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House of Representatives Standing Committee on Indigenous Affairs
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Submission to the Parliamentary inquiry into the growing presence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise for sale across Australia.

Question 1 - How does Fake Aboriginal and Torres Strait Islander Art effect you and your community? Why is it important to do something about this?

The production and sale of fake Aboriginal and Torres Strait Islander art across all mediums impacts our artists in a number of ways:

Culturally: Aboriginal and Torres Strait Islander 'art' is inextricably linked to stories, ceremony and connections to family, land and sea that have existed since time immemorial. Aboriginal and Torres Strait Islander 'art' therefore, does not exist in isolation or simply on the physical 'face value' of the piece – there is always a story or purpose connected to the 'art'. For some artists, the creation of pieces or storytelling can only be depicted or told in a particularly or by a certain group or individual in accordance with cultural protocol of that people. The creation and sale of fake art, that is, without the consent or attribution of artists or community, completely disregards such cultural protocols and undermines any type of control or authority that artists have to create or tell a story, and instead puts control in the hands of individuals and companies to exploit, without any connection to the art piece, story, individual artist or community.

This practice devalues art in a financial sense, does not give proper attribution or acknowledgement, is distressing to artists and community, and contributes to a fragmentation of culture as the sale of fake art does not follow cultural protocol or require artists or community to be consulted or provide informed consent when dealing with such work. The sale of fake art undermines the ability of Aboriginal and Torres Strait Islander people to be self-determined in the pursuit of inherent cultural rights.

In addition, consumers, particularly tourists are misled when they purchase Aboriginal

‘inspired’ art or products that have not been created with the consent or authority of artists. Like any usual market place, consumers should have comfort knowing they are purchasing art and products that have been properly created and produced.

Financially: it deprives individual artists and communities of the opportunity to be economically sustainable by purposefully diverting income streams away from artists who have created the works themselves or otherwise been the source of ‘inspiration’ for manufacturers and vendors engaging in the importation and sale of fake/Indigenous ‘styled’ art products and merchandise. As such, manufacturers and vendors are engaging in unfair practices that are designed to stifle any financial opportunities that artists and communities have to be independent and economically sustainable in their own right.

Manufacturers and vendors engaging in this unfair practice are capitalising on one of the very few ‘assets’ Aboriginal and Torres Strait Islander peoples have retained in this country, and which in part, it is submitted to the inquiry, is conduct that should be considered an offence at law with associated penalties and remedies reflecting the financial and cultural exploitation of artists and disregard of cultural protocol relating to Aboriginal and Torres Strait Islander art and practice.

Question 2 - Should the Federal Government change the laws relating to Fake Art? What changes do you suggest?

Yes, the Federal government should introduce new laws and change existing laws to prevent the manufacture and sale of fake art and protect artists’ rights. It is submitted to the inquiry that the following changes are made:

- Given the limitations of existing intellectual property laws in the context of providing protection for Indigenous artists, introduce uniform legislation that is designed with and for the protection of Indigenous Cultural and Intellectual Property that among other things, include ongoing rights of protection that are not limited to certain time periods. Consideration could be given to existing commentary in this area and the model identified in the Aboriginal Heritage Act 2006 (Vic) relating to the protection of intangible rights such as creation stories and cultural knowledge (particularly in the context of commercial exploitation);
- Amend Consumer Laws to prohibit the importation and sale of Indigenous art, that is, those products created and sold without the authority or consent of Aboriginal or Torres Strait Islanders. The effect being vendors selling souvenirs or other products would only be permitted to import and sell Indigenous art products with written evidence of agreements in place with artists. Given the ACCC has some existing visibility over misleading and deceptive conduct/unfair practices, it could play an important role as

regulator/investigator with this being a continued ‘focus’ area, much like the ACCC does with other areas from time to time (e.g. unfair contract terms and franchising industry);

- Support for artists to build capacity and business;
- Establish a national body that can be used by artists, vendors and purchasers to promote the creation and sale of authentic art.

Question 3 - What can we do to better promote and support the creation of authentic Aboriginal and Torres Strait Islander Arts?

In addition to the changes to laws, it is important for a public educational campaign to be rolled out on a national scale. The aim of the educational campaign would be to inform the public about the importance of engaging with and purchasing authentic art (particularly souvenirs in the tourist market), directing to relevant resources, artists and approved suppliers of authentic products. Local artists should also be supported in establishing their own businesses, to develop their works and gain knowledge on the protection of intellectual property protection and associated agreements.

Question 4 - What else can we do as a community to stop Fake Art?

It is submitted that a multi-layered approach to stop the sale of fake art must be employed, with changes to law being one aspect only. Other factors include the education campaign, engaging with vendors who are currently engaging in the sale of fake art, developing the capacity of artists and sale of work through local art bodies and requiring the ACCC to take a continued investigative approach with the sale of fake art.

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