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9 February 2007

Dr Ian Holland
Committee Secretary
Senate Environment, Communications,
Information Technology and the Arts Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Dr Holland

**Supplementary Submission by the Australian Indigenous Art Trade Association to
the
Senate Environment, Communications, Information Technology and the Arts
Committee Inquiry into Australia's Indigenous visual arts and craft sector**

Thank you for your invitation to make a further contribution to the inquiry about the way that the Australian Indigenous Art Trade Association ("Art.Trade") operates and in particular the enforcement of our Code of Ethics. A copy of the Code of Ethics is attached (Attachment A).

Art.Trade was established in 1998 as a national body to set standards of excellence in all dealings in indigenous art. All Members are bound by our Code of Ethics and Code of Business Practice. Currently Art.Trade has 26 financial members in all States and Territories.

The constitution of the Association provides that:

"22. (a) If any Member wilfully refuses or neglects to comply with the provisions of this Constitution or does not obey or comply with any decision of the Board and/or Disputes Committee or acts in a way which in the opinion of the Board contravenes the Code of Ethics or is otherwise prejudicial to the objects or interests of the association, the Board may censure, suspend or expel the Member from the Association and erase its name from the Register of Members.

(b) Before the Board makes any determination pursuant to paragraph 22 (a) above it must establish a Disputes Committee to receive and consider the relevant material and make a recommendation to the Board as to the appropriate course of action."

The Disputes Committee is required to have no less than two and no more than four members and at least one member of the Disputes Committee must be a Full Member of the Association. The Committee may inform itself by any means it considers reasonable. The Disputes Committee is not bound by the rules of evidence and may determine its own procedure.

The Disputes Committee is required to inform the Member of the allegations and to give that Member an opportunity to provide any explanation or defence. If the Disputes Committee recommends the expulsion of the Member, the Secretary of the Association shall notify the Member

of the recommendation and of the date on which the resolution for expulsion is to be considered by the Board. The Member may elect to address the Board. The resolution for the expulsion of the Member must be passed by a majority of two-thirds of those Board members present and voting.

Responsibility for enforcing the Code of Ethics thus lies with the Board of the Association. While there is no formal process for a member of the public to raise concerns about the behaviour of any of Art.Trade's members, in practice this can occur through the person approaching a Board member and raising the concern.

In parallel with the Disputes Committee, the constitution of Art.Trade provides for an Indigenous Cultural Council. The purpose of the Council is to establish ethical guidelines, rules and policies relating to cultural and authenticity issues together with arbitration of associated disputes. All appointed members of the Council must be of Aboriginal or Torres Strait Islander heritage. Decisions made by the Council on Indigenous cultural practice and/or Indigenous initiatives are binding on the Board. On several matters the Council was able to investigate and recommend on matters of authenticity and cultural practice which would not have been able to be resolved by a mainly non-Indigenous Board.

The Board has investigated several complaints about the behaviour of Members. Each of these was investigated by the Board or the Indigenous Cultural Council, though not all were examined by a Disputes Committee. None of these complaints was substantiated to the extent that the Member of Art.Trade was expelled.

Art.Trade's experience in enforcing its own Code of Ethics underscores the difficulty of effectively enforcing any industry-wide code of conduct such as that currently being developed by the Australia Council and NAVA. The establishment by Art.Trade of an Indigenous Cultural Council helped the Association in its investigation of possible breaches of its Code of Ethics. We suggest that the Senate Committee give careful consideration to mechanisms for encouraging adoption and compliance with a national code, perhaps including an investigative mechanism similar to Art.Trade's Indigenous Cultural council.

Despite difficulties with enforcement, we support the establishment of a national code of commercial conduct for Indigenous artists and have contributed to the work of NAVA as a member of the reference Group for development of the code.



Dr Martin Wardrop

Vice President
Australian Indigenous Art Trade Association

Code of Ethics

Responsibility to the artists, the art and the community.

A member of the Australian Indigenous Art Trade Association (AIATA) must:

- Conduct its affairs in an exemplary manner and with regard to the Indigenous arts industry and the Indigenous artists it represents;
- Foster the arts in Indigenous communities through community authorised bodies, recognising and respecting the cultural integrity while linking arts projects wherever possible to current community objectives;
- Work toward offering high quality uniform documentation in association with community authorised bodies;
- Treat all artists fairly and ensure equitable and timely returns to artists;
- Exhibit honesty and integrity in its dealings with the public, artists, other dealers and other industry organisations;
- Refuse to deal with anyone who violates Indigenous copyright or improperly appropriates Indigenous imagery;
- Be responsible for the proper disclosure of information relating to the authorship and provenance of any work exhibited

Code of Business Practice

A member of AIATA must not:

- Approach any artist to exhibit his or her work if this would be in direct conflict with that artist's existing representation;
- Hold out itself as representing an artist without an agreement with that artist or the artist's agent;
- Act in any way that may undermine exhibitions at another member's gallery;
- Make any inflammatory or potentially damaging public comments against any other members of AIATA without having first explored all avenues through the dispute settlement provisions of the Association;
- Enter Aboriginal land without following the appropriate protocols;
- Act in any way that will bring discredit on AIATA.