important caveats. First, while the literature search was unlimited in its scope, seeking to canvass competition and consumer issues both in Australia and in other fourth-world contexts, within time and resource constraints, most research (in Australia and in North America) appears to be geographically biased to remote and rural regions. This bias probably reflects the reality that the socioeconomic status of Indigenous peoples are lower in such jurisdictions, but it is certainly not intended to imply that the majority of Indigenous Australians residing in urban and metropolitan situations are immune from competition and consumer problems.

Second, the limitations of this report must be recognised—it is the outcome of a 12-month project and it has not sought to canvass all issues. Rather it has interrogated the literature, and then undertaken two specific projects focused primarily on community stores at remote Indigenous communities and the

Indigenous visual arts industry. Paradoxically, this focus may have continued to reinforce the geographic bias of the existing literature towards remote communities.

The literature review assisted us to frame our overarching conceptual framework of the 'frontier economy'. This concept tacitly informs much of this report with the conflict between the various cultural domains being a recurring and dominant theme. Some key findings were as follows:

First, the relative poverty and isolation of Indigenous people in remote regions combines to exacerbate their economic marginality—there may be structural and locational reasons why people are poorer and why goods and services might be more expensive. However, these people are twice as vulnerable because they are often not aware of their rights, especially as consumers.

Second, geographic remoteness also exacerbates a lack of access to existing statutory mechanisms and regulatory agencies, like the ACCC and state and territory fair trading agencies, that are available to more urbanised populations. As with so many other services, access, equity, and enforcement remain a problem for people who reside outside the immediate umbrella of mainstream institutions.

Third, there is a range of broader policy tensions. Some again relating to remoteness, some to other structural factors, like the small size of the nearly 1200 discrete Indigenous communities (almost all with a population of less than 1000), and some to the particularities of the business access arrangements on Aboriginal-owned land. For example, while the broad policy emphasis on enhancing competition for greater consumer benefit is largely uncontested in Australian public policy today, there is a distinct lack of 'competition' in many remote Indigenous communities, largely owing to commercial realities. In situations of market failure, community-based economic enterprises may partially be supported by government subsidy, but these institutions often have a not-for-profit corporate structure. Alternatively, such community-based organisations may evolve into complex multi-functional institutions that mix commercial and social objectives with an attenuated cost to efficiency and consumer benefit. Such organisations are also likely to have governance structures that often reflect community power relationships based on customary law rather than commercial exigencies. The external articulations of such community-based institutions with government and regulatory agencies are often extremely complex.

While the literature review was somewhat dated, this is in part a reflection of the rapid change in the public policy environment, especially that pertaining to the evolving regulatory framework embodied in the TPA. This issue was anticipated, to some extent, by the innovation inherent in this project's focus. The main contribution of the literature search was its identification that the existing literature fails to pay sufficient attention to the distinct cultural practices that inform choices made by Indigenous people as consumers.

The literature's relative neglect of Indigenous cultural practice greatly influenced the use of the conceptual framework of the 'frontier economy' that was initially developed to analyse the relationship between community stores and Indigenous consumers. This framework, outlined in some detail in chapter 3, seeks to focus on the intercultural intersection between Indigenous and non-Indigenous domains, the conceptual zone where the market articulates with extant Indigenous economic values and practices (in all their diversity). A benefit of such a framework is that it is flexible, especially in its recognition that this articulation varies enormously in different community or regional circumstances and contexts. In this project, this framework, which would benefit from further academic development, has been instrumental in facilitating insights into institutions, industries and actions that are in this intersectional (or intercultural) zone:

- institutions like community stores or art centres, that are simultaneously Indigenous-owned, and which may face problems in creating a governance structure that meets the sometimes competing Indigenous and non-Indigenous conceptions of how businesses should operate
- institutions like community stores and art centres, that are located in this zone because they simultaneously pursue objectives, in varying degrees, in the commercial and social and cultural domains
- industries like Indigenous visual arts that require intercultural mediation at the intersection between the Indigenous domain, where art is produced, and the (largely non-Indigenous) market where it is sold.

Understandings of Indigenous agency must inform any action taken by the ACCC for breaches of the TPA by businesses operating in the intercultural domain. Key to an understanding of Indigenous agency is the notion that it is not necessarily through any lack of education that Indigenous consumers are participating in what are perceived by others to be exploitative transactions.

With this framework in mind, the community stores case study includes the following observations:

- many Indigenous consumers, governing bodies and businesses lack an awareness of TPA issues, although experience has been extremely diverse
- the concentration of economic power in a few key institutions in remote Indigenous communities, like community stores, results in these institutions undertaking a multiplicity of functions, some social and some economic;
- governance of these key institutions can be problematic—there is a tension between a range of customary rights in the Indigenous domain and statutory and regulatory frameworks that exist in the non-Indigenous domain
- it is likely that in remote situations, small community populations and diseconomies of small scale make competition policy intrinsically difficult

- market-sharing arrangements may be taking place among community stores in remote Indigenous communities.

A brief summary of the Indigenous visual arts industry case reported in chapter 4 includes the following observations:

- This industry is diverse and complex: the nature of products is highly variable, consumers are located in both fine art and tourist art markets and there are culturally-based concerns about ownership of intellectual property, and potential copyright and moral rights infringements.
- The complexity of the industry and an element of market failure has resulted in a high degree of government involvement in the industry, mainly via ATSIC's support of a network of community-controlled art centres that facilitate the sale of art produced by Indigenous artists to mainly non-Indigenous consumers.
- The range of government support of the industry has historically extended to support for several prominent 'test case' legal actions that prosecuted copyright infringements.
- There is some concern that false and misleading information that can emanate from a number of industry players—artists, art centres, retail outlets, commercial dealers—could have negative impacts on this important Indigenous industry.
- The issues of authorship and authenticity are the main sources of such concern. It is important that information about authorship or co-authorship is accurate so that buyers can be confident about this, especially when purchasing expensive Indigenous fine art. It is also important that authenticity of art is assured and that collaborations between Indigenous and non-Indigenous producers, regional styles, licensed and unlicensed manufactured items and imported fakes or licensed product are all clearly distinguished.
- Unconscionable conduct is evident in situations where dealers have a stronger bargaining position than producers and such practice is most evident when formal collecting institutions, like community-controlled art centres, are absent.
- Indigenous agency is again evident in choices that some artists make to use private dealers over established (and government-sponsored) channels. In some situations, even if they are active rather than passive parties in the transaction, Indigenous artists may face special disabilities and be especially vulnerable. In other situations such choice may be fully informed and based on established social relations, even if the financial return is lower than via established channels.

Therefore, in spite of the differing circumstances facing community stores and the Indigenous arts industry, the analysis of the respective case studies come to similar

conclusions. Some apparent instances of unconscionable conduct can be reduced to unrecognised cultural difference. Similarly, the issue of false or misleading representations is particularly complex when dealing with categories that do not conform with established precedents. One possible tension between the case studies in this report is that the community stores chapter emphasises the need to direct education strategies towards Indigenous organisations, whereas the arts industry chapter is not as focused in its prescription. The more relaxed position of the latter is a recognition that Indigenous artists are, in some sense, engaging in the non-Indigenous market by producing art works for it. However, this in no way denies that education strategies for artists may have to be mediated through an organisation that is in a position to move between the respective cultural domains.

We end this report by making some practical suggestions for the ACCC to consider in seeking to provide equitable, but appropriate, access to its regulatory and educative services and strategies. In making these suggestions, we are acutely conscious that some of the issues that have been highlighted in this report are systemic and beyond the immediate functional responsibilities of the ACCC. Our recommendations include the following:

1. There is evidence that Indigenous consumers and producers have a limited understanding of the workings of the TPA and of their rights. Clearly there is a need for education strategies that are targeted effectively at some of the specific issues that have been raised in this report.
2. Because so many of the TPA issues that we identify appear most prevalent in remote communities, it is important that the ACCC forge strategic links with existing Indigenous organisations that have an administrative presence in these communities. Such organisations will range from those with regional jurisdictions like land councils and ATSIC, to industry associations like ANKAAA and Desart, to community-based institutions like stores, community councils and art centres. It is recommended that consumer and producer education strategies are targeted at these institutions, rather than at individuals, in the first instance.
3. The MoU between the ACCC and ATSIC signed in April 2002 obviously provides an important framework for building strategic alliances. As alluded to in the foreword, such alliances should be viewed as providing a conduit for two-way exchange of ideas and information about their respective domains and areas of expertise.
4. A similar proactive effort could be considered with state and territory fair trading agencies, although it is likely that the range of issues that need to be addressed will vary between States and by section-of-state.
5. There is clearly a need to develop effective and creative modes for the delivery of consumer education and producer information. Options available might include using established Indigenous media outlets, electronic communications,



or the engagement of Indigenous liaison officers. Such strategies are currently being investigated by ASIC and it may be that the ACCC could also benefit from participating in this work.

6. Governance is clearly an issue. For example, TPA compliance education and information for Indigenous artists and Indigenous consumers could be targeted at boards and managers of community stores or art centres. Such a strategy could mesh well with strategies being developed by ATSIC under the broad umbrella of governance
7. *Storecharter—a service charter serving remote and Indigenous communities* provides one model for the development of a code of conduct that was developed by the ACCC during the time that this research project was under way. There are possibilities for developing similar codes of conducts in other areas.
8. Another related option is the development of an ‘Arts charter—a service charter for the Indigenous arts industry’ to provide a code of conduct for all participants in this important and growing Indigenous industry. Such a code could be developed by the ACCC in collaboration with Indigenous arts advocacy organisations.

While this research was specifically commissioned by the ACCC, we hope that our findings can also be widely disseminated to other consumer agencies to increase awareness of competition and consumer issues for Indigenous Australians and to assist in the development of targeted strategies. It is only when Indigenous consumers and producers are empowered with information about TPA issues that they will be in positions to make choices about using existing statutory provisions to enhance their economic wellbeing. While this research has focused specifically on the role of stores in remote Indigenous communities and on issues facing the relatively new Indigenous visual arts industry, we believe that many of the issues raised will have wider applicability to other economic institutions and to other cultural industries.

# appendix 1

## An annotated bibliography, 1980–2001

Sally Ward

### Part A: Published material

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**Aboriginal** Consumer Education Project 1994. *Grin and Bear It: Experiences of Aboriginal Consumers in Rural New South Wales*, New South Wales Department of Consumer Affairs, Parramatta.

**Key words**

Competition, stores, financial services, consumer literacy, culture.

**Geographic area**

Rural New South Wales.

A major incentive for this project was the perception that Indigenous people in NSW were not making use of Consumer Affairs' services. Aboriginal people in rural NSW try to shop in larger towns and regional centres because they recognise that these outlets sell a wider range of items at cheaper prices than do community stores. However most of the people surveyed for this report had no option but to buy essential items from their community stores, so that the degree to which competition exists may be low. The book-up system can further compound a lack of competition, for example in one community people had no option but to shop at the local supermarket because the store manager had given them credit and kept their bank books. Consumer literacy programs in rural and remote NSW must take into account Indigenous people's unique interactions with the marketplace. Cultural norms may affect a variety of experiences including the use of change rooms, refunds and budgeting.

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**Aboriginal** and Torres Strait Islander Commission (ATSIC) 1994. *Recognition, Rights and Reform: A Report to Government on Native Title Social Justice Measures*, ATSIC, Woden.

**Key words**

Economic development, enterprise.

**Geographic area**

Australia-wide.

This report contains a section on Aboriginal economic development. Some of the key recommendations are directed at the need for government to support Indigenous enterprise development in communities and put mechanisms such as tax incentives in place to encourage Indigenous businesses.

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**Altman**, JC 1982. 'Maningrida outstations: A preliminary economic review', in E. Young and E.K. Fisk (eds) 1982. *Small Rural Communities*, Development Studies Centre, ANU, Canberra.

**Key words**

Expenditure, outstations, store pricing, freight, diet, cash.

**Geographic area**

Arnhem Land, Northern Territory.

In 1979 Altman recorded expenditure patterns on the outstations surrounding Maningrida by joining the fortnightly visits made by the supply truck from Maningrida Progress Association (MPA). He found that the 'bush price' is the shop (the MPA store) price plus 10 per cent. However with standard store mark-ups and freight costs the overall mark-up on many basic goods bought at outstations was over 100 per cent. Altman noted the sharing and kin-based distribution of cash and also documented the significant savings made by communities for procuring larger items, particularly four-wheel drive trucks. Low quantities of protein-rich foods were being purchased from the supply truck, from which the author deduces the significant part played by bush foods in the diets of Gunwingu people. He estimated that bush foods produced 81 per cent of protein consumed by people at Momega and 46 per cent of kilocalories. Such data brings into question estimates that over 90 per cent of total energy intake in remote communities comes from store-purchased food.

**Altman, JC 1987a.** 'The economic impact of tourism on the Mutitjulu community, Uluru (Ayers Rock-Mount Olga) National Park', *Department of Political and Social Change Working Paper No. 7*, Research School of Pacific and Asian Studies, The Australian National University, Canberra.

### **Key words**

Competition, stores, service delivery.

### **Geographic area**

Central Australia.

The Ininti store and BP service station owned by the Malpa Trading Company were established in 1972 and until 1984 enjoyed a monopoly. While initially established to cater for tourists, with the growth of the Mutitjulu community, the store increasingly began catering for community needs. In short, the Malpa Trading Company is more than a narrowly focused commercial enterprise. The store acts as both a post office and a bank, extends credit to members of the community, and provides employment and training for Anangu people. Despite the community focus, sales to tourists still accounted for a significant proportion of sales. Malpa maintained a variable mark-up policy on goods popular with tourists, which to some extent subsidised cheaper goods for Anangu.

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**Altman, JC 1987b.** 'The economic impact of tourism on the Warmun (Turkey Creek) community, East Kimberley', *East Kimberley Working Paper No. 19*, Centre for Resource and Environmental Studies, ANU, Canberra.

### **Key words**

Expenditure, competition, store governance.

### **Geographic area**

East Kimberley, Western Australia.

As part of his broader study, Altman addresses expenditure patterns in the Warmun community. He demonstrates that, in terms of housing costs, the cost of living in the community is much reduced compared with the rest of Australia. In part this is due to the provision of housing owned by Warmun Community Inc., which also owns the local general store. Because of the remoteness of the community, goods and services in the area are relatively expensive when compared to urban Australia. However, Altman finds that in a regional context, the community ownership of the store does help to reduce the prices of goods. The store does not pay rental fees or any repayments on business loans and has no need to maximise profits.

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**Altman, JC 1987c.** *Hunter-Gatherers Today: An Aboriginal Economy in North Australia*, Australian Institute of Aboriginal Studies, Canberra.

**Key words**

Expenditure, competition, income, diet, outstations.

**Geographic area**

Arnhem Land, Northern Territory.

Altman highlights the difficulties faced in attempting to determine expenditure patterns among people living at Momega outstation and surrounds in the Maningrida region of Arnhem Land. Expenditure patterns are inconsistent for two main reasons. Firstly, market goods arrive at outstations about every fortnight and local people are thus captive consumers using a supply monopoly. Secondly, outstation residents have little control over their cash incomes: most rely on welfare cheques that often do not arrive. Market foods accounted for approximately 54 per cent of total expenditure at Momega. While this figure cannot be directly compared to those offered by Lee, O'Dea and Mathews (1994\*) and Young (1984\*) (which relate to diet rather than expenditure), they do indicate that the reliance on procurement of foods from stores differs widely between communities. For more on indigenous household expenditure see Smith (1991a\*, 1991b\*).

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**Altman, JC and Johnson, V 2000.** 'CDEP in town and country Arnhem Land: Bawinanga Aboriginal Corporation', *CAEPR Discussion Paper No. 209*, CAEPR, ANU, Canberra.

**Key words**

Income, savings, outstations, financial services, diet.

**Geographic area**

Arnhem Land, Northern Territory.

The authors highlight some of the key differences between Community Development Employment Projects (CDEP) scheme operations in Maningrida community and those at surrounding outstations. The Bawinanga Aboriginal Corporation (BAC) makes mandatory deductions from people on the CDEP payroll in a savings scheme called 'truck accounts'. The scheme is for people who have no access to credit facilities such as the Traditional Credit Union and is mainly used by outstation residents. Truck accounts are used either to save enough to purchase four-wheel-drive vehicles from Darwin or to save toward paying off truck repair bills from the BAC workshop. Altman and Johnson suggest that because of higher costs of food provision to outstations than to Maningrida itself and the high level of saving for vehicles, people must be engaging in significant levels of subsistence activity thereby reducing their need for shop-bought food. Clearly these significant savings raise questions about the validity of estimates made by Lee, O'Dea and Mathews (1994\*) concerning the high percentage of energy provided from community store foods.

**Anderson, C** 1982. 'The Bloomfield community, North Queensland', in E. Young and E.K. Fisk (eds) 1982. *Small Rural Communities*, Development Studies Centre, The ANU, Canberra.

### **Key words**

Stores, financial services, diet, store pricing, culture, expenditure.

### **Geographic area**

North Queensland.

Anderson conducted fieldwork in the late 1970s in the isolated community of Wujalwujal, north of Cairns. The research focuses on the mission store that operated until 1980. The store served as a bank, post office and mission office. Mission staff opened social security cheques and money for rent and other bills were deducted unless residents were opposed to this practice. In 1978 only 106 out of 664 transactions were booked-up. In 1978 prices at the store were 34 per cent higher than in Brisbane. Goods were marked-up by 40 per cent (including 15 per cent for freight) a profit that did not go back into the community. Anderson recognises the significant part that bush food plays in Kuku-Yalanyji people's diets and also notes that women tend to do the main food purchasing at the store. Aboriginal people tended not to enter the store when European people were doing their shopping and they also made purchases item by item rather than all at once. This practice has been documented elsewhere (see Westbury 2000\*). It makes it easier for people to know how much money they have left to spend and they can avoid being embarrassed by not having enough cash for requested items. Of the 35–45 per cent of income not spent at the store most of it was spent on taxis to Cooktown and charter flights to Cairns.

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**Australian Bankers' Association** n.d., Submission to The House of Representatives Standing Committee on Financial Institutions and Public Administration, *Inquiry into Alternative Banking Services in Regional and Remote Australia*.

### **Key words**

Financial services, competition.

### **Geographic area**

Regional and remote Australia.

Perhaps unsurprisingly the submission emphasises the demographic changes and depressed economy in rural Australia in recent years and encourages the reader to view the submission in that context. Changes in banking are also being driven by the increase in competition that has occurred due to government policy changes over the past 15 years. The Australian Bankers' Association (ABA) encourages people to make use of alternative means of accessing their funds, namely through EFTPOS, ATMs, giropost and telephone banking services. Self-service banking is discussed as a means of overcoming the disadvantage of distance but the ABA accepts that existing services do not cater for all the needs of customers in rural and remote areas. The ABA is willing to work with government and community groups to educate people in coming to terms with these alternative means of

banking. The elderly and those with disabilities are singled out as groups with special needs, but Indigenous people with low numeracy or literacy levels are not mentioned.

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**Bagshaw, G** 1982. 'Whose store at Jimarda?: Delivery and distribution of Western foodstuffs in an Arnhem Land community', in P. Loveday (ed.), *Service Delivery to Outstations*, NARU, ANU, Darwin.

**Key words**

Outstations, stores, store governance.

**Geographic area**

Arnhem Land, Northern Territory.

The store at Jimarda outstation was established in 1975 as a bush branch of the Maningrida Progress Association (MPA). With a previous system of fortnightly on-the-spot purchases, the store was envisioned as a small-scale larder from which people could draw over a longer period of time. This paper tells the story of the problems that beset the Jimarda store as it tries to make up its shortfalls by increasing mark-ups. The tensions over the deficits indirectly resulted in two local groups challenging one another over ownership of the store, a conflict in which the MPA was not an adept mediator.

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**Bagshaw, J** 1993. *Stores and Stories: Northern Territory Aboriginal Communities*, NARU, ANU, Darwin.

**Key words**

Store, store governance.

**Geographic area**

Northern Territory.

Bagshaw and her husband were employed as store managers and store advisers all over the Northern Territory during the 1970s and 80s. The book is an anecdotal and rather paternalistic account of their experiences at places such as Hermannsburg, Yuendumu, Maningrida, Katherine and Utopia. Despite the unscholarly nature of the account it does discuss many of the difficulties which were encountered over a significant period of time.

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**Bonner, NT** 1988. *Always Anangu: A Review of Pitjantjatjara and Yankunytjatjara Aboriginal Communities of Central Australia*, Department of Aboriginal Affairs, Canberra.

**Key words**

Store governance, store pricing.

## Geographic area

Central Australia.

Most of the ventures that have been made into the market economy on Anangu lands have enjoyed only limited success. Bonner cites the reasons for this as the restraints that store work places on mobility, store workers and managers mostly seeing their roles as a short-term means to an end rather than longer-term career opportunities and the desire to distribute resources to kin rather than to strive for profit-making. Among Bonner's recommendations are the following:

- that stores' operations be clearly defined to reflect their employment policy, social and economic functions, profit distribution policy and training function
- that stores be subject to community councils
- that the work undertaken by Anangu Winkiku Stores be encouraged and expanded
- that the potential for stores to train locals in financial management be recognised
- that store accounting systems be compatible with those of other stores and councils and integrated into a training program
- that if CDEP is to be utilised in stores then the savings it provides should be passed on to consumers in the form of price reductions.

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**Brady, M and Martin, DF 1999.** 'Dealing with alcohol in Alice Springs: An assessment of policy options and recommendations for action', *CAEPR Working Paper No.3*, CAEPR, ANU, Canberra.

## Key words

Alcohol, international, expenditure.

## Geographic area

Alice Springs, Northern Territory.

This paper examines the 'supply' side of excessive alcohol consumption and related behaviour. The Northern Territory has a high ratio of liquor outlets per capita. International evidence suggests that increased availability encourages consumption and the authors bring this evidence to bear on the situation in Alice Springs. Australian evidence shows that excessive Aboriginal alcohol consumption can be modified by changes in the hours and days of opening of liquor outlets. In Tennant Creek restrictions were put in place after local concerns were voiced by health workers and council members. The changes were in part intended to allow for purchases of food and other items before the spending of entire weekly pay cheques on alcohol. It was found that changes in the hours or days of sale do not affect overall consumption rates but do produce reductions in alcohol-related antisocial behaviour.



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**Byrnes, J 1988.** *Enterprises in Aboriginal Australia: Fifty Case Studies*, The Rural Development Centre, University of New England, Armidale.

**Key words**

Enterprise, stores.

**Geographic area**

Australia-wide.

While based on empirical research conducted by the author, this publication contains no interpretation or analysis. It presents fifty 'representative' case studies of Aboriginal enterprises scattered over the country. Brief descriptions of the enterprises (which include several stores) are arranged under the following headings: objectives, achievements/progress, funding support, legal structure, decision-making, employment, strengths/skills/resources to start enterprise, skills needed, skills being developed, enterprise support available, support needed, problems encountered and advice for setting up a similar business.

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Centre for Australian Financial Institutions (CAFI) 1998. *Banking in the Bush: The Transition in Financial Services*, Report prepared for the Australian Bankers Association, The University of Southern Queensland, Toowoomba.

**Key words**

Financial services, cash, store pricing.

**Geographic area**

New South Wales and Queensland.

As a follow-up to a 1996 survey, residents from two towns in Queensland and four in New South Wales were surveyed on the effects of the recent closure of their local bank branches. Indigenous residents were not targeted specifically and the towns were rural rather than remote. One of the major findings of the study concerned the drain of cash from rural communities as residents increasingly travel to bank as well as shop in regional centres. Range of goods and convenience came above pricing as the main reasons why people shopped elsewhere. However people recognise the need to support local business and travelling to bank and shop elsewhere occurs much less frequently than it did in the 1996 survey.

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**Cerexhe, P 1998.** 'Black money business', *Consuming Issues*, No. 74: 6–10.

**Key words**

Financial services, cash, culture, savings, stores, ACCC/TPA.

**Geographic area**

Australia-wide.

This article outlines several key issues in relation to Indigenous access to financial services as well as discussing some of the ways in which certain organisations have been tackling them. The author uses no empirical research but approaches the issues from a perspective that incorporates cultural attitudes (such as sharing) toward money. Difficulties in saving money are addressed in this cultural context and the Traditional Credit Union is presented as a 'success story' which provides education in financial literacy as well as access to credit. With the lack of bank branches in rural and remote areas many people have had to rely on stores for their financial services. Quoting Gordon Renouf the most relevant section of the article discusses cases of unconscionable conduct by store managers in relation to book-up practices. The lack of electronic banking services in certain remote areas can result in payment problems that can also be exacerbated by people's mobility. The ACCC's legal proceedings against three life insurance companies are also outlined.

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**Commonwealth** of Australia Ombudsman 1997. *One Size Does Not Fit All: Own Motion Investigation into the Department of Social Security's Service Delivery to Clients in the Town Camps of Alice Springs*, Commonwealth Ombudsman, Darwin.

### **Key words**

Financial services, income, culture, service delivery, competition.

### **Geographic area**

Alice Springs, Northern Territory.

This investigation was conducted after it was reported that up to 40 per cent of Indigenous people in Alice Springs town camps received insufficient income support. The Department of Social Security (DSS) has erred toward standardising its administrative approach nationally rather than developing sub-systems designed to meet the needs of particular groups. The DSS has recognised that the national computer-driven system may not meet the needs of all clients. While research has been conducted on the needs of remote area clients, no significant changes have been implemented in response. The DSS's administrative systems are premised on the client having access to a certain level of social infrastructure such as banks, transport, communication and mail services. People in remote areas often have no adequate access to this infrastructure to a level that meets the requirements of the DSS. Problems with the DSS's service delivery are grouped into four categories: language/ cultural, socioeconomic, administrative and statutory.

Some the more dubious activities taking place in town camps are book-up practices, exploitative pricing of goods, customers being prevented from shopping elsewhere, the exploitation of town camp people by some small businesses in Alice Springs, taxi drivers overcharging and selling alcohol illegally in camps and Indigenous customers being overcharged for alcohol. The report recognises that the DSS is not responsible for these events but that it could ameliorate the situation by making administrative changes. For example, the report recommends that the DSS could address the problem of town camp people being 'captives' of local retailers in two ways. It could register retailers who receive cheques as fit and proper persons who are then held accountable for the dispersal of all cheques received. Secondly, in the event that the DSS is given an address that has previously found to be exploitative, an Aboriginal Islander Liaison Officer be sent to discuss the matter with the client. Another recommendation is the provision of payment points that allow for partial withdrawal of monies, providing greater control over spending.

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**Commonwealth Grants Commission (CGC) 2001.** *Indigenous Funding Inquiry: Draft Report*, CGC, Canberra.

**Key words**

Service delivery, freight.

**Geographic area**

Remote Australia.

Chapter eight of the report focuses on infrastructure and the provision of services. There have been disagreements as to who is responsible for service provision in small remote communities. Although community stores are not a topic specifically addressed, the provision and maintenance of power supplies (particularly for refrigeration of fresh produce), access roads, airstrips and barge landings can all have significant impact on the functioning of stores in remote areas. The National Aboriginal Health Strategy is responsible for the difficult and involved task of measuring need and resource allocation. The level of need is determined based on the state of existing infrastructure and on project sustainability, in terms of employment, community support, interaction with CDEP and capacity for management of the program.

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**Crough, G and Pritchard, B 1991.** *Too Poor to Pay Tax? Aborigines and the Australian Taxation System*, A report prepared for the Central Land Council (CLC), CLC, Alice Springs.

**Key words**

Income, expenditure, freight.

**Geographic area**

Australia-wide.

The findings of this report indicate that despite their high level of unemployment Aboriginal people make substantial income taxation payments through indirect taxation, including sales taxation and fuel taxation. For Aboriginal people in remote communities these taxation payments significantly increase the costs of goods and services, costs that are already affected by high transport charges. Petrol tax impacts on Aboriginal people in remote areas substantially because of their high reliance on motor vehicle transportation and their relatively low incomes. The disadvantage is partially offset by the Petrol Freight Differential Subsidy scheme offered to Australians living in remote areas by the Commonwealth Government. The authors note however, that at the time of writing the level of freight subsidies had been reduced. From data obtained from an Alice Springs petrol wholesaler servicing remote communities in the south-west of the Northern Territory, it was found that each resident in these areas contributed an average of \$151 per annum to governments in petrol tax.

**Crough, G and Christophersen, C 1993.** *Aboriginal People in the Economy of the Kimberley Region*, NARU, ANU, Darwin.

**Key words**

Market basket survey, stores, store pricing.

**Geographic area**

Kimberley region, Western Australia.

High transport costs are one of the reasons for the high cost of living in the Kimberley region and in particular for Aboriginal people living in the more remote parts of the region. The results of a 'market basket' survey similar to that conducted in the Northern Territory are presented. The price of goods in the market basket purchased from community stores in the Kimberley region was 61 per cent higher than in Perth.

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**Crough, G Howitt, R and Pritchard, B 1989.** *Aboriginal Economic Development in Central Australia*, Report for the combined Aboriginal organisations of Alice Springs, Alice Springs, NT.

**Key words**

Economic development, stores, store governance.

**Geographic area**

Central Australia.

One major part of the research conducted for this report was to assess the size of the Aboriginal contribution to the Central Australian economy. It was estimated that about one-third of the Central Australian economy, or \$184 million, derives from the Aboriginal sector. In a discussion of the retail sector it is signalled that Aboriginal employment in this industry is relatively low, with only 6 per cent of employed Aborigines in retail work. Under the auspices of local policies of employment and development, many communities were encouraged during the 1980s to purchase local stores. Some of the stores failed as a result of a lack of external support and back up services. To overcome these problems Anangu Winkiku Stores was set up to provide management advice to communities on request, and part of its role was to install its own managers in stores that are in financial difficulties.

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**Dee, B 1991.** 'Sharp practices, Aboriginal consumers and the Trade Practices Act', *Aboriginal Law Bulletin*, June Issue: 8–9.

**Key words**

ACCC/TPA, consumer rights.

**Geographic area**

Australia-wide.

The 1986 amendments to the TPA cover unconscionable conduct (s. 52A) that provides prohibition in cases involving transactions for consumer goods. Dee outlines the amendments and briefly describes three case studies involving the s. 52A amendment and Indigenous consumers. Section 52A contains a discretionary element to which the courts may turn in determining whether or not conduct is unconscionable. Unconscionable acts may include those that use undue influence, pressure or unfair tactics upon a consumer. They can be acts that knowingly take advantage of consumers who have misapprehended the nature of the transaction. The TPC (now the ACCC) can take legal action against corporations which have breached s. 52A.

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**Department of Fair Trading 1998.** *Aboriginal Action Plan, August 1998*, New South Wales Department of Fair Trading, Parramatta, NSW.

**Key words**

Consumer rights, consumer literacy.

**Geographic area**

New South Wales.

This action plan was instigated by the discovery of a general lack of awareness among Indigenous people of consumer rights and the Department of Fair Trading's services. In consultation with communities it became apparent that the main areas of consumer concern were tenancy rights, business contracts and discrimination. Much of the plan centres on a scheme to employ more Indigenous staff to act in consultation, education and mediation roles. Partly due to its focus on future plans rather than outcomes, the publication comes across as a rather superficial public relations exercise.

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**Department of Industry, Science and Tourism 1997.** 'The consumer education needs of rural and remote Australians', *Issues Paper 4*, September 1997, Australian Government Publishing Service, Canberra.

**Key words**

Consumer literacy.

**Geographic area**

Rural and remote Australia.

The aim of the report was to glean, from a survey conducted in 1996, the education and information needs of consumers in rural and remote Australia as well as the preferred means of information delivery. A questionnaire was sent randomly to 1000 households in rural and remote areas and there was no breakdown of data based on ethnicity. The report does however make mention of the disadvantage of Aboriginal people based on reference to the *Grin and Bear It* report (Aboriginal Consumer Education Project 1994). In general, consumers felt disadvantaged compared to their urban counterparts in terms of variety, access to goods and services and costs. In terms of preferred means of obtaining information, the highest percentage of people (though only 26 per cent) stated a preference for newspapers, magazines and newsletters, that is, media demanding literacy.

**Ducret, A 1993a.** 'The sale of insurance at Aboriginal communities', *Criminology Australia*, January/February Issue: 6–8.

**Key words**

ACCC/TPA, consumer literacy.

**Geographic area**

Remote northern Queensland.

The Trade Practices Commission (now the ACCC) successfully took court action against two large insurance companies who were selling insurance schemes to people Indigenous communities. This article offers a legal overview that generalises in order to pick out the common threads in the cases. Factors in the cases include the low incomes of the Indigenous consumers (most of whom were on CDEP scheme payments), low levels of literacy and the unconscionable conduct of the salespeople. The TPA was central to the court action.

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**Ducret, A 1993b.** 'Trade Practices Commission's exposure of exploitation of Aboriginals', *Australian Journal of Corporate Law*, 3 (3): 1–11.

**Key words**

ACCC/TPA, consumer literacy.

**Geographic area**

Remote Queensland and remote Northern Territory.

Ducret examines the difficulties of applying the TPA to the conduct of insurance agencies who sold policies to Aboriginal people living in remote Queensland and Northern Territory communities. Certain provisions under the *Insurance Contracts Act 1984* created uncertainties in the application of the TPA. The setting of time limits for an action against misleading conduct to commence in court was another problem. Ultimately the difficulties remained untested as the companies settled the litigation on terms favourable to the Aboriginal people involved.

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**Duhaime, G, Franchette, P, Langlais, JF, and Strong, TL 2000.** *Nunavik Comparative Price Index*, Groupe d' Etudes Inuit et Circumpolaires, Université Laval.

**Key words**

Market basket survey, store pricing, international.

**Geographic area**

Nunavik, northern Canada.

The main objective of this research was to compare prices of goods and services in the Nunavik region with the south of the Province of Quebec, as well as making comparisons

between Nunavik villages. For methodological as well as practical reasons, a comparison of what consumers pay for goods and services was the methodology chosen rather than a cost of living investigation. From this methodology however, the general picture to emerge is that cost of living is significantly higher in this northern region of Canada than in more densely populated urban areas such as Quebec city. The authors note the difficulties involved in trying to 'translate' statistical techniques used by Statistics Canada to a cultural and geographic reality for which they were not designed. The categories used for data collection were thus modified to suit the particular region. They were food, housing, hunting and fishing, household operations and personal care. On the whole these categories represent a broader range of issues analysed than in much of the Australian research, which has tended to focus on food only. Using a market basket survey method similar to that adopted in many Australian studies it was found that overall, grocery stores in Nunavik are 69.1 per cent more expensive than those in the Quebec city area.

Under the category of hunting and fishing it is recognised that transport costs (including the purchase and operation costs of hunting vehicles) make up a large part of the price differentials between Nunavik and Quebec city. Consumers in Nunavik are severely restricted in their ability to exercise consumer choice due to a narrow range of retailers and products. One means of overcoming this has been through the use of mail ordering, which is associated with high shipping costs. Unlike much Australian research, the report urges caution in interpreting the data and there is some attempt to qualify the results in terms of considering other factors that may contribute to, or in fact skew, key findings. For example the report recognises that food obtained by hunting and fishing as well as the cheaper housing supplied for residents of the Nunavik region may, to some extent, help offset the higher prices of goods and services. There are many similarities between the findings in this report and those in some Australian research. They include relatively low Indigenous incomes, a high proportion of household budget spent on foodstuffs, irregular supplies (particularly of fresh food), limited access for seeking redress for faulty goods, high transport costs and high costs of communication services (compounded by a wide dispersion of family members).

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Ellanna, L, Loveday, P, Stanley, O and Young, EA 1988. *Economic Enterprises in Aboriginal Communities in the Northern Territory*, NARU, ANU, Darwin.

### Key words

Enterprises, stores, alcohol, store governance.

### Geographic area

Remote Northern Territory.

The object of this study was to identify the opportunities for Aboriginal enterprises in Yuendumu and Burunga-Wugularr in the Northern Territory. Intensive fieldwork was conducted in the communities and their surrounds. The two stores in Burunga-Wugularr both stocked alcohol and this was signalled as a key source of conflict. The selling of alcohol brings into focus the quandary that seems to dominate the running of remote stores in general: that is, whether stores should focus on profits or on community wellbeing. The sale of alcohol was very profitable for the stores but concerns were raised about its impacts on local people. There is a reasonably detailed discussion of the stores in Yuendumu (one of which was established in 1959 and is one of the biggest stores in Central Australia)

including an analysis of profits and their distribution. In 1986 the Yuendumu store employed six Indigenous and six non-Indigenous staff. The lack of Indigenous input in management, and the secrecy involved in financial matters are signalled as key areas of concern. The sole recommendation in relation to stores in the report is that more effort be put into training Indigenous store managers.

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**Fisk, EK 1985.** *The Aboriginal Economy in Town and Country*, George Allen and Unwin, Sydney.

**Key words**

Diet, outstations.

**Geographic area**

Australia-wide.

Fisk draws on broader research and estimates that for the Aboriginal population as a whole, less than 5 per cent of food consumption comes from non-market production. On outstations on the other hand, the estimate is that 70 per cent of total food consumed is produced by subsistence hunting and gathering (a figure that contrasts with that of Lee, O'Dea and Mathews 1994\*).

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**George, KL 1996.** *Community Stores and the Promotion of Health: An Assessment of Community Stores and their Functions in the Promotion of Health in Aboriginal Communities*, A report to the Health Department of Western Australia, Nanga Services, Subiaco WA.

**Key words**

Stores, diet, financial services, store pricing, store governance.

**Geographic area**

Remote Western Australia.

A cross-section of remote community stores in Western Australia was surveyed with an eye to examining the role of stores in remote Aboriginal health. The report provides some historical background on remote stores, though in general the empirical data are rather 'thin' and poorly analysed. The report recognises that remote stores act as more than mere retail outlets and often function as pseudo-banks. Emphasis is placed on the importance of good store management, which can have a positive impact on store prices. With poor management a store may incur debt which can in turn result in higher prices paid by the community. Retail pricing policy is usually set by store management and factors which are most likely to influence it include the indebtedness of the community, community council intervention, reliance on external advice on retailing practice, and mismanagement which can lead to a lack of access to the most economical wholesalers. Retail prices incorporate transport costs, wastage and pilfering. The majority of food suppliers in all of the stores surveyed obtained their goods in Perth. The report makes several general recommendations including subsidisation for fruit and vegetables, greater scrutiny of management and greater accountability.



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**Goto, Y 1999.** 'Store food: A case study of the food supply in Maningrida from 1988–1995', *Bulletin of the National Museum of Ethnology* 24 (1): 141–98.

**Key words**

Stores, store pricing, diet, freight.

**Geographic area**

Arnhem Land, Northern Territory.

Goto presents a largely quantitative profile of the Maningrida store's provision of foodstuffs over a seven-year period, based on the store's ordering data. Store pricing is not addressed specifically, the focus being on the quantities of different types of food being ordered over time. From these statistics and with a view to improve the health of Indigenous people, Goto makes several recommendations (aimed both at store managers and Indigenous consumers). Groceries are transported to Maningrida by a weekly barge from Darwin while fruit and vegetables arrive by air bi-weekly. Goto's data are compared with that of Lee, O'Dea and Mathews (1994\*) as well as data from the ABS. When compared to fruit ordered into the Maningrida store, the national per capita consumption rate is found to be almost five times higher. In 1991 the mark-up on chilled items dropped by 30 per cent and in grocery items by 10 per cent which affected consumer demand and led to supply increases. After the introduction of a shuttle bus service larger quantities of food and of heavy goods were purchased. The analysis of reasons for changes in the supply of items is somewhat insubstantial, especially lacking is any consideration of cultural or simply general consumer-based factors.

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**Government of Western Australia 1994.** *Task Force on Aboriginal and Social Justice: Report of the Task Force*, Vol. 2, Government of Western Australia.

**Key words**

Stores, store pricing, freight, governance, financial services, consumer literacy.

**Geographic area**

Western Australia.

The report contains an appendix on Aboriginal community stores (a background briefing paper prepared for the Task Force). The fundamental dilemma of whether a store should be run as a community service or as a commercial enterprise is noted. Similarly all the usual difficulties that afflict remote community stores are addressed such as prices of goods, freight discounts generally being unavailable because of a lack of competition, staffing issues, a limited range of goods, the added function as a bank, pilfering and storage. However the authors appear to place great (and perhaps misguided) faith in technological solutions. For example book-up can, apparently, be solved using computer software which can provide customers with details of their spending and not allow them to go over their credit limit. Similarly, pilfering can be remedied by point of sale technology that can calculate stock losses and adjust prices to counter such losses. Perhaps as a reflection of their lack of rigorous empirical research the authors believe such measures to be 'culturally

appropriate'. This clearly ignores the low levels of literacy, numeracy and awareness of consumer rights among remote Indigenous people and would obviously require significant training and education programs.

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**Green**, DH and **Green**, MB 1987. 'The food retailing structure of the Northwest Territories', *Arctic*, 40 (2): 123–30.

### **Key words**

International, stores, store pricing, freight.

### **Geographic area**

Northwest Territories, Canada.

The three main types of food retailers—independents, chain stores and cooperatives—operating in the Northwest Territories (NWT) of Canada are compared. Empirically the data are rather 'thin', relying purely on a mail survey. Of NWT residents, 85 per cent are Indigenous and many parallels can be drawn with remote Australian community stores, though this is not discussed in the paper. Poor management, lack of profit motivation, high transport costs and high food prices were all found to be issues in the stores surveyed. Perhaps the central contrast to Australian data is the greater range of products available in the NWT food outlets. The authors conclude that these stores have adapted to the small isolated markets by expanding their merchandise line to include more variety.

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**Harrison**, L 1991. 'Food, nutrition and growth in Aboriginal communities', in J Reid and P Trompf (eds), *The Health of Aboriginal Australia*, Harcourt Brace Jovanovich, Sydney.

### **Key words**

Diet, stores, store pricing, income.

### **Geographic area**

Australia-wide.

Harrison is interested in the political, sociocultural and economic aspects of nutrition. Her data are drawn from previous studies and she notes that food costs in remote community stores are far higher than those found in other centres. Aboriginal people's incomes are generally low but, on available evidence, Harrison states that store food needs can be met by low levels of income with surplus left for other items.

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**House** of Representatives Standing Committee on Economics, Finance and Public Administration (HRSCEFPA) 1999. *Regional Banking Services: Money Too Far Away*, HRSCEFPA, Canberra.

### **Key words**

Financial services, income, financial literacy.

## Geographic area

Rural and remote Australia.

Like clean water, health care and education, access to financial services is viewed as an essential service. This report outlines the changing nature of banking in rural and remote areas, notes the impact of these changes and highlights alternative means of providing such services. There is no particular reference made to the impact of bank closures on Indigenous communities. This is surprising and disappointing given the high concentration of Indigenous people in rural and remote areas. What makes this omission even more surprising perhaps, is that the report does make mention of other specific groups who may be particularly affected by changes in the delivery of banking services. These groups include the elderly, people with disabilities, low-income earners and welfare recipients. However in the context of steps which have already been taken in providing alternative financial services in rural and remote communities, the Traditional Credit Union in the Northern Territory and the Aboriginal Credit Union of Victoria are reviewed in a favourable light. Westpac has developed an in-store branch concept where basic teller services are provided within stores in rural and remote communities. This model satisfies the need for face-to-face banking services. The committee recommends that in the event of closures bank customers are provided with education and training so as to better make the transition to alternative, and most likely electronic, services.

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**Ketilson, LH and MacPherson, I (eds) 2001. *Aboriginal Co-operatives in Canada: Case Studies, June 2001*, Minister of Indian Affairs and Northern Development, Ottawa.**

## Key words

International, enterprise, store governance, freight.

## Geographic area

Canada.

The co-operative movement began in Canada in the 1950s. Co-operatives grew in number and were found in almost every community by the 1980s by which time their membership was between 90 and 97 per cent aboriginal. This report presents case studies of 13 different co-operatives in Canada covering a broad spectrum of aboriginal enterprises including fishery, financial, housing and consumer co-operatives. It is presented in part as a guide for those interested in developing a co-operative. The co-operative model is congruent with self-determination, it can ensure the continuing aboriginal ownership of resources and can be useful in fostering growth and sharing accountability and responsibility. Many of the difficulties mentioned in the case studies are similar to those encountered in remote Australia, for example the high transport costs and the difficulties of building viable businesses in small communities. Underlying these issues is a lack of well-trained people—both elected and employed—which has undermined the ability of people to enter leadership roles within the co-operatives. As in Australia, a key problem has, been at a managerial level where most managers are non-aboriginal people from the south. The case studies discuss issues such as financial and organisational structure, education and training, barriers to development and future developments.

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*Land Rights News* 2001. 'Town campers banking on the future', *Land Rights News*, June 2001, 3(6): 5.

**Key words**

Financial services, financial literacy.

**Geographic area**

Alice Springs, Northern Territory.

Centrelink's move to replace cheque payments with the depositing of money into bank accounts has prompted Tangentyere Council to develop a pilot banking project in Alice Springs. Indigenous participants will be taught about key cards and the electronic transfer of funds in an environment in which they will feel comfortable. Initially 30 customers of the Tangentyere Bank Agency will be offered assistance until they become proficient in the use of ATMs and become self-reliant. They will then be replaced with another 30 people. People who have gained these skills will have the option of leaving their key cards with the bank or taking them with them.

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Lee, A, O'Dea, K and Mathews, JD 1994. 'Apparent dietary intake in remote Aboriginal communities', *Australian Journal of Public Health*, 18 (2): 190–7.

**Key words**

Diet, stores

**Geographic area**

Remote Australia.

The focus of this article is on nutrition and health rather on than stores per se. However, in an attempt to gather data on remote Indigenous diet, the store-turnover method was applied to three central desert stores and three northern coastal stores. Intakes of refined sugar, fatty meat and white flour were high and intakes of dietary fibre and some minerals and vitamins were low. The authors state that it has been estimated (and these data are gleaned from estimates made in 1978, 1984 and 1985) that over 90 per cent of the total energy intake in remote communities comes from purchased foods.

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Lee, AJ, Bailey, APV, Yarmirr, D, O'Dea, K and Mathews, JD 1994. 'Survival tucker: Improved diet and health indicators in an Aboriginal community', *Australian Journal of Public Health*, 18 (3): 277–85.

**Key words**

Diet, stores, store governance, freight.

**Geographic area**

Minjilang, Northern Territory.

A health and nutrition project was conducted in the Minjilang community on Croker Island and its success is attributed to the high level of community involvement at all phases. The community has one ALPA-owned store with two Indigenous store-workers. The store-turnover method was used in association with medical indicators. Intervention strategies were put in place during the project in an attempt to produce better health and nutrition outcomes for locals. Unlike other projects there was no attempt to manipulate prices, but rather simply to provide greater choice for customers by offering and promoting a wide range of good quality and nutritious foods. The article relates the story of a store manager being unwilling to order a larger variety of produce. The local council then arranged for a regular air charter to transport healthy foods from a mainland mining town. After some weeks the store manager bowed to economic pressure and restocked lines of fresh fruit and vegetables and wholemeal bread in the stores. Local people thus realised their consumer power.

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Lee, AJ, Smith, A, Bryce, S, O'Dea, K, Rutishauser, IHE, and Mathews, JD 1995. 'Measuring dietary intake in remote Australian Aboriginal communities', *Ecology of Food and Nutrition*, 34: 19–31.

### **Key words**

Diet, stores.

### **Geographic area**

Northern coast and central desert.

Five different methods of measuring dietary intake are applied in two remote communities and their practicality, acceptability and validity compared. The method favoured by both the communities and the researchers was the store-turnover method in which the mean daily store turnover is used to approximate the mean daily dietary intake. Part of the potential of this method of data collection lies in its comparability with similarly collected data, dating back as far as 1978, that food purchased from stores accounts for over 90 per cent of nutrient intake in remote communities.

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Legislative Assembly of the Northern Territory 1999. *Inquiry into Food Prices in the Northern Territory*, Vol.1, August 1999, Legislative Assembly, Darwin.

### **Key words**

Food prices, market basket survey, competition, store governance, diet.

### **Geographic area**

Northern Territory and comparisons with Queensland.

The inquiry investigated the impact of food prices both in urban centres and remote communities. Prices in a number of Northern Territory locations were compared with locations in other states. Darwin and Cairns prices compared reasonably, as did Alice Springs and Mt. Isa, but the price levels found in Katherine and Nhulunbuy were found to be unjustified. The report contains a breakdown of the comparison of prices of items in the

market basket. It was found that '[s]ome of the major centres and all of the remote communities in the Northern Territory are disadvantaged in terms of price, variety and quality of food supplied, particularly perishable foodstuffs' (p. 7). Food prices in the Northern Territory will only come down when the population is high enough to be conducive to greater competition. Reasons for higher costs include transport, stock spoilage and also where management regards a store less as an economic enterprise and more as a pool of funds for other community interests. It was found that higher food prices affect people's buying patterns and this created problems for nutrition. The committee recommended that an inquiry be undertaken to review store management and operation practices in remote communities. Given the central role of management in issues relating to pricing and nutrition, the report was enriched by a discussion of four different models of store management and their relative effects on pricing. Bush tucker is not addressed as the report operates on the premise that 95 per cent of food eaten in Aboriginal communities is purchased in stores. This figure originates in rather vague estimates made in 1978 by Cutter, 1984 by Young and 1985 by Fisk. Fisk in fact estimates that 95 per cent of food consumed by the Aboriginal population *as a whole* is purchased from stores (see also Young's 1984 reference). In his work on Maningrida, Altman (1987c) indicates that reliance on stores for food may be much lower in outstation communities.

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**Leonard, D, Moran, M, McLachlan, L, Johnson, G, Hallen, G, Adams, M and Tropical Public Health Unit. 1998. *A Report on the Food Supply to the Indigenous People of Cape York Health District*, Tropical Public Health Unit for North Queensland, Cairns.**

### **Key words**

Diet, stores, store pricing, market basket survey, freight, financial services.

### **Geographic area**

Cape York.

This report is compiled from a health and nutrition perspective and contains a draft food and nutrition policy for remote community stores. The stores examined were Lockhart River, Aurukun, Kowanyama and Pormpuraaw. A 'healthy shopping basket' was used to compare pricing of healthy foods. It was found that during the wet season Cape York communities pay between 30 per cent and 75 per cent more for the shopping basket than people in Cairns do. Sea freight added between \$0.60 and \$0.80 per kg and contracted air freight added \$1.50 and \$2.50 per kg to the cost of fruit and vegetables. EFTPOS facilities were introduced into all the Office of Aboriginal and Torres Strait Islander Affairs (OATSIA) stores during 1997 and it was suggested that this may help individuals manage their money and resist the pressures to share income. However there is no mention of whether appropriate education was provided during the introduction of these electronic services. There is a fundamental confusion in communities as to whether remote community stores exist as a social service to communities or whether they operate solely to generate profit. The role of store management in providing and promoting healthy foods is emphasised. For example in OATSIA-run stores a policy was implemented of reducing the profit margin on fresh fruit and vegetables, training in fresh produce management and better storage facilities. Bush foods and seafoods are recognised as a significant factor in the diet and social lives of local people, though a lack of vehicles and boats is a constraint on subsistence related activities.

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**McDonnell, S** 1999. 'The Grameen Bank micro-credit model: Lessons for Australian Indigenous economic policy', *CAEPR Discussion Paper No. 178*, CAEPR, ANU, Canberra.

**Key words**

Financial services, enterprise, culture.

**Geographic area**

Australia, Canada and America.

Micro-credit models such as that developed by the Grameen Bank work to extend small loans to people who are too poor to qualify for commercial lending schemes. Case studies from Canada and America show that it is possible to successfully replicate micro-credit schemes among indigenous communities in developed countries. However, McDonnell argues, policy-makers may encounter some unique challenges in attempting to implement such programs in Indigenous communities in Australia. Low population density, welfare payments, investment opportunities and particular cultural practices will all need to be addressed if micro-credit is to become a viable option for Indigenous entrepreneurs in Australia.

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**McMillan, SJ** 1991. 'Food and nutrition policy issues in remote Aboriginal communities: Lessons from Arnhem Land', *Australian Journal of Public Health*, 15 (4): 281–285.

**Key words**

Diet, store prices, stores, culture.

**Geographic area**

Arnhem Land.

Much of the literature to date on stores in Indigenous communities has been written from a health and nutrition perspective. McMillan outlines the main issues that affect food availability and nutrition policy in remote communities. The Arnhem Land Progress Association (ALPA) attempts to negotiate a path that both improves the health of Indigenous people and maintains economic viability. The demand for food is affected by factors such as price, price of substitutes, income, Aboriginal buying habits and seasonality. Perhaps of most relevance here is that, in ALPA's experience, Aboriginal people will pay almost anything for something they want and if something they do not want is offered for free it is near impossible to give it away. This pattern could clearly lead to the exploiting of Indigenous consumers by increasing the prices on popular items. Another important factor of which ALPA was aware was that brand loyalty was often high but that it may be a matter of low literacy levels (people may select goods by recognising packaging rather than reading brand names), a factor which made it difficult to introduce consumers to cheaper generic house brands. Factors affecting supply include consumer demand, stock management, carrying capacity and deliveries, all of which can in turn affect pricing.

**Marks, G** 1995. 'Sold out: The violation of the consumer rights of Aborigines', *Alternative Law Journal*, 20 (4): 190–193.

### **Key words**

Consumer rights, service delivery, consumer literacy.

### **Geographic area**

Remote Australia.

In 1985 the United Nations adopted the Charter of Consumer Rights. According to the Charter consumers are entitled to have access to adequate food, clothing and shelter, health care, education and sanitation. This article examines several areas in which Indigenous consumers in remote areas have been denied their consumer rights. For example sophisticated sanitary facilities have been installed in communities accompanied by little or no explanation or information on why they were introduced or how to use and maintain them. The article focuses on the need for culturally informed education programs in remote communities.

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**Martin, DF** 1995. 'Money, business and culture: Issues for Aboriginal economic policy', *CAEPR Discussion Paper No. 101*, CAEPR, ANU, Canberra.

### **Key words**

Expenditure, culture, income.

### **Geographic area**

Cape York, Queensland.

This paper provides a cultural analysis of the use of money by the Wik people of Aurukun, Cape York Peninsula. It presents data on incomes and expenditures on a weekly aggregated basis over a twelve-month period, and argues for a distinctive Aboriginal 'economy' in which it is social rather than material forms of capital that are the subject of competition.

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**Martin, DF** 1998. 'The supply of alcohol in remote Aboriginal communities: Potential policy directions from Cape York', *CAEPR Discussion Paper No. 162*, CAEPR, ANU, Canberra.

### **Key words**

Alcohol, store governance, enterprise.

### **Geographic area**

Cape York, Queensland.

Martin argues that the supply side of alcohol must be controlled if alcohol consumption is to be lowered. A number of Cape York communities have their own canteens run by the local Council. Martin states that there is an irreconcilable tension between Council's statutory role



to foster and promote community wellbeing and law and order, and their dependence on the profits made from liquor sales. This tension runs parallel to the fundamental dilemma facing community stores of how to run a business as both a successful community service and a viable financial enterprise. Martin suggests that to overcome the dilemma faced by Councils, a Regional Alcohol Trust could be set up so that any profits made from alcohol could be used for alcohol education programs and more broadly, resourcing community development initiatives. Evidence from one Cape York community suggests that demand for alcohol is essentially independent of its price. McMillan's (1991) findings that Aboriginal people would pay almost anything for something they want supports this. Further this attitude encourages practices such as selling 'sly grog' for exorbitant prices (Martin recorded poor quality cask wine selling for between \$100 and \$150 per cask).

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**Matsuyama, T** 1991. 'Sharing and money in an Aboriginal outstation', in N Peterson and M Toshio (eds), *Cash, Commoditisation and Changing Foragers*, National Museum of Ethnology, Osaka.

### Key words

Outstations, diet, cash, culture, financial services.

### Geographic area

Arnhem Land, Northern Territory.

Matsuyama's paper looks at the impact money has had on the outstation community of Gamardi in Arnhem Land. The study relies on data collected on visits to the community during 1984, 1986 and 1988. Purchased food was estimated to provide 50 per cent of daily dietary intake, a figure that contrasts markedly with estimates of Lee, O'Dea and Mathews (1994\*). During the period of data collection food was generally purchased every 10 days either from the mobile shop that came once a fortnight or by visiting Maningrida or Ramingining. The author contends that purchased food is not shared nearly as much as bush tucker is. In relation to store credit, the Arts and Crafts Centre at Maningrida is said to provide credit for several local artists against their future productions.

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**Meehan, B.** 1982. *Shell Bed to Shell Midden*, Australian Institute of Aboriginal Studies, Canberra.

### Key words

Diet.

### Geographic area

Coastal Arnhem Land, Northern Territory.

Meehan set out to investigate the role of shellfish in the economy of the Anbarra of the northern coastal region of Arnhem Land. She measures the gross weight, protein content and energy content of shellfish, other bush foods and bought foods. Though not a focus of her research, she finds that purchased food makes up a much less significant part of Anbarra diet than that estimated by Lee, O'Dea and Mathews (1994). Meehan's data (like Altman's

1987c data) suggest that Lee et al.'s estimate that over 90 per cent of the total energy intake in remote communities comes from purchased foods may need qualification.

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**Musharbash**, Y 2000. 'The Yuendumu community case study', in DE Smith (ed.), *Indigenous Families and the Welfare System: Two Community Case Studies*. CAEPR Research Monograph No. 17. CAEPR, ANU, Canberra.

### **Key words**

Cash, income, culture, service delivery.

### **Geographic area**

Yuendumu, Northern Territory.

Musharbash presents an analysis of data on the appropriateness of policy frameworks and the delivery of welfare payments and services in Yuendumu. Concern was raised by some members of the community about the lumping together of 'kids' money' into one cheque (the Family Allowance). This policy makes it difficult to determine exactly the amount of money that 'belongs' to individual children (an issue compounded by high mobility), the conviction being that a child's money belongs to the individual child. The author recommends that a 'Kids' Care Card' be trialed by DFACS and Centrelink. The card would function as a reusable debit card into which Centrelink would make welfare payments. Each child would be allocated a card that would have a set number of 'designated carers' as signatories. This approach could be relevant to the concerns raised by Rowse et al. (1994\*) about children's access to nutritious foods.

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**Northern Territory Government** 1995. *Northern Territory Food and Nutrition Policy and Strategic Plan 1995–2000*, Territory Health Services, Northern Territory Government, Darwin.

### **Key words**

Stores, economic development, freight, diet.

### **Geographic area**

Northern Territory.

The key priority for this plan was to improve the quantity, quality and affordability of the food supply in remote communities. Various actions to this end include:

- promotion of self-sufficient food production by Aboriginal communities
- development of business management skills among local leaders to help facilitate the local control of food supply which, if successful, will lower food costs, provide community employment and economic development
- develop model food policies and food supply guidelines for stores
- investigate food transport issues

- establish a food and nutrition training package for store workers
- investigate means of making book-up more equitable.

Several goals and targets were outlined, some of which focus on remote Indigenous communities, and the year 2000 is cited as the time by which certain aims will be achieved.

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**Northern Territory Government 2000.** *Market Basket Survey of Remote Community Stores in the Northern Territory 2000*, Territory Health Services, Northern Territory Government, Darwin.

### **Key words**

Market basket survey, store prices, stores.

### **Geographic area**

Northern Territory.

The survey was conducted in mind of the figure that 95 per cent of foods eaten in remote Aboriginal communities is purchased at community stores. The reference for this figure is Lee, O'Dea and Mathews (1994), which states the figure of 'over 90 per cent' based on estimates made by others in 1978, 1984 and 1985. Using a similar approach to Tregenza and Tregenza, the researchers created a hypothetical family and a market basket (which met the family's nutritional and energy requirements). Remote community stores across five districts in the Northern Territory were surveyed and compared both with the supermarket in the given districts and with a corner store. The report provides quantitative data on food pricing, quality and availability. There is however, little analysis of the findings, leaving questions of consumer spending patterns, cultural factors and pricing policy unexplored. For example it was found that overall it was 38 per cent more expensive to buy the same basket of goods in Northern Territory remote stores than in a Darwin supermarket and 28 per cent more expensive than in a Darwin corner store. However, there is no mention of the part played by transport costs in such findings. Nor is there mention of competition issues, whether prices were always found on goods, or whether any unconscionable conduct was unearthed during research.

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**Pearson, N 2000.** *Our Right to Take Responsibility*, Noel Pearson and Associates, Cairns.

### **Key words**

Economic development, income, enterprise, service delivery.

### **Geographic area**

Cape York, Queensland.

Pearson contends that Indigenous people's right to self-determination is ultimately the right to take responsibility. Dominant in Pearson's argument is the right of Indigenous people to build and participate in a real economy, one that is not based on welfare. Pearson is critical of the current CDEP model but recognises that often these payments are the dominant

resource inputs to communities. He is concerned that inputs immediately get sucked out of the community through the mostly non-Indigenous owned businesses that supply goods and services. He argues for the development of internal economies and enterprises through the training of Indigenous communities in business and investing in the general economy.

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**Povinelli, EA 1993.** *Labor's Lot: The Power, History, and Culture of Aboriginal Action*, The University of Chicago Press, Chicago.

### **Key words**

Stores, book-up, diet, culture, alcohol.

### **Geographic area**

Cox Peninsula, Northern Territory.

Povinelli's account centres on the Belyuen community on the Cox Peninsula. Local Aboriginal productivity and the hunter-gatherer economy are key concerns as well as Belyuen people's selective engagement with the non-Aboriginal economy. In 1984–85 there were two stores on the Peninsula, the community store and another 15 kilometres away that was attached to the Mandorah Pub, the latter holding a virtual monopoly on alcohol. The food from grocery stores provided approximately 80 per cent of the total caloric needs of Belyuen. At the Belyuen community store, profits exceeding a certain dividend were used to finance community projects. A third store, the Alewa Grocery Store, opened in 1988 with higher quality goods, a larger range and, initially, cheaper prices. Consequently, most Belyuen income was spent at the new store. As Povinelli highlights, Belyuen money flows along a wide system of kin, cards, and domestic and ceremonial obligations. By encouraging locals to spend their money in the form of credit, store owners attempt to control the direction of this flow. That is, in a restricted monetary system, businesses look for ways of extending their share of the market. Towards this goal both the Belyuen and Alewa grocery stores began extending credit to their customers. The Alewa storekeepers ran into some financial difficulty and began to send out legal notices to customers advising that they pay their bills. For non-drinking locals unable to pay their debts the answer was to minimise their patronage of the store and simplify their diet (as well as presumably relying more heavily on bush and sea foods). After some time negotiations were initiated whereby arrangements were made for people to make lower repayments than had previously been asked and customers were promised that new items would be stocked.

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**Report** of the Select Committee of the House of Assembly on Food Prices, 9 November 1984, Newfoundland.

### **Key words**

Store prices, market basket survey, freight, international.

### **Geographic area**

Newfoundland and Labrador, Canada.

A committee was established to determine what factors may contribute to the higher prices of foodstuffs in Newfoundland and Labrador and to recommend how prices might be reduced. Similar methodologies to those used in Australia were employed, including the use of a market basket, although the stores surveyed were not always small community stores and were often supermarkets including those in cities. As in remote Australia, isolation from distribution centres is one of the key reasons for higher food prices, particularly because of freight costs. A direct positive correlation was found between the distance of the store from the capital city of St. Johns and the price of food. Consumers in the more remote regions were found to be paying more and having less to choose from at their stores. The committee found that those communities with the highest populations tended to pay slightly more for their food. It was found that the operation of government stores in remote areas was unnecessarily complex and inefficient and this also contributed to the higher prices of foodstuffs. In another parallel to Australian data it was found that consumers are brand-loyal and will pay almost anything to buy some particular brands. Recommendations made by the committee include improving freight services, handing over government owned stores to the private sector, establishing community gardens, increasing access to training and education for management and staff, increasing consumer awareness, and increasing the buying power of small independent retailers by banding them together.

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**Rowse, T, Scrimgeour, D, Knight, S and Thomas, D 1994.** 'Food-purchasing behaviour in an Aboriginal community: Results of a survey', *Australian Journal of Public Health*, 18 (1): 63–7.

#### **Key words**

Diet, stores, expenditure, income.

#### **Geographic area**

Central Australia.

A central Australian community of 925 people (866 of whom are Indigenous) was surveyed over a two-week period in December 1989. The community had four food retail outlets including a supermarket, a butcher and two take-aways. One of the clearest findings of the survey was that women are by far the main food purchasers compared to men. Another key finding was that children have sufficient disposable income to provision themselves without adult supervision, thus determining their own diets, mostly from the take-away stores (see also Musharbash 2000). This article focuses very much on improving health outcomes; there is little analysis of cultural and financial factors, though it is noted that the cycle of expenditure is determined by CDEP and welfare payments.

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**Scrimgeour, D, Rowse, T and Knight, S 1994.** 'Food-purchasing behaviour in an Aboriginal community: Evaluation of an intervention aimed at children', *Australian Journal of Public Health*, 18 (1): 67–70.

#### **Key words**

Diet, store governance.

## Geographic area

Central Australia.

Two years after the initial study (Rowse et al. 1994) this follow-up study evaluates an intervention strategy which had been implemented in the interim. The strategy provided healthier choices for children using tactics such as putting fruit rather than confectionary at the checkout and labelling 'healthy food' items. Overall there was an improvement in the food-purchasing behaviour of children over the two-year period. The success of the intervention program is attributed to community involvement, good personal relationships between outsiders and community residents, especially with store managers, and ensuring the availability of a wide variety of food.

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**Singh, S** 1999. 'Electronic money: Understanding its use to increase the effectiveness of policy', *Telecommunications Policy*, 23: 753–73.

## Key words

Financial services, culture, income.

## Geographic area

Australia and Asia-Pacific region.

This article does not specifically address Indigenous peoples' experiences of electronic money. However in light of the deregulation of financial services in rural and remote regions, and the closure of many bank branches, a discussion of using electronic money is revealing. The article presents a users' perspective on electronic money and in doing so focuses on the social and cultural context in which money is used. It is argued that pricing policies ignore the effects of trust, comfort and habit in banking behaviours. Indigenous consumers may be particularly excluded from electronic banking due to low literacy and/or numeracy and a preference for face-to-face transaction services.

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**Smith, DE** 1991a. 'Aboriginal expenditure patterns: An analysis of empirical data and its policy implications', *CAEPR Discussion Paper No. 9*, CAEPR, ANU, Canberra.

## Key words

Expenditure, income.

## Geographic area

Australia-wide.

Smith compares Indigenous household expenditure data gleaned from empirical research with data obtained from the HES conducted by the ABS. She uses expenditure categories such as food, housing and transportation, and finds that the emergent patterns from low-income Indigenous households are indicative of poverty. A key finding is that the high proportion of income spent on basic commodities means that many households do not have the resources to pay for service provision. While expenditure data are sparse, Smith notes

that, overall, Aboriginal people spend in the range of 33 to 65 per cent of their income on food and non-alcoholic beverages. In comparison, 20 per cent of income amongst the lowest income quintile group in the total population is spent on food. Given the high proportion of Aboriginal people living in rural and remote areas and their high mobility rates, transport costs are surely a considerable aspect of expenditure (see also Crough & Pritchard 1991\*). This is particularly the case where levels of car ownership are low and public transport is unavailable, making people reliant on taxis.

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**Smith, DE 1991b.** 'Toward an Aboriginal household expenditure survey: Conceptual, methodological and cultural considerations', *CAEPR Discussion Paper No. 10*, CAEPR, ANU, Canberra.

**Key words**

Expenditure, culture, cash.

**Geographic area**

Australia-wide.

Rigorous research on the cost of goods and services in remote communities is difficult to conduct given the lack of data on Aboriginal household expenditure. Smith argues that the HES, which measures mainstream patterns, is not an appropriate model for obtaining Aboriginal expenditure data, particularly due to the dynamic nature of Aboriginal households. Furthermore any survey of Aboriginal expenditure may be difficult to formulate given Aboriginal conceptions of economy, money and spending which may differ from those of the wider community (see also Martin 1995\*). Other complicating factors include the nature of cash redistribution and sharing in Aboriginal communities and subsistence production and exchange (which can be seen as an expenditure equivalent).

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**Srivastava, S 1998.** 'Indigenous consumers in the Northern Territory', *Indigenous Law Bulletin*, 4 (11): 17–18.

**Key words**

Consumer rights, ACCC/TPA, stores, financial services, competition.

**Geographic area**

Northern Australia.

Srivastava is a solicitor at the North Australian Aboriginal Legal Aid Service in Darwin. From a legal perspective, the lack of access for Indigenous people, particularly those in remote communities, to financial literacy, consumer rights information and interpreters is at the root of many difficulties people encounter with shops and financial institutions. Another fundamental problem is the lack of commercial competition in remote communities, which can develop into exploitative relationships between store owners and community members. The author lists several cases relating to Indigenous people and consumer law, many of which involve unconscionable conduct (as defined under the TPA) by store keepers. Cases include customers being refused service after complaining about exorbitant prices, book-up

arrangements where the consumer is not told that they are being charged 15 per cent interest per annum, and reports of unscrupulous car dealers.

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**Stanley, O 1982.** 'Some problems in the provision of banking facilities in remote Aboriginal communities', in P Loveday (ed.), *Service Delivery to Remote Communities*, NARU, ANU, Darwin.

### **Key words**

Financial services, income.

### **Geographic area**

Remote Australia.

Banks face many difficulties in providing Indigenous Australians living in remote communities with banking facilities. This paper focuses on the provision of services through private bank agencies, a phenomenon that has now all but disappeared in remote regions. Problems with the provision of services included the following: it is not a profitable exercise for banks, there is insufficient cash available given the mostly welfare-based nature of the local incomes, and there are security issues such as theft and inadequate reporting of agency business. The solutions for such problems offered by the author include a better management selection process and staggering welfare payments over time. H.C. Coombs on the other hand, reportedly proposed that people who only use the service to cash cheques should be charged and the bank paid a subsidy from the (then) Department of Aboriginal Affairs. It is interesting to note that even in this era when banking services were more accessible, stores sometimes assisted agencies by cashing cheques.

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**Stanley, O 1985.** 'Economic development problems in remote Aboriginal Communities', in P Loveday and D Wade-Marshall (eds), *Economy and People in the North*, NARU, ANU, Darwin.

### **Key words**

Economic development, store governance, store prices.

### **Geographic area**

Remote Australia.

Stanley's paper aims to examine the ways in which remote Aboriginal communities follow the paradigm of underdeveloped countries which has been developed in the economic development literature. He also pessimistically discusses the long-term development of these communities. Stanley notes the key role of store managers who can, for example, manipulate prices by making basic foodstuffs cheaper and making beer, tobacco and soft drinks more expensive to encourage better health.



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**Sullivan**, H, Gracey, M and Hevron, V 1987. 'Food costs and nutrition of Aborigines in remote areas of northern Australia', *The Medical Journal of Australia*, Vol. 147: 334–7.

**Key words**

Market basket survey, stores, store prices, financial services.

**Geographic area**

Kimberley region, Western Australia.

A locally-relevant market basket was devised in order to measure the cost of food purchases for Indigenous people in the Kimberley region. It was found that prices in community-run stores were 45 per cent higher than in Perth. The remote area allowance of \$22.50 is well short of the differential cost of the market basket (\$86.76) in West Kimberley Aboriginal communities. The authors state that book-up had largely been eliminated at the time of writing due to the serious financial burden that it had placed on the communities. The decline in book-up may have contributed to the fall in food prices in the Kimberley in the months preceding the study.

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**Taylor**, J and Westbury, N 2000. *Aboriginal Nutrition and the Nyirranggulung Health Strategy in Jawoyn Country*, CAEPR Research Monograph No. 19, CAEPR, ANU, Canberra.

**Key words**

Stores, diet, store prices, store governance, financial services.

**Geographic area**

Katherine East, Northern Territory.

Community stores are highlighted as one of the key structural elements that impede better nutrition in the Katherine East region of Jawoyn. While focusing on nutrition this study uses a systems framework which helps to trace linkages between food supply, distribution, consumption and nutrition and it also takes socioeconomic factors such as income into account. Taylor and Westbury found that store management (managers as well as committees) played a vital role in the price, quality and variety of foodstuffs found in stores. They stressed that it is important to get store managers on side in any efforts to improve nutrition in communities. The ALPA food policy is discussed and reviewed in terms of what has changed since its implementation. Factors influencing the prices of foods are many and varied. They include production costs, demand, and international price fluctuations as well as transport, storage and handling costs and taxes. The Community Market Basket Survey—conducted by the Northern Territory Government Health Services—operates in Burunga and Wugularr and, by providing comparative data with other remote stores can act as a monitoring device. Book-up is discussed as a 'double-edged sword'; on the one hand users of the system are guaranteed access to foodstuffs and store owners are guaranteed reimbursement, while on the other hand it perpetuates welfare dependency, and provides no incentive to develop skills in dealing with the cash economy.

**Wells, S** 1993. *Taking Stock: Aboriginal Autonomy Through Enterprise*, NARU, ANU, Darwin.

**Key words**

Stores, economic development, store governance, consumer literacy.

**Geographic area**

Arnhem Land, Northern Territory.

This book is a record of the ALPA's achievements, activities and the hurdles it has faced over a twenty-year period from 1972 to 1992. Economic independence and community development through Aboriginal-owned, managed and staffed community stores was a key vision at ALPA's inception. Since its inception ALPA has envisioned itself as both a commercial venture *and* an alternative development agency servicing communities. Perhaps inevitably then, much tension has occurred between the commercial aspects and the community aspects of ALPA's activities. ALPA's prices are not exorbitant compared to many remote stores, but they do receive complaints about pricing which ALPA interprets as a reflection of the lack of knowledge about how stores actually operate, in terms of ordering, transport, stocking shelves and payment of goods. To address this lack of awareness, an education program was implemented aimed both at storeworkers and communities. The program addresses the key question of 'what happens to all the money that goes into the store?' ALPA found that the cheaper 'No Name', 'Black and Gold' and 'Homebrand' brands were very difficult to sell, partly because of communities witnessing major brand advertising on television.

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**Westbury, N** 1999. 'Feast, famine and fraud: Considerations in the delivery of banking and financial services to remote Indigenous communities', *CAEPR Discussion Paper No. 187*, CAEPR, ANU, Canberra.

**Key words**

Financial services, culture, income.

**Geographic area**

Remote Australia.

Westbury identifies the main barriers to the delivery of financial services to Indigenous people in central Australia as well as highlighting potential initiatives for overcoming those barriers. The technological and regulatory changes being made to financial services mean that Indigenous people, and particularly those in rural and remote areas, are being further marginalised from such services. The key barriers to improving service delivery are income and welfare dependence, infrastructure shortfall, cultural factors, the nature of Centrelink payment delivery, the 'feast and famine' cycle and banks' lack of cross-cultural awareness. Electronic services, Indigenous credit unions and the maintaining of bank agencies where possible, can all ameliorate the problem when provided with proper support and education. However Westbury notes that if responses are to have a truly positive impact they must be community oriented. A closer working relationship between Centrelink and banks is one of the key recommendations made which ultimately may lead to Indigenous people having greater access to appropriate financial services and greater economic independence.

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**Westbury, N** 2000. 'What's in it for Koories? Barwon-Darling Alliance credit union and the delivery of financial and banking services in north-west New South Wales', *CAEPR Working Paper No. 7*, CAEPR, ANU, Canberra.

**Key words**

Financial services, cash, stores, savings, income.

**Geographic area**

North-west New South Wales.

Banks play a critical role in enabling people to manage their finances and budget for their households. The deregulation of financial services has had a disproportionate effect on many Indigenous people in regional and remote areas because of their low income levels, reliance on welfare payments and low levels of financial literacy. Bank accounts are often seen by Indigenous people primarily as a means to obtain cash from their wage or welfare payments, not as a means to generate savings. Bank branches have been closing at a rate of five branches per month in regional and rural New South Wales. This means a significant reduction in the possibility for people in these areas to access face-to-face financial services. Branch closures can mean that there is more need for book-up style credit schemes as stores increasingly take on pseudo-banking roles. Some Indigenous people have raised concerns about the embarrassment of having to access financial services in the more public arena of stores. This is particularly the case where people are not sure of their account balance and may need to make numerous withdrawals. Financial literacy is a key consideration in the transition from face-to-face financial services to those accessed through machines. The services provided by the Traditional Credit Union are discussed in this report, highlighting many advantages such as access to face-to-face services with Indigenous staff, easy access to account balances (unlike EFTPOS), access to affordable loans and assistance with saving regimes.

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**Westcombe, R** 1991. 'Bad money business', *Aboriginal Law Bulletin*, June Issue: 6–7.

**Key words**

Financial services, culture.

**Geographic area**

Australia-wide.

Based on broad observation Westcombe signals the key areas that can cause difficulties for Indigenous people in accessing credit. Aborigines in small country towns are harder hit economically than urban and remote outstation communities because they are less able to fall back on traditional supports, while also being only partially accepted into the socioeconomic patterns of broader society. Low incomes coupled with kin-based sharing obligations can cause financial hardship, making budgeting very difficult. The culture gap makes financial planning problematic, particularly in relation to negotiating business transactions. Unconscionable conduct or misleading practices on the part of credit providers can have severe effects on consumers. Westcombe recommends that any response to such problems needs to stem from community derived programs.

Westcombe, R 1998. 'Hard shopping', *Consuming Interest*, 74: 17–19.

**Key words**

Consumer rights, consumer literacy.

**Geographic area**

New South Wales.

The author discusses what has happened since the report *Grin and Bear It* (which Westcombe authored) by the Aboriginal Consumer Education Project of the New South Wales Department of Consumer Affairs (1994\*). The report examined experiences of Indigenous consumers in New South Wales. In this article the reader is presented with several 'success stories' which have occurred since the report (and some follow up workshops aimed at informing Indigenous consumers of their rights) as well as a list of problems still facing Indigenous consumers. Such problems include discrimination resulting in their being charged at higher rates for some goods and services, and banking cards being held by traders, taxi drivers and bank staff.

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Young, E 1981. *Tribal Communities in Rural Areas*, Development Studies Centre, ANU, Canberra.

**Key words**

Stores, store governance.

**Geographic area**

Northern Territory.

The main socioeconomic components of the communities of Yuendumu, Willowra and Numbulwar are discussed in this study. The brief general discussion of stores in these communities focuses on the lack of success in placing Aboriginal management into stores. Young argues for greater Aboriginal participation in the running of stores and recommends the provision of training to this end.

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Young, E 1982. 'Aboriginal community stores: A service "for the people" or "by the people"', in P Loveday (ed.), *Service Delivery to Remote Communities*, NARU, ANU, Darwin.

**Key words**

Stores, store governance, competition, cash.

**Geographic area**

Northern Territory.

Young uses case studies from Yuendumu, Willowra and Numbulwar to examine the main challenges involved in maintaining retail services in remote areas. Young found that on

average 80 per cent to 90 per cent of community income was being spent in their stores. While stores managed by non-Indigenous people often fail, the failure rate is higher for stores run 'by the [Indigenous] people'. After reviewing the history of community stores Young notes three main detrimental legacies which have contributed to their contemporary development. Firstly, Aboriginal involvement, and particularly management, remains at a very low level. Secondly, given the monopoly that tends to exist for remote stores and their dual function as a cash outlet, Aboriginal people have had little opportunity to learn how to manage their cash in a broader context. Finally, providing an essential service 'for the people' took precedence over the provision of stores 'by the people'. The two key problems with operating and maintaining stores is the lack of facilities for training Aboriginal staff, particularly in management roles and the lack of service and support given, particularly in the financial side of operations. Addressing these challenges at a community level is the way forward.

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**Young, E 1984.** *Outback Stores: Retail Services in North Australian Aboriginal Communities*, NARU, ANU, Darwin.

### **Key words**

Stores, financial services, freight, store governance, store pricing, diet, culture.

### **Geographic area**

Northern Australia.

This work is one of the only publications of its size that is entirely dedicated to a thorough discussion and rigorous analysis of stores in remote communities. Young conducted fieldwork in regions spread from the Kimberley to Cape York and south to the Pitjantjatjara lands. The resulting data are largely comparative, using numerous detailed case studies. The cultural factors that affect many aspects of the running of stores are taken into account at every step of her discussion. Stores in remote communities are an essential service, and this assumption forms the basis of Young's analysis. Their functions are broad and include retailing, banking and financial operations, social, economical, and educational functions and ensuring the physical wellbeing of the community. Hence Young's framework is informed by these diverse roles. Problems that stores face in association with isolation include difficulties accessing transport and communication services. Ownership of stores is largely in Aboriginal hands, whereas management is most often non-Aboriginal, and for staff employment, figures suggest that the split is fairly even. Details of variations between each of the stores pricing policies are provided as well as a discussion that illuminates the reasons behind many of the differences. For example, among ALPA stores mark-ups are not designed to make high profits and are differentially applied so that basic foodstuffs are reasonably cheap. On the other hand Aurukun store has higher mark-ups to cover the higher freight costs but another contributing factor is that the store is the main income-generating component within the community-owned enterprise organisation. The market basket cost \$549.90 in the ALPA-owned Yirrkala store compared to \$663.10 in Aurukun. Using the market basket survey, information on costing was standardised to give a Consumer Price Index used to compare all the case studies with their neighbouring towns. When stores operate as credit agencies they provide an important service, but in order to run smoothly and to avoid store closures several mechanisms should be put into place, for example placing a limit on the amount individuals can book-up or restricting book-up to non-tobacco and soft drink sales such as was implemented in Mowanjum. In relation to

nutrition Young states that there are no detailed analyses of the percentage of purchased food that make up Aboriginal diets in the Northern Territory and Western Australia. She estimates that it exceeds 80 per cent and in some places is well over 90 per cent. Stores are also discussed in terms of education and social interaction and the Aboriginal–European interface. If nothing else this volume highlights an incredible diversity in the practices, policies and situations faced by stores in remote Indigenous communities.

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**Young, E 1987.** 'Commerce in the bush: Aboriginal and Inuit experiences in the commercial world', *Australian Aboriginal Studies*, 2: 46–53.

**Key words**

Stores, international, culture, freight, competition, store governance.

**Geographic area**

Remote Australia and remote Canada.

Young notes some basic challenges which many Indigenous people both in remote Australia and in Canada must face in the commercial world, namely isolation, the fulfilment of kinship obligations which can undermine conventional business practice, high freight costs and a chronic shortage of capital. The structure of Inuit stores differs from their Australian counterparts in two main ways, namely the development of Inuit producer cooperatives and the competition with the large and well-established trader, the Hudson's Bay Company. Non-Indigenous people still largely manage Inuit stores, as is the case in Australia. Young stresses the importance of placing control of stores in Aboriginal hands and believes that the success of a store should be judged on social as well as economic grounds.

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**Young, E 1988.** 'Aboriginal economic enterprises: Problems and prospects', in D Wade-Marshall and P Loveday (eds), *Northern Australia: Progress and Prospects*, Vol. 1: *Contemporary Issues in Development*, NARU, ANU, Darwin.

**Key words**

Economic development, enterprise, stores, culture, store governance.

**Geographic area**

Remote northern Australia.

Opening her paper Young highlights the interconnection between self-determination and social, economic and political development. What follows is a discussion of the opportunities for, and existing problems with, Aboriginal economic enterprises in remote communities. Young divides the reasons for failure of such enterprises into two groups, those endemic to northern Australia in general and those specific to Aboriginal enterprises. In the first group Young signals isolation, the poverty of the local resource base, the dominance of external operators in ownership, marketing and finance, and demographic factors. Factors that may negatively impact specifically on Aboriginal enterprises include cultural attitudes and behaviours and the nature of non-Indigenous support including managerial and associated needs. To illustrate these problems Young discusses the pastoral industry and retail stores

and the fundamental tension between the commercial and social aspects of community stores is again raised. She estimates that in the remote parts of northern Australia, around 90 per cent of peoples' daily sustenance is procured from stores. However there is no empirical evidence provided in the text to support this figure. Yuendumu is discussed to illustrate the range of problems that afflict enterprises in remote areas. In terms of prospects for Aboriginal enterprises, Young signals the artefact industry as holding the potential for great success.

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**Young, E 1991.** 'Australia, Canada and Alaska: Land rights and Aboriginal enterprise development', in P Jull and S Roberts (eds), *The Challenge of Northern Regions*, NARU, ANU, Darwin.

### **Key words**

Economic development, enterprise, cash, international.

### **Geographic area**

Australia, Canada and Alaska.

Of only peripheral relevance (though international comparative data are used), this article stresses the importance of the economic context in which self-determination and community development operate. Land rights settlements in Alaska, Canada and Australia are discussed and it is argued that land rights should, though rarely does provide economic development for Indigenous people through enterprise. Young adopts a broad approach to enterprise that incorporates both cash and non-cash activity (see also Altman 1987c). Enterprise thus includes subsistence, pastoralism, the art and craft industry, tourism and mining ventures.

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**Young, E 1995.** *Third World in the First: Development and Indigenous Peoples*, Routledge, London.

### **Key words**

Economic development, stores, culture, store governance, international.

### **Geographic area**

Australia and Canada.

This book addresses how development has affected Indigenous people in Australia and Canada and explores alternative strategies that may be available. In chapter seven, 'Aboriginal community stores and development', Young notes that community stores are one of the few services in remote communities that are expected to contribute to the economy by generating profits. They also act as places for people to congregate where cultural norms of reciprocity and kinship obligations are played out. In commercial terms, the performance of the store can be affected by the high costs of operation, problems of undercapitalisation and cash flow, and by staffing and management difficulties. Isolation from external markets, variation of trading patterns and harsh environments contribute to the high operational costs for example heating or cooling costs of stores both in the Arctic

and in central Australia. Young bases her analysis on the tension, which occurs because of the dual and often conflicting role of the store as both the provider of an essential community service, and as an economic enterprise. In broader terms the former is accompanied by a whole host of social and cultural functions and the latter can tie the community more closely to industrialised society and the mainstream economy. Bureaucrats and policy-makers, says Young, have not properly taken this dichotomy into account. In addressing how stores can tread this tightrope Young turns to several models including the Arctic Co-operative, the Federation des Co-operatives du Nouveau-Quebec, ALPA, Anangu Winkiku Stores and Yanangu Stores, and examines in some detail the ways in which each are run. Young also discusses the merits and difficulties of stores run as individual-owned small businesses, which in order to succeed must overcome many hurdles which are less problematic for community-owned stores and co-operatives. The fundamental challenge remains, how to 'provide a socially appropriate store (a service) that remains financially viable (an enterprise)' (p. 236).

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**Young, E, Crough, G and Christophersen, C 1993. *An Evaluation of Store Enterprises in Aboriginal Communities*, NARU, ANU, Darwin.**

### **Key words**

Stores, enterprise, store governance, international.

### **Geographic area**

Central Australia, Arnhem Land (Northern Territory) and North America.

In this volume Young compares support organisations for Aboriginal community stores in Arnhem Land, central Australia and North America. The Australian organisations discussed are ALPA, Anangu Winkiku Stores and Yanangu Stores. The second section of the book contains Crough and Cristophersen's rather critical analysis of ALPA. Support organisations help to provide better services to customers. ALPA's work includes the bulk ordering of stock, appointing and supporting managers, encouraging employment of Aboriginal staff through training programs, and an accountancy service. In similar ways to ALPA, Anangu Winkiku Stores assists nine stores, including five stores outside of Pitjantjatjara lands. Yanangu has six member stores and specialises in wholesale distribution. The main comparisons to be made between these three Australian organisations and those in North America are their functioning in a cultural context, their support for self-determination and their attempts to reconcile the social and economic functions of stores. ALPA and the North American organisations differ mainly with respect to the nature of their political origins. The former was set up on a top-down basis that is reflected still today, with limited Indigenous participation in senior positions. The piece by Crough and Cristophersen is based on interviews with Aboriginal people who patronise ALPA stores. Tensions arise when discussing the degree to which ALPA is an 'Aboriginal organisation'. What happens with the dividends from ALPA stores is another point of conflict as 'community purposes' can be rather a loosely defined agenda. It is stated that in some communities dividends benefit a relatively small group of people. The authors suggest that ALPA may need to review their pricing policy and lower their store prices in a structured manner, which would reduce dividends but benefit all of their community members.



## Part B: Unpublished material

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**Cultural Perspectives.** 1998. Gabami Report: Aboriginal Consumer Issues and Education Strategies, Unpublished report prepared for the NSW Department of Fair Trading, June 1998.

### **Key words**

Consumer literacy, consumer rights, culture, service delivery, financial services.

### **Geographic area**

New South Wales

The central aim of this research project was to identify the key needs of Aboriginal consumers in different areas (urban, rural and remote) of New South Wales paying particular attention to cultural issues that may affect consumers. The research sought in part to determine the level of awareness of the role and functions of the New South Wales Department of Fair Trading. In order of importance, the main consumer and fair trading issues reported by Aboriginal people were: tenancy issues, access to goods and services, consumer service, equitable prices, financial matters and car purchasing and mechanical repairs. Taxis were singled out as a particularly problematic service with many people stating that taxi drivers refused to pick up Aboriginal people or asked that their keycard be provided by way of insurance. A poor level of service was also cited as a common problem, for example where Aboriginal people were sold items that did not suit their needs because the salesperson assumed that there will be no complaint. Many Aboriginal people can feel shame acutely and may be less likely to 'cause a scene' as a result. Some people also felt that where prices were not marked on goods they were charged at a higher rate than non-Aboriginal people would be. There was also perceived to be a lack of access to information on financial services including redress for faulty goods, contracts, bank fees and credit arrangements including book-up. It was found however that people in the younger age group were more aware of their consumer rights and were relatively confident in exercising them. The preferred means of information dissemination were found to be face-to-face discussion with an Aboriginal liaison officer, television and radio, and then pamphlets and posters. This data stands in contrast to the findings of the Department of Industry, Science and Tourism (1997) report which did not single out Indigenous-specific educational needs.

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**Dodson, M** 1995. 1995 Ruby Hutchison Memorial Address on World Consumer Rights Day, March 12, 1995, Federal Bureau of Consumer Affairs, Canberra.

### **Key words**

Consumer rights, consumer literacy.

### **Geographic area**

Australia-wide.

Dodson states that one can examine any one of the eight consumer rights adopted by the United Nations in almost any context and show that it has been violated in Aboriginal communities. He considers these rights in the context of Indigenous health care consumption. The case of a tobacco company promoting cigarettes in an Indigenous community in the Top End is highlighted as an example of the lack of the right to safety. In a positive example consumer education strategies in Minjilang community led to greater provision of nutritious foods in the community store. The right to choose, says Dodson, is farcical in remote communities where stores are stocked with a narrow range of overpriced goods. To protect Indigenous consumers in keeping with international standards, government needs to act on what it hears from Indigenous voices.

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**Henson, E and Nathan, L 1998.** 'Tool of sovereignty: The Crow commercial code', Harvard Project on American Indian Economic Development Report No. 98-4, John F Kennedy School of Government, Harvard University, Cambridge.

### **Key words**

International, competition, enterprise, economic development.

### **Geographic area**

Montana, USA.

Certain socioeconomic factors on the Crow reservation in Montana are similar to those in remote Aboriginal communities in Australia. Crow country covers 2.29 million acres and has a population of 6,600 and an unemployment rate of 78 per cent. The per capita income is between one half and one quarter that of residents in surrounding counties. The reservation has one IGA supermarket and two other enterprises. Residents must travel to other towns between 12 and 60 miles away for some goods and almost all services. The level of competition is clearly minimal. Crow entrepreneurs struggle to get enterprises off the ground: there are difficulties in obtaining loans as the relationship between banks and Indigenous entrepreneurs has a strained history. The complete absence of financial institutions on Crow country is one reason that off-reservation investors are reluctant to invest in the community. Other reasons include the low physical capital, poor roads and an underdeveloped labour force. The authors argue that the implementation of a Crow Commercial Code, with an appropriate judicial system to enforce it, would stimulate economic development on Crow country. A commercial code specifies the conditions under which businesses may operate and the rules they must follow as well as the mechanisms under which commercial disputes will be resolved. More specifically, a code covers sales and leases, shipping of goods and bank deposits, and outlines rights and obligations within contracts and transactions. The authors argue that a code would clarify and strengthen the relationship between business and government in Crow country. The implementation of a this code would stimulate investment from outside the reservation and create enterprise development among Indigenous entrepreneurs.

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**Lumbu** Indigenous Community Foundation 2001. Financial Services and Indigenous Australia Roundtable, Unpublished summary of meeting April 2001.

**Key words**

Financial services, consumer literacy.

**Geographic area**

Australia-wide.

The roundtable was convened 'to expand relations between Indigenous Australia and the Financial Services Sector' (p. 4) and was launched with a \$20 million commitment from the Department of Family and Community Services. The summary attempts to outline some general areas of future research. Most relevant aspects of the discussion centre on a commitment to building financial literacy and consumer awareness in Indigenous communities in forms which are culturally relevant.

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**Martin, D** 1993. *Autonomy and Relatedness: An Ethnography of Wik People of Aurukun, Western Cape York Peninsula*, PhD thesis, Department of Anthropology, ANU, Canberra.

**Key words**

Cash, alcohol, culture, expenditure, stores.

**Geographic area**

Cape York, Queensland.

Martin's thesis provides a detailed account of a remote Aboriginal community in Cape York. Through a sustained examination of the principles and values which Wik people bring to everyday life, the thesis elucidates social process in such areas as the raising of children, gender relations, the utilisation of cash, gambling, work, alcohol consumption, and conflict and violence. In particular, there is a highly detailed treatment of the cultural understandings underlying the use of cash incomes (primarily welfare based), using data on community-wide weekly aggregate incomes and expenditures over a twelve-month period. The data include expenditure patterns in the store, alcohol canteen, and food takeaways. In relation to alcohol purchases, the data suggest that demand is highly price-inelastic.

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**Northern Territory Government** n.d. Northern Territory Food and Nutrition Policy Action Plan 2001–2006, Territory Health Services, Northern Territory Government.

**Key words**

Diet, service delivery.

**Geographic area**

Northern Territory.

This publication reviews the 1995 Northern Territory Food and Nutrition Policy and identifies directions for public health and nutrition for the five-year period. Food supply (affordability, quality and quantity) is the main focus in servicing the needs of remote Indigenous communities.

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**Queensland Health 1995.** Queensland Aboriginal and Torres Strait Islander Food and Nutrition Strategy, Queensland Health, Brisbane.

### **Key words**

Diet, stores, enterprise, financial services.

### **Geographic area**

Queensland.

This strategy document provides a framework aimed at improving the health and nutrition of Indigenous people in Queensland. Stores can obviously play a pivotal role in nutrition, particularly in remote communities. The report highlights the importance of Indigenous involvement in food-related business and enterprise and identifies the need to work with community stores to this end. The coordination between money supply and food supply should be investigated, including issues such as access to banking services. The authors recommend that community stores be reviewed and evaluated in terms of practices and policies, in comparisons with other states. Programs for store managers and staff are recommended with particular reference to stock management, food handling, nutrition and marketing strategies. Store pricing is not directly addressed.

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**Renouf, G 2001.** Some Consumer Problems with the 'Book Up' System, Unpublished Consultation Paper prepared for the Australian Securities and Investments Commission, May 2001.

### **Key words**

Financial services, consumer rights, stores, cash, competition, ACCC/TPA.

### **Geographic area**

Australia-wide.

Book-up can result in financial hardship for its users through the exploitation of their weaker bargaining power. In cases where stores are sent social security cheques (addressed 'care of' the store) a captive market is gained which can result in price exploitation. Renouf notes that in stores which do not label their prices people paying by book-up may end up being overcharged compared to those paying with cash, although no empirical evidence of this practice has been found. It is important to note that book-up is not always seen in negative terms by consumers who use it. Advantages can include not having to carry around one's key card or cash (and therefore not having to hand out cash or relinquish access of the card to family members) and having help in using the card. In most rural and remote communities (although book-up has also been found to occur in Darwin and regional centres) face-to-face banking services have closed, or may never have existed. Thus book-

up can offer consumers a personal encounter when dealing with financial matters. In terms of the TPA, book-up may result in cases of a lack of competition (consumers tend to be tied to using only one store) and unconscionable conduct.

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**Tregenza, JD and Tregenza, EJ 1998.** Anangu Pitjantjatjara Services Resource Management Project.

### **Key words**

Store pricing, market basket survey, expenditure.

### **Geographic area**

Central Australia.

Empirical research was conducted with the aim of informing local Indigenous people about resource management issues. Cost of living was an important element within this and, using a health framework, research was conducted on income and store pricing. Bush tucker is often only accessible with a vehicle and according to the authors most Anangu get most of their foodstuffs from community stores. A hypothetical family income was calculated at \$600 per week, and a 'stores box' was created based on the needs of keeping the hypothetical family healthy for one week. Using the stores box a survey was conducted across all eight stores on Anangu Pitjantjatjara Lands as well as in three Alice Springs stores by way of comparison. It was found that average regional prices are 23 per cent higher than in Alice Springs; the report does not make mention of whether this may be due, at least in part, to transport costs. The survey determined that the average price of the weekly stores box came to \$500 per family per week. Based on this model it was found that an Anangu family would spend 85 per cent of their income on health necessities. It was found that many people may have income levels less than their cost of living. It was calculated that a 40 per cent reduction in store prices of the specified items would result in 50 per cent of income being spent on the healthy food basket. Such a pricing structure could not be borne by the stores. Other relevant findings include: prices not being shown on goods in some stores, in one community the cash register was not used in the store and store management and policy were not effectively controlled by local councils. Also, the increase in employment of non-local, non-Indigenous staff was resulting in higher prices. A computer program for checking store prices and nutrition for food baskets was developed during the course of research and the authors are creating a regional stores policy which it is hoped will be completed in September 2001 and may include a pricing policy.

## appendix 2

# Possible breaches of the TPA

Siobhan McDonnell and David Martin

## Possible unconscionable conduct (ss. 51AA; 51AB)

Arguments as to whether transactions entered into by Indigenous consumers are unconscionable must take account of both Indigenous agency and the often heightened vulnerability of Indigenous consumers relative to other consumers. While Indigenous consumers do not constitute a class of ‘special disability’, in general Indigenous consumers, and particularly those in remote communities, are more likely to have lower levels of education, literacy and consumer awareness than non-Indigenous consumers, and be less able to access to independent legal advice (Amadio). In addition, Indigenous consumers in remote areas are likely to be more dependent on single providers of goods and services, such as community stores.

- **Overcharging for taxi services and alcohol**—The literature contains allegations that taxi drivers overcharge for services to town camps around Alice Springs (Commonwealth Ombudsman 1997). In addition, the Commonwealth Ombudsman (1997) also notes instances of Indigenous people being overcharged for alcohol. Further anecdotal evidence exists of the practice in the Northern Territory of the price of alcohol being increased dramatically to coincide with days on which welfare payment are made. Moreover, mechanical repairs for cars have also been identified as being priced at above market rates for Indigenous consumers (Cultural Perspectives 1998). It is recognised that while overcharging for goods and services is itself not a TPA issue, evidence that overcharging is directed towards Indigenous consumers may be suggestive of a relationship of vulnerability consistent with unconscionability (see Altman, McDonnell & Ward 2001: 10, and chapter 1 of this volume). The fact that these practices are directed towards Indigenous consumers, and are different to the services offered to non-Indigenous people may be indicative of an unconscionable practice. Such an interpretation would be consistent with s. 51AB(2)(e) under which ‘the amount for which, and circumstances under which, the consumer could have acquired equivalent goods or services from another party’ will be taken into account in assessing whether a transaction was unconscionable.

- **Used-car dealers**—during fieldwork a number of Indigenous and non-Indigenous people interviewed (including representatives of various consumer agencies) indicated that Indigenous people were often sold cars at significantly above market rates. In particular, a number of people gave accounts of car-dealers (both registered and unregistered) bringing cheap cars over the border in anticipation of royalty payments being made, and then selling these cars to Indigenous consumers at much more than their market value. In Alice Springs there were also accounts of a number of people, including art dealers, running small unregistered used-car businesses aimed at the Indigenous market as a means of supplementing their income. Two key consumer reports also note instances of cars being sold to Indigenous consumers at prices that are double, or triple their market value (Bell & Johnson 2001; Commonwealth Ombudsman 1997). In addition, in interviews conducted during fieldwork a number of people told of individuals who brought cars over the boarder into the Northern Territory to coincide with royalty payments being made to communities. These cars were then sold at rapidly inflated prices.

Cars are particularly prized possessions in remote communities. Elsewhere in this paper it has been argued that the value Warlpiri men, for example, accord to cars is not constructed against that of the regional used car market, but in terms of their role in the primarily masculine pursuits such as hunting, attendance at ceremonies, and visiting kin across a huge region. Thus it may be that Walpiri males' demand for used cars is more inelastic than non-Indigenous consumers' demand for cars. While on the one hand the ability of used-car salespeople to exploit the more inelastic demand curve of Indigenous consumers could be considered good business practice, the fact that evidence exists of Indigenous people paying more for used cars may also be indicative of unconscionable conduct.

- **Book-up (or book-down) practices**—one interpretation of book-up practices is that they result in exploitation of Indigenous consumers' lesser bargaining position and as such may be unconscionable. For example, in accordance with the factors specified in s. 51AB(2) it could possibly be argued that an Indigenous consumer who enters into a book-up arrangement, who has low level of literacy and education (s. 51AB(2)(a)) and who is pressured into using book-up arrangements on the basis that there are no other financial services available to them and they were hungry and needed food (s. 51AB(2)(b)) and who is required to leave their key-card and PIN-number as security (s. 51AB(2)(c)) may be unconscionable. This is particularly the case if the fees charged for book-up are exorbitant compared with the fees charged for other financial services (s. 51AB(2)(d)). This last point however assumes that Indigenous consumers have access to credit from alternate financial sources, an assumption that can be problematic particularly in remote areas. Following on from this point, another possible interpretation of book-up is that it provides an essential service to Indigenous people who otherwise would not have access to credit. Thus it is possible that in some cases book-up has the potential to benefit Indigenous consumers (for a more detailed discussion of

book-up see Altman, McDonnell & Ward 2001: 12, and chapter 2 this volume).

- **Book-up and alcohol consumption**—a recent report (Martin 2002) indicates that in communities in Western Australia, publicans are taking key cards and PIN numbers in return for providing people with alcohol. Evidence exists of a single publican at Kookynie holding onto the cards of 200 Aboriginal people. Such transactions seem particularly unconscionable where people are alcohol dependent and thus particularly vulnerable to being pressured into using book-up arrangements in order to purchase alcohol. Finally, it should be noted that selling alcohol on credit may be in breach of the store's licence to sell alcohol, as is the case with many of the alcohol licences issued in the Northern Territory. Such matters however are more properly in the province of the relevant liquor licensing agency than that of the ACCC.

## Possible misleading and deceptive conduct and/or misrepresentation (ss. 52; 53).

The issues detailed below seem to indicate that many Indigenous people, and particularly those located in rural and remote areas, are vulnerable to misleading representations made during face-to-face transactions. This may be due in part to the high levels of illiteracy amongst the Indigenous population in rural and remote Australia.

- **Door-to-door sales**—TPA investigations to date seem to identify that Indigenous people may be particularly vulnerable to representations made by door-to-door salespeople (see Altman, McDonnell & Ward 2001, and chapter 2 of this volume). In addition, a recent Queensland Legal Aid report (2001) on Cape York Indigenous communities offers further examples of Indigenous consumers' vulnerability to representations made by door-to-door salespeople. Accounts within the report suggest that a travelling salesman sold vacuum cleaners on hire purchase agreements for \$3000 each to a number of women located in remote Indigenous communities. Payment for the vacuum cleaners was arranged through a finance company.
- **Mobile phones**—during fieldwork interviews a number of people gave accounts of mobile phones being sold to Indigenous people who, upon returning to the remote community in which they live, realise that the phone does not work as they have no coverage. For example, during interviews a number of Indigenous people commented that during trips to Alice Springs they had purchased mobile phones because of signs saying 'free phone' or because the salesperson had told them they did not have to pay for the phone. People were then asked to sign contracts. Problems with mobile phones are compounded when phones are paid for using automatic deductions from a



consumer's account. Thus a consumer may be having a service fee deducted from their account for a phone that they cannot use. A recent ACCC (2001) investigation against Total Communications details some of the problems that can arise in the purchase of mobile phones when the terms and conditions of the contracts are not fully disclosed (ACCC 2001). However, in the scenario detailed above even if the terms under which the phone was purchased are not considered a breach, it is likely that representations suggesting that the phone was free, if found to be inaccurate, would be.

## Possible abuse of market power

- **Monopoly selling**—where stores, retail outlets or taxis hold peoples' bank cards, as a form of book-up, this may create a monopoly (Commonwealth Ombudsman 1997; Westcombe 1998). This is because people whose cards are being held cannot purchase food or goods from other stores and thus become a captive market. Such a monopoly restricts competition and may be an abuse of market power in accordance with s. 46 of the TPA.
- **Market sharing agreements**—evidence gathered from one community suggested a market sharing arrangement such that one store sold sporting goods and clothing while another store sold petrol and goods to tourists. It is unclear how extensive such agreements are, whether they operate to the detriment of consumers, or whether examples of similar arrangements exist in other communities. If it could be established that market sharing arrangements were in operation then they may be in breach of s. 45 of the TPA.

## Possible breaches of specific provisions

- **Credit cards**—during interviews in two communities accounts were given of unsolicited credit cards being sent to people for amounts of money that they probably had no capacity to repay. We were told of one Indigenous couple who were receiving welfare payments and who had been sent a credit card with a \$1000 credit limit. The couple had quickly spent the \$1000 and were now trying to manage the debt on their welfare payments. This practice would seem to be in breach of s. 63A of the TPA.
- **Letter scams**—letters are being sent to Indigenous people in remote communities detailing winnings and asking for a payment to be sent. During fieldwork in Aurukun, David Martin was shown a letter that offered a prize in return for money sent overseas. These letters clearly involve misleading and deceptive conduct, and so would breach s. 52 of the TPA. In addition, letters that offer gifts or prizes with no intention of providing them breach s. 53C of the TPA.

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