



5 March 2007

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

### **Senate Inquiry into the Indigenous Visual Arts and Crafts Sector**

Dear Dr Holland,

Thank you for your invitation to the Australian Customs Service to provide information to assist the Senate Inquiry into the Indigenous Visual Arts and Crafts Sector.

You have asked for information on what role Customs may play, if any, in enforcing the control of the importation into Australia of 'inauthentic' artworks, souvenirs, and the like, that purport to be genuine Australian Aboriginal arts and crafts yet originate from overseas.

There are two pieces of legislation that Customs administers, namely provisions under the *Copyright Act 1968* and the *Commerce (Trade Descriptions) Act 1905*.

Copyright is the legal protection of any literary, artistic, dramatic or musical work. Provisions under the *Copyright Act 1968* allow Customs, under certain circumstances, to seize goods that infringe copyright works.

To protect copyright works from importation of unauthorised or pirated works, the copyright owner must have a Notice of Objection in place with Customs. This is a legal document that allows Customs to seize imported goods that infringe copyright owners rights. It is valid for four years and can be re-lodged at any time but is not retrospective.

In lodging a Notice of Objection the following is required:

- A Notice of Objection advising the name of the copyright owner or exclusive licensee and details of the copyright for which coverage is required.
- An undertaking that the copyright owner will cover any costs incurred by Customs in seizing and handling the goods.

In relation to imported artworks, souvenirs and the like, I suggest the copyright claim would be in the artistic works created by the indigenous artist. It would be quite difficult to protect these imports given the range of artists and types of works that may be imported. Each work would need to be listed on the Notice or alternatively, there would need to be a large number of individual Notices.

Under the *Commerce (Trade Descriptions) Act 1905* (CTDA) it is an offence to import goods bearing a false trade description. A false trade description is a description that is false or misleading in a material respect with regards to matters like the origin of the goods and who

made them. When Customs locates goods that bear a false trade description, we can seize these goods (under warrant) or we can allow them to be remarked with a corrective trade description. The penalty for importing goods with a false trade description is \$10 000. However, it is a defence if the defendant proves that he did not intentionally import the goods in contravention of the Act.

The combined requirements for Customs to obtain a warrant to seize goods bearing a false trade description and the defence provisions, mean that seizure of goods under the CTDA is resource intensive for Customs. It also places the costs involved onto the Commonwealth.

With regards to possible inauthentic artworks the process may also be complicated by administrative issues, such as confirming the goods are in fact inauthentic and/or bear a false trade description. While this legislation may be used, the application of it is not well suited to this situation.

I trust this information is of assistance.

Andrew Hosking  
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Trade Policy and Regulation Branch