

20th September 2019

I thank you for your leave to allow me to make some comments on the 'Competition and Consumer Amendment (Prevention of Exploitation of Indigenous Cultural Expression) Bill 2019.

I wish to make these comments as the result of experience gained from working with indigenous peoples for 57 years, initially in a government position, and since 1979 through my operation of an Aboriginal art gallery with my indigenous wife. For over 50 years I have been purchasing and commissioning indigenous cultural items and works of art.

I have worked with all State museums and many other institutions in Australia in facilitating the donation of indigenous cultural objects and artworks under the 'Cultural Gifts Program' of the Federal Government and have been a valuer, under this legislation in excess of 35 years.

My wife has had the privilege of personally knowing many of Australia's great indigenous artists, across most regions of this country, while I have worked with and curated thousands of sacred and ceremonial items amongst all the other items I have handled.

Together as a family, we have curated exhibitions of 'indigenous' art from many areas and promoted some of those artists to international fame.

We were founding members of Aboriginal Art Association of Australia of which my wife was the South Australian representative on Board, and of the Indigenous Art Code. I have previously provided input in the 1980's to Australia's, 'Movable Cultural Heritage Act 1986': - and

- to 'Shane Simpson's Review of the Protection of Movable Cultural Heritage Act 1986', in August 2015,
- to the 'Art Retail Royalty Scheme', in July 2013
- to Stephen Cassidy, Director, National Cultural Policy Task force, in October 2011

I offer the following insights on my understanding of the 'proposed legislation'.

In General

While most Federal and State legislation proclaims 'non-discrimination' throughout our community, these same institutions still seem fit, as in this present case, to consider introducing discriminatory legislation, viz legislation applicable to a small sector of our Australian community. In all reality, we look on our nation as a multi-cultural community, and there should be no discrimination, for or against, any sector of that community. Do we want other sectors of our Australian community, sectors even larger than the indigenous sector, to be claiming special legislative privileges?

Certainly, the intent of the proposed legislation appears to be good, but could not most aspects be covered by current legislation regarding open disclosure and correct labelling of all products?

Individuals and companies have been effectively charged and fined under this existing legislation. It is the enforcement of the existing legislation that has been lacking. Even outside of the area of 'indigenous cultural expression' there are many other retail situations where some enforcement of legislation regarding correct labelling should be undertaken.

Consider Australia's National Gemstone – the OPAL.

A majority of shops in Australia now sell synthetic opal, opal substitutes and Ethiopian opal all liberally mixed amongst the Australian opal on display, often with no concern for appropriate labelling. This of course extends to the complete range of gemstones, in both high-end and tourist outlets.

As regard to the sale or offering for sale of items that are fake, copied and misrepresented, the indigenous segment is really only a small part of the whole problem.

The Development of the Indigenous Art Market

From first European settlement in Australia there has been a market for indigenous cultural material, as curios for collectors and for institutional collections, where they were primarily of ethnographic interest. However, since 1971, Indigenous art has become mainstream, contemporised. This was as the result of an collaboration between a non-indigenous Australian and indigenous Australians. For 70 years all efforts of the Australian Government to assist the economic and social advancement of the Indigenous populations had been in vain. However, their art industry developed in spite of initial,

official sanctions. The art has become widely collectible and has been shown by and collected in many major institutions worldwide.

There was a growing demand.

Indigenous artists that formerly made wooden artefacts for sale swapped over to doing paintings. This was much easier and more lucrative, in some cases bringing in the millions of dollars per artist per annum.

As the art became known there developed a shortage in supply.

Entrepreneurs and galleries retained artists to paint full time for them.

With many new community art centres coming on stream over the past 20 years and a slackening of collector demand there is now a surfeit of indigenous art available on the market. The value of many indigenous art works have fallen considerably over the past 10 years, when coming on the secondary market and the tourist sector now provides the main market for indigenous artworks and artefacts, in a specific price range. While the demand for other cultural items, eg. artefacts, has grown, indigenous Australians have been unable / unwilling to supply this demand. This is quite understandable. It is exactly what happened to the Australian car industry and many other manufacturing industries in this country. Does government expect indigenous Australians to work for \$50 a day producing wooden artefacts, or is the intention to offer subsidies? Certainly, other Australians don't work long hours making our cuddly koala bears. In every Australiana shop I've been there sit our iconic koalas, proudly bearing the 'Made in China' logo. Consequently, supplies have come in from overseas, Indonesia and elsewhere, to fill the demand in the lower end of the market for 'Aboriginal' artefacts and art. A commercial reality.

Galleries often give customers a choice, an Aboriginal made mulga boomerang at \$100 to \$150 (or more) c/w a production line painted plywood boomerang at \$40. In 90% of occasions it is the \$40 item which the customer purchases.

Can't blame the tourists, we Australians do exactly the same.

Any Legislation is unlikely to change the commercial reality of life.

If a traveller cannot purchase a suitably priced boomerang in Australia, he can do the purchase when passing through Bali, the U.S.A. or even Europe. They are on sale in

many countries. There are said to be more Yirdaki (didgeridoos) in Germany than in Australia.

We may not like the situation, but this is what 40years in the retailing business has taught me.

More Specific Concerns

Division 6

50 A

This section largely overlooks or ignores the fact that 100's of thousands of items of indigenous art and culture are circulating in the Australian community, all presumed to have been made by indigenous Australians. Most have no certification.

Documents or Certificates of Authenticity are a figment of our European need to have a story attached to a work of art. It was introduced as a selling point to capitalize on the 'exotic nature' of the product and to try and give meaning to unfamiliar designs and images.

50 A (c)

Australians of European heritage often consider our indigenous population to be one group, whereas in fact the diversity amongst the Aboriginal nations was much greater than the diversity amongst all the European nations, with hundreds of different languages and cultural practices.

Indigenous artists themselves often appropriate 'Indigenous cultural expression' from other cultural groups.

In recent years we have seen groups from Victoria, the Nullarbor and elsewhere, appropriating, making and selling Yirdaki, a cultural item traditionally made only across certain areas of the Top End of Australia.

The sand paintings, done on the ground, to the west and N.W. of Alice Springs, morphed into 'Tula painting', often now referred to as 'dot' painting. This was as a result of European intervention, with European materials. There is no cultural connection whatsoever between this painting tradition in central Australia and the traditional indigenous art of, for example Victoria or Queensland. However, 'indigenous' artists from these and many other regions have appropriated this style of painting, only because it is

readily recognizable and a marketable commodity, not having real tangible connection to the local traditional art.

Over the years, entrepreneurial indigenous people have employed people of indigenous heritage to copy and combine motifs from different areas around Australia, to develop their own brand of 'traditional' Aboriginal art.

As Aboriginal art became popular during the 1990's – mid 2000's our indigenous artists capitalized on the situation to enhance their income. Traditionally the prerogative of elderly, initiated men, recording their personal and clan stories from the 'Dreamtime', artworks were soon being done by the women, even young people and children. The precise dotting developed into splashes of colour using multiple tipped brushes, then to broad lines. This enabled paintings to be produced more quickly. Traditional colours and stories morphed into multi-colour 'pretty pictures', with appeal to a decorator market. Today much of the so called Aboriginal art, is material produced in quantity for this and the tourist market. While this may be hard to accept by some, it may even be politically incorrect to be so expressed, but nevertheless is true.

Re 50A (2)

Re 'Indigenous ceremonial or sacred artefact'.

Recently I was contacted by the elders of a traditional group in the Northern Territory. They had just completed a series of initiation ceremonies and were offering for sale 'sacred' objects used in the ceremony.

Their considerations were:-

- a) The young people, the uninitiated and women in the community must not see these objects.
- b) We could hide them in the 'bush' where they would likely be destroyed by white ants, or
- c) We can sell them far away from our community and use the money to benefit our community. The considerable amount of money sought would certainly have helped their community.

Their response to this proposed legislation would be along the lines of, 'You White-fella mob in Canberra, look after your own problems. We make our own decisions.'

So very often there are people of different cultures who feel it their prerogative to impose their concepts on another group, in this case indigenous Australians, often without real 'grass roots' knowledge. While, as stated previously, there are many different indigenous cultures in Australia, in general, sacred objects are made for a specific person at his initiation, and for a specific ceremony. To the uninitiated or a

person from a different tribal group, that object was often considered as poison, not to be viewed, certainly not touched. Because of this they were some times given or sold to Europeans; to ensure the safety of other community members. This aspect has been completely overlooked in the drafting of the current proposed Legislation.

At present we see non-initiated males, young people, even women of varying degrees of indigenous heritage, interfering in men's business, and being listened to out of a sence of 'political correctness'. As a result, we have instances of, as an example, non-traditional artwork from the Kimberley's in W.A. being considered by some Victorian indigenous people as 'sacred objects'. This 'political correctness' can be seen by many Australians of both indigenous and non-indigenous backgrounds as a new form of 'paternalism'.

Another aspect not considered by this legislation is the fact that tens of thousands of so called 'sacred objects' are in collections throughout Australia, indeed the whole world. They are there-by preserved, appreciated as works of art and treasured by many people. Had they not been collected they would not be in existence today, as a lasting memorial to Australias many, diverse, indigenous peoples. How would these items be treated under this legislation?

In many indigenous cultures, sacred and ceremonial items were made for a specific purpose, after which they were destroyed. Only rarely was consideration given to keeping an item in perpetuity with few exceptions, a basically nomadic culture, where everything was carried from campsite to campsite, could not even conceive of hording or keeping any but the essential items for survival.

Re Attribution

Unlike European culture, the artists in many indigenous cultures did not sign their artworks. Being part of a small community, everybody recognized the style of the work, or from the artwork itself, knew who had the right to produce the work. Most early indigenous artworks were unsigned. The signatures or names ensconced on the backs of artworks today are only the requirement of a foreign, viz European sensibility.

Many artists of indigenous or part indigenous heritage are completely independent of traditional communities and want to be recognized as part of the Australian community, and have their art judged on its own merit.

Some have gone to Art School / university and they paint as they are inspired, sometimes interpreting aspects of how they perceive their heritage, sometimes not. As one expert quoted – 'You cannot put boundaries on art'.

It should be noted that in recent years good Aboriginal art is being sold under the banner of 'Fine Australian and International Art' in many of the major Australian auction houses.

In a consideration of 'Indigenous Cultural Expressions' –

Where do you draw the line?

Do you include the art/ culture of everybody claiming indigenous heritage?

Does it include all artistic expression of these people?

eg. the artwork of the Hermannsburg artists?

- the political art of urban indigenous artists?
- art in glass and other media
- the highly sophisticated and truly international art, equivalent to anything in the world today
- the pretty lines and splotches of colour (truly contemporary art) often labelled 'My Country', often made to order?

One of Australia's greatest indigenous artists, Rover Thomas, once commented about the work of the famous American artist Mark Rothko... 'who's that bugger, who paints like me' – not realizing the Rothko had painted many decades prior to him.

When adequate consideration is given to the whole palette of 'Indigenous art and expression, we realize that one of the main reasons for the art-worlds continuing interest in Australian Aboriginal art is the ensuing and rapid evolution of content, style, ingenuity and expression, far exceeding that of any other art movement in the world today. Anything that works well, tends to be copied – fact of life!

CONCLUSION

- 1) It is frustrating and concerning that fake, imported material is being sold as Aboriginal art.
- 2) Discriminatory legislation should not be used. (Aren't we in favour of inclusiveness and anti all forms of racial discrimination?)
- 3) Many other areas of retailing are affected by the same problems, eg. the opal and gemstone industries
- 4) Current legislation about appropriate and correct labelling of all retail product needs be enforced. (This may require additional resourcing, but that would also be required were the present defective legislation be enacted.)

- 5) Why! Even the groceries or our supermarket shelves are labelled as to source of content. This could be a requirement with indigenous, Australian artwork, opals and all areas of retailing where transparency of product is poor.
- 6) It is the consumer, informed by correct labelling, who ultimately makes the choice of what product to choose, based on their purchasing budget.
- 7) It is inappropriate to include a clause on the protection of sensitive cultural heritage in a Bill that is essentially about retail transactions.
- 8) While essentially well meaning, it is unfortunate that the proposed Amendment appears to lack understanding of the complexities of the Aboriginal art market, seems to consider only the current market rather than the whole market (historic collections etc.) and while promoting a more reliable provenance for art and cultural material, also has a paternalistic approach to one (the indigenous) sector of the Australian community.
- 9) The word 'Indigenous', used throughout the 'Bill' is an attempt at current political correctness. The amazing art, produced by the original occupants of Australia is now known, collected and displayed world-wide as Aboriginal art.
Ask any proud first Australian who he is: he'll say, I'm Aboriginal, or I have Aboriginal heritage, or I'm Arrernte, I'm Narrindjerri, I'm Kokata, I'm Anmatyerre, or just, I'm Australian.
'Indigenous' is an innocuous word, only recently brought into common usage, and refers to any species endemic to a particular place; it is disrespectful.

I respectfully submit my comments, based on a lifetime of working in the Aboriginal and indigenous art industry, and in the tourism industry, for your consideration.

Sincerely

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Representing a total 125 years working in the indigenous art market