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**HOUSE OF REPRESENTATIVES STANDING
COMMITTEE ON INDIGENOUS AFFAIRS**

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

I have worked with Aboriginal and Torres Strait Islander (ATSI) artists and arts businesses for over 10 years, advising on a range of issues affecting their creative practice including issues at the heart of this inquiry. My clients have included emerging, mid-career and established artists based both remotely and in urban areas, and includes those working independently, collaboratively and in community art centres, as well as the peak bodies and galleries that represent them.

The definition of authentic art and craft products and merchandise.

In the context of ATSI art and craft, I understand authenticity to mean artworks, products and merchandise which are created by members of the world's oldest living culture namely Australia's ATSI peoples. Authenticity should be required not only for individually crafted artworks, craft products and artefacts but also in respect of industrially or mass produced reproductions of such items or artworks including items which are decorated with ATSI art. Such mass-produced items may be made by non-Indigenous manufacturers but, to be authentic, must be made under a transparent licensing arrangement with the ATSI creators of the work which is reproduced. I do not believe there is any scope for 'Aboriginal-style' art or merchandise which is not created by, or licensed from, Australia's first peoples. Such products are not authentic.

Current laws and licensing arrangements for the production, distribution, selling and reselling of authentic Aboriginal and Torres Strait Islander art and craft products and merchandise.

As an IP lawyer, I am familiar with the common law and legislative framework of copyright, designs, trademarks and consumer laws regulating the ability of businesses to copy or reproduce the work of others. My experience is that these existing laws are not adequate to give the protection described in article 31 of the Declaration on the Rights of Indigenous Peoples. This says that States should take effective measures to recognize and protect the rights of their Indigenous peoples "to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of

their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts..... [and] to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.”

Australia’s existing laws do not generally prevent the manufacture and sale of ‘ATSI – style’ art or product unless it is a close copy of an artwork by a living or recently deceased artist (within 70 years) or it is sold with labelling that describes it as ATSI art or product. Australia is in the unique and wonderful position of being home to the world’s oldest living culture dating back over 60,000 years. It’s a culture (or many cultures) without written language or built structures which is expressed and preserved through story handed down through generations. Such stories are the primary repository of that culture and the only material expression of such stories is through the creation of art and artefacts. Copyright protection which only extends a single generation plus 70 years is insignificant and cannot safeguard that cultural heritage. Also, as copyright focusses on the individual creator rather than the cultural custodians (a people or community) and can be assigned away from the creator, it is not suited to protect communal rights. The recent example of Albert Namitjira’s copyright assigned by a non-Indigenous government authority to a non-Indigenous manufacturer leaving the Aboriginal custodians of story and culture with no control whatsoever over the reproduction of his art is illustrative. While the copyright rests again with the Aboriginal community (represented by a trust structure), this outcome does not reflect any inherent right of his people but rather the results of diligent negotiation within a legal framework that gave all the leverage to the non-Indigenous proprietor of copyright.

It is of extraordinary value to us as a nation and the world that non-ATSI people can access and experience that Indigenous culture. We don’t have Egyptian pyramids or Roman ruins or ancient writings to illuminate and explain that culture – instead we have the stories as expressed in ancient rock art interpreted by its living ATSI custodians and as expressed in the contemporary art of our ATSI peoples. Yet instead of treating this with the reverence accorded by other countries to their cultural monuments and records, our laws allow it to be diminished and diluted by businesses looking to make a quick profit out of creating ATSI-style art and craft and merchandise.

An examination of the prevalence of inauthentic Aboriginal and Torres Strait Islander ‘style’ art and craft products and merchandise in the market.

My personal experience of working with ATSI artists is that their art is a powerful expression of their culture and the availability of inauthentic commercial versions or knock offs is deeply distressing and directly undermines their cultural connection and ability to continue cultural traditions. The prevalence of such product is not only culturally but economically damaging, particularly in remote communities where businesses based on the production and sale of authentic ATSI art and merchandise provide a vital source, often the only source, of economic independence and jobs. It is also economically important to Australia generally given the importance of tourism to our economy.

Options to promote the authentic products for the benefit of artists and consumers and to restrict the prevalence of inauthentic Aboriginal and Torres Strait Islander ‘style’ art and craft products and merchandise in the market.

In my view three things are required:

- a. Amendments to the Australian Consumer Law to prohibit the sale of inauthentic product;
- b. Direct government support of the ATSI art and craft sector particularly Australia’s remote community art centres and their peak bodies so as to protect and preserve the maintenance of Indigenous culture as expressed through the creation of authentic art;
- c. Support the ATSI art and craft sector by raising public awareness both domestically and internationally about Australia’s unique Indigenous cultural heritage and the importance of authentic expressions of that culture.

Thank you for the opportunity to contribute to the enquiry.

Yours sincerely



Delwyn Everard