



13th August 2019

Stephen Palethorpe
Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

SUBMISSION: Competition and Consumer Amendment (Prevention of Exploitation of Indigenous Cultural Expressions) Bill 2019

Thank you for your invitation to make a submission for this proposed Bill.

We appreciate this as a well intention response to the Inquiry and a practical intervention to improve the situation in regards to the protection and promotion of Indigenous Cultural Expressions.

This Bill are important measures to address the exploitation of Indigenous Cultural Expressions. I take this matter seriously both as a UNESCO Expert, *2005 Convention for the Protection and Promotion of the Diversity of Cultural Expressions*, to which Australia is a signatory, and as the Founder and Managing Director of Creative Economy.

Established in 1992 in Australia, is a niche consulting practice specialising in the strategic development and sustainable development of cultural and creative industries, especially indigenous cultural organisations.

Over the last 25 years, Creative Economy has instigated a range of initiatives and delivered programs directly addressing the capacity of Indigenous people to economically benefit from their culture and art. We have taken an active role in supporting and building the capacity of Aboriginal and Torres Strait Islander artists, communities and enterprises to promote authenticity and achieve economic returns.

Creative Economy has been an active advocate and contributor to this matter. We would encourage the committee to review our past submissions and proposals to Government agencies, including the ACCC, to the *2006 Inquiry into Australia's Indigenous visual arts and craft sector* and to the *2017 Inquiry into the proliferation of inauthentic Aboriginal 'style' art*.

Our submission in relation to the "Competition and Consumer Amendment (Prevention of Exploitation of Indigenous Cultural Expressions) Bill 2019" is attached.

Thank you for your consideration.

Kind regards

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SUBMISSION: COMPETITION AND CONSUMER AMENDMENT (PREVENTION OF EXPLOITATION OF INDIGENOUS CULTURAL EXPRESSIONS) BILL 2019

Our response is formed from our experience working with Aboriginal and Torres Strait Islander peoples and their communities and in the trade and commerce of Indigenous cultural expressions and cultural artefacts.

In general we support the Amendments Bill as outcome of the Inquiry to improve the Prevention of Exploitation of Indigenous Cultural Expressions.

We highlight six points for further consideration.

Generally,

1. Ensuring ability for Aboriginal and Torres Strait Islander peoples and their communities can maximise economic returns from Indigenous Cultural Expressions.

We encourage the Committee to ensure that the Bill allows for Aboriginal and Torres Strait Islander peoples and their communities to benefit through trade and commerce of their cultural expressions and appropriate cultural artefacts. Importantly, that the Bill has no unintended consequences of restricting or reducing economic returns to Aboriginal and Torres Strait Islander Cultural Expressions from trade and commerce, including with third parties.

Specifically,

2. **1 Subsection 2(1) of Schedule 2 Definition of *Indigenous cultural artefact***

We suggest rephrasing the end of the statement to “...includes, and is not limited to, the following:” It is difficult to determine a finite list of cultural artefacts. Adding the phrase “is not limited to” would ensure the inclusion of cultural artefacts, such as head-dresses, jewellery, etc. The items in the current list are more reflected of items for Northern Territory and not fully reflected of cultural artefacts throughout Australia.

3. **50A Misuse of Indigenous cultural expression**

“(2) A person must not, in trade or commerce, supply or offer to supply to a person an Indigenous ceremonial or sacred artefact.”

Does this clause restrict Aboriginal and Torres Strait Islander peoples and communities in gaining economic returns from trade and commerce?

Currently there are ceremonies and items used for ceremony, for example, dance headdresses, dance boards, etc. and photographs and films of ceremony that Aboriginal and Torres Strait Islander peoples and communities offer for trade and commerce with institutions, event producers, collectors, etc.

This is because not all ceremony and Indigenous cultural expressions related to ceremonial purposes are sacred. It is appropriate that the use, trade or commerce, supply is vested in the cultural authority of the relevant Aboriginal and Torres Strait Islander peoples and communities.

Does this clause of the proposed Bill impact on the cultural authority of Aboriginal and Torres Strait Islander peoples and communities and their ability to seek economic returns, should they chose?

4. 50AB Offences 31

“(1) A person commits an offence if the person, in trade or commerce: supplies or offers to supply a good to a person that includes an Indigenous cultural expression;”

Does this clause restrict Aboriginal and Torres Strait Islander peoples and communities in gaining economic returns from trade and commerce?

5. Prevent inauthentic cultural expressions and the terms of “Aboriginal Style” “Aboriginal Design” “Indigenous Style” “Indigenous Design”

We strongly encourage the Committee to address inauthentic cultural expressions that passes off as Aboriginal or Torres Strait Islander cultural expressions. We encourage the Committee to include in this Amendment Bill the abolition of the use of the terms “Aboriginal Style”, “Aboriginal Design” “Indigenous Style” “Indigenous Design” to describe inauthentic Aboriginal Torres Strait Islander cultural expressions. These terms are misleading and deceptive for consumers and are detrimental to Aboriginal or Torres Strait Islander peoples and communities in trade, commerce and supply of authentic cultural expressions.

6. 2005 Convention for the Protection and Promotion of the Diversity of Cultural Expressions

Perhaps this is an appropriate time to address and reference the *2005 Convention for the Protection and Promotion of the Diversity of Cultural Expressions* as part the amendment of this Bill.