

FORM.

building a state of creativity

Submission to the House of Representatives Inquiry
into proliferation of inauthentic Aboriginal Torres
Strait Islander 'style' art and craft products and
merchandise sale across Australia on behalf of
FORM building a state of creativity Inc.

Contact:

08 9226 2799

mail@form.net.au

Table of Contents

1. The definition of authentic art and craft products and merchandise.	3
2. 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.	4
2.1. Laws	4
2.2. Licensing arrangements	4
3. An examination of the prevalence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise in the market.	5
4. Options to promote the authentic products for the benefit of artists and consumers.....	5
4.1. Supporting advocacy bodies	5
4.2. Ethical and accessible procurement	5
4.3. Expansion of consumer law	5
4.4. Alternative methods.....	6
5. Conclusion and recommendation summary.....	6
A. Port Hedland Visitor Centre Submission	8
B. Contacts	10

FORM.

building a state of creativity

Committee Secretary
House of Representatives Standing
Committee on Indigenous Affairs
PO Box 6021 Parliament House
Canberra ACT 2600
3 November, 2017

To Whom It May Concern,

Re: Submission on behalf of FORM building a state of creativity regarding the growing presence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise for sale across Australia

This submission is presented on behalf of FORM building a state of creativity Inc, a not-for profit and charitable arts, crafts, and cultural organisation committed to supporting and facilitating creativity in Western Australia. FORM is recognised as 'best practice' in its management, commissioning and promotion of Aboriginal arts and crafts through notable national projects like *Yiwarra Kuju -The Canning Stock Route Project*, developed and promoted in collaboration with the National Museum of Australia. We also manage and operate art galleries with commercial objectives in Perth CBD, Perth metropolitan area, and regional Western Australia, a Visitor Centre in the Pilbara region, and an Aboriginal art collective (Spinifex Hill Artists) in South Hedland, Western Australia.

This submission to the House of Representatives addresses the following key points in response to the Inquiry's terms of reference:

1. the definition of authentic art and craft products and merchandise;
2. 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;
3. an examination of the prevalence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise in the market;
4. options to promote the authentic products for the benefit of artists and consumers; and
5. options to restrict the prevalence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise in the market.

Given the prevalence of fake Aboriginal and Torres Strait Islander product within tourism retailers, and FORM's direct engagement with this sector through the management of the Port Hedland Visitor Centre, we have provided a statement on behalf of the Centre (see A.).

We appreciate the opportunity to make a submission to the House of Representatives on this important issue. More information about FORM's programming can be found on our website: www.form.net.au.

1. The definition of authentic art and craft products and merchandise.

When considering defining the authenticity of the products and merchandise under discussion it is essential to actively involve Aboriginal and Torres Strait Islander peoples in forming this definition, and in devising solutions for mitigating the prevalence of the proliferation of inauthentic products.

Although we are not an Aboriginal and Torres Strait Islander governed and operated organisation we would suggest considering the following key points in the definition of cultural authenticity in this context:

- There are over 250 language groups/ nations in Aboriginal Australia, each of which has its own cultural specificities, connections to place, cultural designs and stories that are relevant to the specific area of land that they are from. As such, there is no unified Aboriginal and Torres Strait Islander designs or 'styles' of art and craft, that is relevant nation-wide. There is a great diversity in the culture of Aboriginal nations.
- Authentic Aboriginal and Torres Strait Islander art and crafts are designed or created by a person who self-identifies as Aboriginal and/or Torres Strait Islander. Or, in the case of designs or works that are licenced, that the original work has been created by a person who self-identifies as Aboriginal or Torres Strait Islander, and that person has been ethically and appropriately consulted and compensated throughout the process of licensing for the use of their design or works to ensure that the artistic integrity of the work is maintained.

FORM supports the concept that to be considered 'authentic' products should either be made by, or under licence from, an Indigenous artist/s. Furthermore, the definition of authentic Aboriginal and Torres Strait Islander art and craft does not place limitations on the kinds of subjects, styles, designs, materials, and stories that can be integrated into the works in order to give autonomy to artists regarding the types of product they would like to develop for commercial markets. For example, an authentic artwork does not have to depict or reference Dreaming (Jukurrpa) or be in a particular style in order for it to be authentic.

Additionally, the definition of authentic Aboriginal and Torres Strait Islander art and craft does not necessarily stipulate where or how a commercially produced art or craft product has been produced to give artists the option to utilise international supply chains to derive commercially viable product for sale. For example, if an artwork has been ethically and appropriately licenced, and is printed on a scarf that is produced outside of Australia, this does not affect its authenticity, given that the artistic integrity has been determined through the ethical and appropriate licensing of the work for its production.

2. 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.

2.1. Laws

FORM supports the strengthening of consumer protection laws to ensure purchasers throughout supply chains are minimising the risk of trading fake Aboriginal and Torres Strait Islander art and craft products and merchandise. We advocate for this for two reasons. First, to protect consumers from deception in industries where the distribution of fake products is prevalent. Second as a means of protecting income streams for Aboriginal and Torres Strait Islander people where copyright and intellectual property laws currently fail to do so.

We acknowledge that unethical practices exist within the commercial Aboriginal and Torres Strait Islander art market, however the prevalence of the art centre model as part of the art market's value chain has fostered greater awareness of importance of provenance and ethical artwork procurement across the sector. Broadly, the art centre model better equips consumers to make informed purchasing decisions, and enables income streams for Aboriginal and Torres Strait Islander people.

There is far less best-practice procurement of ethically made/authentic Aboriginal and Torres Strait Islander merchandise, specifically within tourist value chains, evidenced by the availability of fake product. This issue has been highlighted by the *Fake Art Harms Culture* campaign, which estimates up to 80% of the products available in shops is inauthenticⁱ. Additionally, in preparation for this submission, FORM found two shops selling potentially fake/ambiguously labelled Aboriginal and Torres Strait Islander merchandise within 600 metres of our Perth CBD Gallery. While there are voluntary codes suppliers and product producers can adhere to (for example the Indigenous Art Code), we advocate for a unified and, legally enforceable, national labelling standard (as per truth in labelling fair trading laws and food laws in Australia and New Zealand) to minimise the risk of purchasing fake merchandise to consumers. This will at least protect income streams for Aboriginal and Torres Strait Islander people in the absence of copyright laws that protect the rights of a language group or nation.

2.2. Licensing arrangements

FORM supports transparency and ethics within licensing arrangement frameworks which aim to protect the licensor in instances where asymmetrical bargaining power exists in favour of the licensee. Furthermore, these frameworks are endorsed under a specific code or charter which forms part of labelling and packaging standards on Aboriginal and Torres Strait Islander art and craft products or merchandise. This imparts consumers with the confidence that they are making an ethical purchase. Broadly, we suggest in the case of a licensed design or work, the following should apply:

- the artist has right of attribution, including their name and a reference to the original artwork;
- the integrity (moral rights) of the artist has been respected;

- the artist has a received/ or negotiated a fair licensing fee /payment under a transparent licensing agreement; and,
- the artist has had the opportunity to access legal advice on the terms of the contract or agreement.

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

To date, there have been few comprehensive investigations into the prevalence of inauthentic or fake Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise in the market. Given the lack of best-practice procurement of merchandise within tourism value chains, compared to the wider art market, FORM supports a comprehensive investigation into retailers within the tourism industry to understand their motivations for purchasing fake product. We see this investigation as having two core purposes. First, to understand purchasing priorities and perceived barriers relating to the accessibility of authentically made product, and attitudes towards purchasing fake product for distribution. Second, a prelude to devising options to promote authentic products for the benefit of artists and consumers by understanding purchasing motivations and barriers to enter retail markets. Additionally, a greater understanding of the demand for products may be a practical piece of market research to inform new business and product development opportunities for artists, art centres, and craft practitioners.

4. Options to promote the authentic products for the benefit of artists and consumers.

4.1. Supporting advocacy bodies

FORM supports the continuation of, and further resourcing for the support of bodies that protect and advocate for authenticity in the production and distribution of Aboriginal and Torres Strait Islander arts and craft, such as the Indigenous Art Code. FORM is signatory to the Indigenous Art Code.

4.2. Ethical and accessible procurement

Understanding the motivations of retailers in making fake product purchase decisions, or perceived accessibility barriers may inform other options for promoting positive procurement practices. These may include leverage of existing initiatives such as Supply Nation, or other procurement portals to increase the accessibility of authentically made products. Options to restrict the prevalence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise in the market.

4.3. Expansion of consumer law

FORM supports the expansion of Australian Consumer Law to prohibit the sale of fake merchandise, in order to protect consumers from being misled, while also protecting Aboriginal and Torres Strait Islander people from cultural misappropriation.

4.4. Alternative methods

Resultant from a possible expansion of Australian Consumer Law, financial penalties for the sale of inauthentic Aboriginal and Torres Strait Islander 'style' products could be applied as a deterrent. However, the realities such as the size of the market and the challenge of consistent enforcement may impact the effectiveness of this tactic. Thus, FORM supports alternative methods of restriction that combine education and preventative initiatives to increase the awareness among travellers including:

- prominently placed messages at airports/ports to inform inbound international travellers of the negative impacts of purchasing fake art, and promotion of ethical labelling standards;
- the prohibition of fake art and craft merchandise as a specific requirement of the Australian Tourism Accreditation Programⁱⁱ; and,
- encourage local governments, shires, or councils to stamp out the sale of fake merchandise within their local area by including specific provisions within their Reconciliation Action Plans with governance measures to enable tangible action.
- partnerships/collaborations between major arts and cultural organisations and other stakeholders to promote and showcase the benefits of ethical and authentic purchases of Aboriginal and Torres Strait Islander products.

5. Conclusion and recommendation summary

Authentic art and craft products referred to in this submission are those created by, or in transparent collaboration with Aboriginal and/or Torres Strait Islander people, who have a complete awareness of where and how that artwork will be seen and marketed, and provide a fair and lawful financial return. The existence and profiteering off misleading, fake, Aboriginal and/or Torres Strait Islander 'style' products, creates and contributes to the perpetuating of Aboriginal art and/or craft as a broad genre, rather than supporting authentic intricacies that exist in Aboriginal culture across diverse nations. The use or appropriation of imagery, which in the most severe cases is may be culturally sacred, is often offensive, and damaging to the esteems of Indigenous Australians because this can result in feelings of helplessness around the ownership of cultures that have been stolen, faked and warped.

As a signatory to the United Nations *Declaration on the Rights of Indigenous People* we hope that the Australian Government begins the process to recognise and exercise these rights by expanding our laws to prohibit the distribution of art and craft products that plagiarise, appropriate, or have similar design, style and imagery to those of Aboriginal and Torres Strait Islander nations.

FORM makes the following recommendations as part of our submission:

- An inclusive definition of authentic Aboriginal and Torres Strait Islander art and craft which does not preclude artists and accessing international supply chains in the production of merchandise for tourism markets, collaborations with non-Indigenous people, or using a wide range of content matter.

- Expanded Australian Consumer Law to prohibit the sale of fake Aboriginal and/or Torres Strait Islander art or craft, and corresponding labelling standards to ensure consumers are making informed choices, while protecting the moral rights of individual artists and communities.
- Equip consumers with the knowledge to make informed purchasing decisions by continual support and promotion of the Indigenous Art Code principles (truth in labelling), and proactively educating tourists/wider society on the negative impacts of purchasing fake goods.
- Commissioning a study into the prevalence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise in the market, to better understand the decision of product distributors to inform future preventive action, and enable authentic goods supply to fill market gaps.

A. Port Hedland Visitor Centre Submission

The Port Hedland Visitor Centre is part of a network of visitor centres across Australia who provide information to travellers and support the tourism economy. The Centre is managed by FORM building a state of creativity Inc. on behalf of the Town of Port Hedland, and is accredited with the Australian Tourism Accreditation Program.

Port Hedland is the Pilbara's northern gateway to the region which encompasses 31 Aboriginal cultural groups. Aboriginal people make for a proportionately large segment of the community, compared with other areas of Australia. The Port Hedland Visitor Centre, unlike others in the region, has a very important role to play in showcasing and communicating the culture of Aboriginal people of the region due to its positioning as the northern 'gateway' to the Pilbara.

The intrinsic value of promoting Aboriginal cultures, as part of telling the Pilbara's unique story, is fundamental to the strategic objectives of the Port Hedland Visitor Centre. Additionally, there are great opportunities to provide income streams to Aboriginal people through the sale of products and services. For example, Port Hedland Visitor Centre is a retailer for the Spinifex Hill Artists, a locally based Aboriginal art collective, also managed by FORM, representing multiple Aboriginal nations. We also stock artwork and products from a variety of other Aboriginal-owned enterprises at a variety of price points to satisfy our customer preferences which are signatories to the Indigenous Art Code.

Our visitors demonstrate a great appetite for purchasing original artworks and artisan products made by Aboriginal people. If not from us directly, it is common for visitors to ask for the location of galleries or art centres in the region. Products that licence Aboriginal designs are popular as they can provide a varied price point and range. We are finding our typical visitor profile is growing ever more conscious of provenance. As such, the importance of ensuring ethical practices throughout the supply chain of products we make available for sale is a critical factor in our stock purchase decisions.

The risk of us stocking 'fake' products including those mass produced off-shore and created by non-Indigenous people, copying Indigenous art aesthetics or misappropriating culture, goes beyond a breach of our business ethics. It will also destroy the value of our services provided and, negatively impact our reputation and revenue streams, and therefore threaten the sustainability of our business model. Additionally, it compromises our working relationship with Aboriginal people in the area.

Our visitor demographic is unique to our geographical location and local circumstance, and as such we recognise these consumer preferences and purchasing trends may not be reflective of the national tourism market. What we have learned from our visitors is they are increasingly conscious of purchasing products that are 'authentic', meaning, they are taking a piece of Aboriginal culture home with them as a reminder of their travels, a design that has been created to tell a story of place, Country, culture, or tradition. With this in mind, if we were to provide 'fake' products (knowingly or unknowingly) we feel this effectively is deceiving our customers. In this context, we view wholesalers of fake product as also stealing financial opportunities from Aboriginal people, profiting off a culture

that isn't theirs, which is a breach of human rights in respect to Article 31 of the *United Nations Declaration on the Rights of Indigenous Peoples*.

For a region such as the Pilbara, which is in the fledging stages of Aboriginal cultural tourism development, selling fake products in Visitor Centres undermines the Pilbara's competitive advantage as a place to experience the culture and traditions of our First Nation's peoples. We believe a consistent, and region-wide effort to provide authentic souvenir products and tours will strengthen the industry as a whole. It will enable all parts of the tourism value chain in the Pilbara – Visitor Centres, airport retailers, roadhouses, and operators alike - to contribute to a vision for a socially and economically inclusive region where we can support on-Country jobs for Aboriginal people.

Port Hedland Visitor Centre

13 Wedge Street

Port Hedland WA 6721

B. Contacts

FORM building a state of creativity Inc.

PO Box 443

Claremont WA 6910

08 9226 2799

This submission has been put together in consultation with the Spinifex Hill Studio artists and manager, the Visitor Centre, the broader FORM team, and Arts Law.

We would like to acknowledge the Whadjuk Noongar and Kariyarra peoples as the traditional owners of the land in which our metropolitan and regional operations are respectively based.

ⁱ <https://www.artslaw.com.au/news/entry/fake-art-harms-culture-campaign/>

ⁱⁱ As of time of writing this submission, in Western Australia the sale of fake products does not necessarily preclude a business from achieving accreditation within the Australian Tourism Accreditation Program