

Possible solutions

- 5.1 There are many examples of individuals and businesses making outstanding contributions to safeguarding Indigenous cultural expressions. These include the artists themselves, art centres, art fairs, and various peak bodies.
- 5.2 However, there are also many examples of businesses and individuals who are causing significant harm through unethical dealings with artists or by manufacturing and supplying large quantities of inauthentic product.
- 5.3 In some cases the harm may be unintentional, but it remains damaging nonetheless. It is clear therefore that First Nations cultural expressions require some protections given the countless inauthentic art and craft items being sold throughout the country.
- 5.4 It appears to the committee that there are three fundamental drivers of the prevalence of imitation Indigenous art and craft. The first is the interest that many tourists and domestic customers have in First Nations cultures and souvenirs. The second is that imitation products are profitable and can be traded legally. The third is that most consumers are unaware of what is authentic and what is not.
- 5.5 This chapter provides possible solutions, through a number of recommendations to government that the committee believes will significantly change this industry for the better over time. The ultimate goals of these suggested changes are that First Nations peoples will be able to exercise proper and rightful control over the production of cultural expressions in the future and benefit economically from it.

Defining authenticity

- 5.6 Establishing a universally accepted definition of authenticity for artworks is not going to be straightforward and may not be feasible. Whilst there must of course be involvement of a First Nations artist for a piece of art to be authentic, the context of the item in question will be relevant to this question. The relevant government agencies including the departments of Communications and the Arts (DCA) and Prime Minister and Cabinet (PM&C) and the Australian Competition and Consumer Commission (ACCC) should investigate this further with First Nations stakeholders as part of developing an accepted standard.
- 5.7 As a starting point, the committee supports the definition employed by the City of Melbourne in its Code of Practice:

“Authentic Indigenous arts and craft” refers to arts and craft made by an Aboriginal or Torres Strait Islander person, from start to finish. It includes contemporary works and works that draw from Indigenous traditional practices and beliefs.

“Authentic Indigenous art products” are products reproducing Indigenous art, such as t-shirts, postcards, souvenirs and stationery, produced under a fair licence agreement, where royalties are paid to Indigenous artists.¹

Art centres

- 5.8 Art centres create significant opportunities for First Nations artists and artisans to earn a living whilst remaining in their own communities. As discussed previously in the report, these centres are often the only source of employment for Indigenous peoples in remote areas. Equally important are their roles in protecting cultural authenticity and fostering ethical dealings in the art industry, educating the wider public about First Nations art, and contributing to the social life and cohesion of their communities. The dedication of art centre staff is central to these activities and is acknowledged by the committee.

1 T Janke, Code of Practice for galleries and retailers of Indigenous Art, City of Melbourne, 2017, p. 9, <<https://www.melbourne.vic.gov.au/SiteCollectionDocuments/code-of-practice-indigenous-arts.pdf>> viewed 2 August 2018.

- 5.9 The art centre model is important, but proper resourcing is required given this vital role. Art centres have the potential to be even more successful, both culturally and economically. There are some impediments to this, most notably in terms of staffing. A lack of housing in remote locations makes it difficult to hire or retain an art centre manager.
- 5.10 An investment in housing infrastructure would therefore be of benefit, but this needs to be part of an overall strategy to promote the effectiveness of art centres as small businesses. A major outcome that the committee wants to see from this inquiry is that art centres can compete effectively in the souvenir market and thus have the opportunity to significantly increase their output, if they so desire. This will require access to a level of business expertise and advice that many do not currently have. The promotion of art centres by the tourist industry will be another element of such a strategy, as discussed below.
- 5.11 The committee notes that DCA and PM&C confirmed that further support for art centres will now be available through the recently launched Indigenous Business Sector Strategy (IBSS) and a \$90 million Indigenous Entrepreneurs Fund (IEF).²
- 5.12 It is particularly encouraging that the key actions of the IBSS will include the roll out of three Indigenous business hubs, support for remote businesses, and increased funding for Indigenous start-ups.
- 5.13 It is the committee's firm view however that art centres and independent artists need a bespoke business advisory hub that will allow them to compete in mainstream souvenir markets. Funding and support needs therefore to be specifically earmarked for this capacity building. This should be a separate arm of the IBSS and be implemented as a matter of urgency.
- 5.14 The damage to First Nations cultures that is being done by inauthentic art cannot be stopped and reversed unless more clearly identifiable authentic products start to become available for both tourists and domestic consumers.
- 5.15 The issue of carpetbagging requires capacity-building for art centres and First Nations organisations to be able to identify and provide strategic intervention, and support to protect artists who are affected. The committee would like a specific fund under IVAIS to be established to provide for this.

2 Department of Communications and the Arts (DCA), *Supplementary Submission 131:1*, Answer to Question on Notice, p. 6.

Indigenous Art Code

- 5.16 The Indigenous Art Code Ltd (IartC) has been remarkably active and successful, but lacks the resources needed to reach its considerable potential. Many of the organisations that contributed to the inquiry spoke very highly of the Code and expressed the view that it should become the industry standard. There were also arguments made during the inquiry that the Code should be mandatory.
- 5.17 The expansion of the IartC is a key component of any future strategy to foster and preserve the integrity of First Nations art and craft items. The committee does not believe however that a mandatory code is feasible for the reasons stated in Chapter 4.
- 5.18 It is pleasing that the Cultural Ministers from the States and Territories have agreed to provide matching funding for the IartC.³ Funding increases for IartC need to be substantial and sustained however. The IartC and the First Nations art sector should be consulted fully on the resourcing requirements going forward.

Art fairs

- 5.19 Art fairs are now hugely important for promoting Indigenous art and the committee was privileged to be able to visit three of the most significant of these events in Fremantle, Cairns and Darwin.
- 5.20 Indigenous art fairs have a number of key roles. They are significant sales avenues for artists and art centres, and generate millions of dollars in revenue both directly and indirectly. For example, the Darwin Aboriginal Art Fair contributes \$15 million to the economy of the city annually.
- 5.21 An expanded series of fairs in the future is likely to be very beneficial for the Indigenous art industry as it will boost sales and provide other economic opportunities. It will also contribute to the wider teaching of First Nations cultures.

3 DCA, *Supplementary Submission 131:1*, Answer to Question on Notice, p. 5.

Current education

- 5.22 The lack of awareness among most non-Indigenous Australians that inauthentic First Nations art and craft is being sold in high volumes, indicates that the current level of education about Indigenous cultures is inadequate.
- 5.23 As mentioned at various stages throughout this report, tourists are not receiving adequate information about questions of authenticity, nor about the significance of this. This is addressed further in the section below on tourism.
- 5.24 The committee notes that the outcome of recent ACCC court proceedings against the Birubi Company will be used to frame some of its future consumer guidance.⁴ This will certainly be useful.
- 5.25 The longer term policy option idea prepared jointly by the Treasury, DCA and the ACCC to develop an Information Standard for authenticity, in a similar manner to that used for free-range eggs, also appears to have merit and should be pursued. Such a Standard would require that clear information is provided to consumers and would be enforceable by the ACCC.⁵
- 5.26 Consultation on the definition of authenticity referred to earlier needs to form part of this.
- 5.27 It will be of paramount importance that the new Standard is adequately resourced to enable its wide promotion in the industry.

First Nations tourism

- 5.28 The current promotion of First Nations cultures by Australia's tourism industry, including both the private sector and public agencies, seems to be very patchy at present.
- 5.29 Evidence indicates that visitors to Australia are keen to have an Indigenous experience, including purchasing souvenirs. It seems to the committee that this demand is strong and there is opportunity for First Nations communities to benefit economically from this interest. That this is not happening in any consistent way is down to policies not being optimal and the right structures not being in place.

⁴ DCA, *Supplementary Submission 131:1*, Answer to Question on Notice, pp. 4–5.

⁵ DCA, *Supplementary Submission 131:1*, Answer to Question on Notice, p. 3.

- 5.30 Some initiatives are in place such as the art trail being promoted by the Northern Territory Government, but a coordinated approach is needed at all levels of government.
- 5.31 Neither domestic nor international tourists are sufficiently informed about authenticity and this has to change. The relevant government agencies in consultation with First Nations communities need to develop a system for providing clear and succinct information at all airports or ports of entry in Australia. This information can be provided in the form of a card that accompanies a customs declaration form, information in an in-flight video presentation, magazine, or other format.

Copyright

- 5.32 Copyright laws are designed to protect the artistic and intellectual output of an individual over a period of several decades, but not an ancient and typically communal ownership of a particular form of Indigenous expression. The committee acknowledges that amending existing copyright legislation to achieve this would be difficult and complex.
- 5.33 First Nations cultural expressions will likely need a separate framework to be protected under law. Introducing stand-alone legislation to protect First Nations cultural expressions is a complex task that is not likely to be achievable in the short term, but the committee believes this is achievable and should be considered.
- 5.34 IP Australia noted that a Certification Trade Mark (CTM) scheme could be looked at,⁶ with full consideration of the lessons learned from the previously failed scheme. The committee supports this idea and would like to see a proposal in the next 12–18 months. During this process, there needs to be proper consultation with artists and other producers.

Labelling

- 5.35 There is currently no consistent labelling used for any type of art or craft, whether Indigenous or not, and no legal requirement to indicate whether something is authentic. An inauthentic product can be labelled in any number of ways that neither confirm nor deny this fact. Consumer law is designed to prevent buyers from being misled, only preventing inauthentic products being sold if explicitly labelled as authentic.

6 DCA, *Supplementary Submission 131:1*, Answer to Question on Notice, p. 7.

- 5.36 The committee believes that the lack of any consistency or coherency in how art and craft items, such as souvenirs, are marked at the point of sale contributes greatly to the current lack of awareness about authenticity.
- 5.37 The new labelling trial to be conducted by Desart with government funding of \$150 000 is welcome. The committee awaits the results of this trial with interest.

Industry data

- 5.38 One of the biggest problems for any policymaker considering a possible response to inauthentic art is that the value of this market is unknown. There has been some detailed work done on art centre revenues by Mr Tim Acker, as noted earlier in the report. As noted also by Mr Acker however, and confirmed by the Treasury, there are no accessible data on the revenues and profits made from the nationwide sale of inauthentic products.
- 5.39 This information would provide a dollar figure for the potential earnings that could be going to First Nations artists. A detailed and robust structural analysis of this market and its revenues is urgently needed.

Recommendation 1

- 5.40 **The committee recommends as a matter of urgency that the Productivity Commission conducts a comprehensive inquiry into the value and structure of the current market for First Nations art and crafts. This inquiry should incorporate the following elements:**
- a detailed structural breakdown of the different parts of this market and the operators within it;
 - the total value of the fine art market stratified by the different avenues through which this art is produced, procured and sold;
 - the total value of the souvenir and craft market stratified by the different avenues through which these products are produced, procured and sold;
 - the market value of inauthentic souvenirs and art sold in Australia;
 - the revenues generated by art centres;

- the barriers facing art centres and First Nations artists who wish to sell fine art or souvenir style items in mainstream markets; and
- a summary reflecting both the number and value of imported imitation low end Indigenous products, and a like summary for products made and/or licenced in Australia.

Recommendation 2

5.41 The committee recommends as a matter of urgency that the Australian Government consults with the Indigenous Art Code and the First Nations art sector on what resourcing is required for the Indigenous Art Code Ltd to fulfil its considerable potential, and provides this funding as a means of protecting both our unique Indigenous cultures and protecting the future and value of this market for Australian and International visitor purchasing.

The committee further recommends that a detailed evaluation of industry practices take place no later than two years after the provision of this funding. A mandatory code should be introduced if that review reveals few improvements in industry behaviour and little reduction in the prevalence of imitation First Nations art and craft.

Recommendation 3

5.42 The committee recommends that the Australian Government establishes and funds a separate arm of the Indigenous Business Sector Strategy that is specifically aimed at art centres. This arm should incorporate the following aspects:

- a business advisory hub that will advise art centres on how to access mainstream souvenir markets;
- seed funding for art centres to build capacity, including staff training, to enter mainstream souvenir markets, including mentoring and monitoring strategies; and
- solutions to the lack of infrastructure, particularly housing, that prevents many art centres from hiring and retaining art centre managers.

Recommendation 4

- 5.43 The committee recommends that the Australian Government develops an Information Standard for authentic First Nations art in full consultation with First Nations artists and communities and the Indigenous Art Code.

Recommendation 5

- 5.44 The committee recommends that the Australian Government develops an information guide on authentic First Nations art to be provided to all arriving passengers at an airport or any other port of entry to Australia, with a preference for a short pre-arrival video presentation.

Recommendation 6

- 5.45 The committee recommends that IP Australia develops a Certification Trade Mark scheme for authentic First Nations art and craft in full consultation with all relevant stakeholders

Recommendation 7

- 5.46 The committee recommends that additional funding be provided through the Indigenous Visual Arts Industry Support program to:
- enable First Nations organisations such as art centres to advise and support artists who have been affected by carpetbagging; and
 - work with advisors from the Departments of Social Services, Employment and Prime Minister and Cabinet to plan a detailed program of interactive, financially viable assistance for First Nations artists or individuals who have been abused in this way, including a model to estimate any budgetary implications.

Recommendation 8

- 5.47 **The committee recommends that the Australian Government begins a consultation process to develop stand-alone legislation protecting Indigenous Cultural Intellectual Property, including traditional knowledge and cultural expressions.**

The committee is mindful of the current Australia Council inquiry into the feasibility of a National Indigenous Art and Cultural Authority. The committee fully supports the establishment of this body and recommends that it be part of the consultation process.

Ann Sudmalis MP
Chair

17 December 2018