

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates 3-5 June 2008

Question: bet 8

Topic: Indigenous Art Industry

Hansard Page: Written

Senator Eggleston asked:

1. I noticed Graeme Samuel's article in the Northern Territory News in February this year regarding the indigenous art market – it stated that the ACCC had started distributing information and fact sheets to galleries and art centres. One of the recommendations from last year's Senate ECITA Committee inquiry into Australia's indigenous visual arts and craft sector was that the ACCC be funded specifically to increase its scrutiny of the indigenous art industry, including conducting educational programs for consumers as well as investigation activities. Could you advise me if any funding was given to the ACCC in the budget to fulfil this recommendation because information and fact sheets are undoubtedly helpful, but they do fall short of fulling the report's recommendations?
2. Did the ACCC put forward the need for funding in this area to the government and if so, what was their response?
3. Other than the information and fact sheets what other steps has the ACCC taken to fulfil the report's recommendations?
4. Has the ACCC sought advice from the indigenous art industry itself on the extent of fraud and malpractice in the indigenous art industry, specifically the practise of passing off as the work of 'known name' indigenous artists paintings that are of a similar style (but not actually the work of the supposed artist) that are sold for prices which genuine works of the 'known name' artist would attract?
5. The indigenous art industry has been estimates to have a value of \$600 to \$800 million per annum across Australia. Does the ACCC regard the Trade Practices Act which it administers as the most appropriate legislative framework to deal with matters such as the authentication of indigenous art as well as fraud and exploitation of indigenous artists?

Answer:

1. Did the ACCC receive increased funding in the Federal budget to specifically address issues in the Indigenous art and craft sector?

While the ACCC has been actively engaged on a number of compliance and enforcement activities associated with this sector, it has not specifically sought nor received specific funding for these activities. The ACCC has, to date, been able to deliver these activities by drawing upon existing resources.

2. Did the ACCC put forward the need for funding in this area to the Government and if so, what was their response?

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As outlined below, the ACCC has conducted education and compliance activities as part of its overall strategy to address consumer protection and fair trading concerns in the Indigenous arts and craft sector. The ACCC will continue to undertake these activities as required, and is able to do so within its existing resource allocation. As such, the ACCC did not request additional funding specifically to address concerns in the Indigenous art and crafts sector.

3. Other than the information and fact sheets, what other steps has the ACCC taken to fulfil the Senate Inquiry report's recommendations

Apart from education and information initiatives by way of advisory material, including fact sheets, the ACCC activities in the Indigenous art and craft sector include:

ACCC Enforcement Activity

The ACCC actively monitors this industry, and carefully assesses any matters involving allegations of behaviour, particularly misleading or deceptive conduct or unconscionable conduct, that may breach the *Trade Practices Act 1974* (TPA).

The ACCC is currently investigating allegations of misleading and deceptive conduct relating to the authenticity of artwork promoted by a trader in Queensland.

The ACCC concluded a successful action against Australian Icon products Pty Ltd (AIP) subsequently trading as Australian Aboriginal Art Pty Ltd (AAA) in May 2004 for misleading and deceptive conduct in breach of s52 of the TPA in relation to the sale of souvenirs.

Following the Senate Inquiry into Australia's Indigenous Visual Arts and Craft Sector ('Inquiry'), the ACCC reviewed submissions and verbal statements provided to the Inquiry for indicators of conduct that may raise concerns under the TPA.

Where the submissions and statements indicated potential breaches of the TPA, the ACCC contacted submission authors and conducted meetings with art centre representatives in Central Australia and the Top End to clarify the information provided to the Inquiry.

The Indigenous Australian Art Commercial Code of Conduct

The Senate Inquiry report highlighted the importance of the development and implementation of the Indigenous Australia Art Commercial Code of Conduct (IAACCC). The IAACCC is a joint initiative of the National Association for the Visual Arts (NAVA), Desert and the Association of Northern, Kimberly and Arnhem Aboriginal Artists (ANKAAA) (the Reference Group)

Substantial progress has been made on the development of the IAACCC and the ACCC continues to provide ongoing guidance to the Reference Group on the development and implementation of the code.

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National Indigenous Intellectual Property Toolkit

The ACCC provided comment on the draft National Indigenous Intellectual Property Toolkit in June 2007. The toolkit contains advisory material relating to indigenous Intellectual Property issues. This project is funded by the Commonwealth Cultural Ministers Council and its development is managed by the West Australian Department of Culture and the Arts. The toolkit is expected to be launched later this year.

Indigenous art and craft fact sheets

In September 2007 the ACCC distributed copies of two new fact sheets on Indigenous art and craft at the Desert Mob Symposium in Alice Springs. A small business fact sheet: *Unconscionable conduct in the Indigenous art and craft* and *Your consumer rights: Indigenous art and craft* a DL size flyer were developed by the ACCC's Darwin office to address concerns about market practices in the sector.

In October 2007 the ACCC conducted an Australia wide mail out of the publications to inform industry participants and stakeholder groups. Approximately 7500 of the consumer fact sheets and 5000 small business fact sheets have subsequently been distributed nationwide.

The National Indigenous Consumer Strategy (NICS)

The ACCC is a signatory to the National Indigenous Consumer Strategy (NICS) -a five year action plan, concluding in 2010, which adopts a whole-of-Government approach to Indigenous consumer issues. NICS establishes specific activities for member consumer agencies under eight key priorities areas, including Indigenous art and craft.

The ACCC assisted the Department of Employment and Consumer Protection in Western Australia (DOCEP), the lead agency for NICS, to develop the NICS website which was launched in February 2008. The website (<http://www.nics.org.au>) provides a wide range of consumer education and information resources for Indigenous people and associated advocacy groups. The ACCC's Indigenous art and craft fact sheets are available from the NICS website.

4. Has the ACCC sought advice from the indigenous art industry itself on the extent of fraud and malpractice in the indigenous art industry, specifically the practise of passing off?

The ACCC has consulted extensively with the Indigenous art industry and stakeholders to gather intelligence on the issues impacting on the sector that may raise concerns under the TPA. Some of the parties contacted by the ACCC include representatives from:

- The Arts Law Centre of Australia
- The National Association for the Visual Arts (NAVA)
- Desart

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- The Association of Northern, Kimberly and Arnhem Aboriginal Artists (ANKAAA)
- Jill Gientzotis, the consultant charged with the preparation of the draft Indigenous Australian Art Commercial Code of Conduct.

As noted above ACCC enforcement staff met with representatives from art centres in Central Australia and the Top End to identify specific cases involving potential breaches of the TPA. ACCC staff also contacted a number of industry stakeholders who made submissions to the Senate Inquiry to clarify issues that may impact on the industry.

Advice from knowledgeable industry stakeholders can assist ACCC investigations of allegations of misleading and deceptive conduct relating to the authenticity of artwork. This may include, for example, where consumers are misled by traders 'passing off' art work.

The ACCC continues to maintain relationships with key industry participants to ensure that concerns about fair trading and consumer protection in the sector are reported and investigated.

5. Does the ACCC regard the Trade Practices Act as the most appropriate legislative framework to deal with matters such as the authentication of indigenous art as well as fraud and exploitation of indigenous artists?

The objective of the Trade Practices Act 1974 is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection. Key consumer protection provisions contained in the TPA include those prohibiting conduct which is misleading or deceptive, or which is likely to mislead or deceive and prohibiting unconscionable conduct by businesses in their dealings with consumers and other businesses.

As such the TPA can be used to effectively address some consumer protection concerns, including those specified above, such as misleading and deceptive conduct relating to the authenticity of artwork, for example.

The TPA alone, however, cannot address all of the problems identified in the Senate Inquiry report. Some issues of concern for the sector may not necessarily constitute breaches of the TPA and therefore cannot be addressed by it.

This point was highlighted in the ACCC's report to the Senate inquiry "Review of submissions and verbal evidence for indicators of potential breaches of the Trade Practices Act 1974 (Cth) and a discussion of possible outcomes" (included as an attachment to the Senate Inquiry report).

The ACCC considers that the TPA forms part of a wider legislative framework which can address concerns in the sector. This framework includes State and Territory Fair Trading Acts, Intellectual property law and the Crimes Acts. Some of the conduct highlighted by the Senate Inquiry is also likely to fall within other agency

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jurisdictions such as State and Territory Police, State and Territory fair trading agencies (which administer the Fair Trading Acts in each jurisdiction), the Australian Crime Commission, Customs and Intellectual Property Australia.

Other initiatives including the Indigenous Australian Art Commercial Code of Conduct and the National Indigenous Intellectual Property Toolkit (described above) are also important components of this wider framework. These initiatives seek to promote fairer market behaviour, market integrity and sustainability.