

# Chapter 8

## Threats to the Indigenous art market

8.1 In March 2006, journalist Nicholas Rothwell wrote an article 'Scams in the desert', which highlighted questionable practices in the Indigenous art trade.<sup>1</sup> He drew attention to concerns about a range of issues in Indigenous art that have the potential to undermine the market for the art, as well as damaging the reputation of Indigenous artists and art movements. Anything that has the potential to damage this sector is of concern to the committee and to the industry's stakeholders. The committee's terms of reference require it to examine 'opportunities for strategies and mechanisms that the sector could adopt to improve its practices, capacity and sustainability, including to deal with unscrupulous or unethical conduct', and a great deal of the committee's evidence was on this subject. This chapter, and the two that follow, concentrate on these issues.

8.2 At the heart of concerns about the Indigenous art market are two related concerns: the integrity of art works that are sold in the Indigenous art market; and the conditions under which those works are produced and traded. However there are many facets to these issues and many strategies to combat them.

### Provenance

8.3 The provenance of artworks is generally determined through two complementary but separate mechanisms – a certificate of provenance and some kind of proof of sale. It is important to note that the two mechanisms are independent: legitimate proof of a sale does not guarantee the provenance of the piece, nor does a certificate of provenance guarantee that the piece has been sold through legitimate means for a reasonable price.

8.4 The definition of provenance essentially revolves around the history and authenticity of a particular object. The provenance of a work is the:

Record of ownership for a work of art, ideally from the time it left the artist's studio to its present location, thus creating an unbroken ownership history.<sup>2</sup>

8.5 While provenance establishes the history and legitimacy of the work of art, this is not to be confused with the mechanism for the legitimate sale of the work, be it an Indigenous painting, souvenir, sculpture or other tradeable item.

---

1 Nicholas Rothwell, 'Scams in the desert', *The Weekend Australian*, 4 March 2006.

2 Antiques by Alternatives website, [http://www.antiquesbyalternatives.com/Art\\_Terminology.htm](http://www.antiquesbyalternatives.com/Art_Terminology.htm), accessed on 13 February 2007.

### ***Problems of Indigenous art provenance***

8.6 When considering the provenance of Indigenous art, concerns are generally raised in regard to Indigenous art produced in remote communities in north and central Australia, and not so much in connection with art being produced by urban Indigenous artists.

8.7 Proving the provenance of Indigenous art and craft can be difficult. Traditional European scholarly methods of the 19<sup>th</sup> century, such as:

- where and when the work was painted;
- ownership lineage;
- documents of sale and proof of purchase;
- academic and other publication; and
- exhibitions

are not necessarily applicable to art work that has been created and sold in remote outback art centres or communities.<sup>3</sup> Documentation prepared by art centres might not provide some of the information. Many works get sold by artists for cash or barter with little or no documentation at all. Yet many of these works will be the undisputedly genuine creative work of the Indigenous artist who sold them.

8.8 Carole Best described in her submission the various levels of authentication (or non-authentication) that can exist in Indigenous visual arts. Using work by Kumantji Possum Tjapaltjarri as an example, she listed nine categories that the art could fall into:

- securely provenanced works, both signed and unsigned;
- insecurely provenanced works both signed and unsigned;
- securely provenanced works signed as Kumantji Possum but not by his hand;
- insecurely provenanced works signed as Kumantji Possum but not by his hand;
- family works signed by Kumantji Possum Tjapaltjarri;
- unsigned family works which show evidence of Kumantji Possum Tjapaltjarri's hand;
- securely provenanced works that Kumantji Possum Tjapaltjarri did not recognise as his;
- several dozen 'known' forgeries, the identification of which involved significant resources at the time; and

---

3 Perkin, C., 'Plunder of a painter's reputation', *The Australian*, 8 December 2006, p. 16.

- an unknown number of unidentified forgeries currently circulating in the art market.<sup>4</sup>

8.9 Ms Best's categories highlight the role of family members that can be an important, and controversial, aspect of the making of Indigenous paintings. The role of families in the creation of art works – particularly paintings – can present problems with the verification of their authenticity. For example, paintings can be produced within the Indigenous community by individuals other than the recognised artist. That artist then signs the paintings and they are sold as original, authentic work:

"They [the women] make them, I sign them", famous Aboriginal artist Turkey Tolsen Tjupurrula was reported as saying... He reportedly revealed that scores of works sold under commission from an art gallery owner were in fact painted by his daughter, Nellie, and his daughters-in-law Leanne, Pamela and Elizabeth. They were then signed by him. Tjupurrula also reportedly said that with some paintings, "I do the markings first and give the canvasses to the women to complete".<sup>5</sup>

8.10 An investigation by the West Australian Police showed that this practice still continues today. Major Fraud Squad detective, Senior Constable Mark Duzevich, said in a 2006 media report that police had investigated claims that, amongst other issues, works sold under a high-profile artist's name were being largely painted by family members.<sup>6</sup>

8.11 However there is not agreement about the extent to which, or even the reasons why, this is a problem. Mr Ullin was just one stakeholder who questioned the level of concern in some quarters about the role of family members:

I cannot always guarantee, for instance, the culture of Aboriginal artists who design a painting— it is their painting—but who from time to time get their family to fill in dots, do a few lines and so on. There is no escaping that situation; it does occur. It does not mean that it is not authentic. In fact, if you go back through time, Rembrandt and other famous artists had schools. Altdorfer—there was a school of Altdorfer—and all kinds of famous artists had their students working with them. I do not see this as being very different with Aboriginal art, because the story is the person who designs the canvas. It is not necessarily how it is painted or the quality of the painting that matters; it is more, in Aboriginal areas, what the story is. That goes back, of course, to their history. There are some artists who

---

4 Ms Carol Best, *Submission 69*, p. 4.

5 Grafico Arts, Special Exhibition Reviews by Sue Smith, website, [http://www.grafico-qld.com/exhibition/abart\\_comment.htm](http://www.grafico-qld.com/exhibition/abart_comment.htm), first published in *The Courier Mail*, 24 April 1999, accessed on 15 February 2007.

6 Eloise Dortch, 'Aboriginal art experts warn of fraud as police fail to file charges', *The West Australian*, 16 March 2006, p.17; and 'Art of Exploitation', *The Australian*, 7 March 2006, p. 13. See also, Tania Johnson, 'When is a forgery not a forgery?', *Journal of Indigenous Policy*, Issue 6, pp 83–119.

would not have a bar of that, but overall you have to accept the fact that that is the case. It will happen. It does not mean that that artist is not authentic.<sup>7</sup>

It is also ironic that at the same time as some people are expressing concern about the role of family members in the provenance of works, there is, equally, widespread concern that the next generation in these Indigenous communities will not be mentored and develop the artistic skills that would lead them to one day being major artists in their own right.

8.12 Doubts about the role of family or community members may also fail to take account of the role of custodianship and tribal law in dictating who portrays country or stories through art. This is not just a question of who might be permitted to paint certain pictures. It can also involve expectations in the community that certain people will paint, or that they will co-operate with others in painting. Such collaboration may not be reflected in the signature of a single artist, but it may well be done openly and with a shared understanding between the community and the artist that it is appropriate. Designs and responsibilities for portraying certain images or laws may pass from one person to another, particularly on the death of an artist. The notion that this represents copying or imitation can represent a fundamental misunderstanding of the culture and motivations involved.

8.13 As Mr Ullin reminds us, collaboration of artists under a single signature has also been the norm in areas of western art. It still is. The sculptures of Patricia Piccinini are created with the assistance of highly skilled workers in the materials that are her media.<sup>8</sup> Christo's 'wrapped' installations are created with the aid of large teams of volunteers. The roles of these artists, to whose names the works are credited, are not questioned merely because they did not undertake all – or even most – of the physical creation of the works.

8.14 The committee understands that family or community members can have a legitimate role to play in the painting of Indigenous art works. However it also recognises that the combination of cultural differences and concerns about fraud may be contributing to prospective buyers being unsure about the legitimacy of some artworks. In some circumstances this can create a danger that prospective sellers will be unable to sell their works as auction houses or dealers may refuse to act as intermediaries because they feel unable to guarantee the art's authenticity.<sup>9</sup>

### **'Carpetbagging'**

8.15 Many participants in discussion about Indigenous art use 'carpetbagger' as a pejorative term in describing dealers involved in the exploitation of Indigenous artists.

---

7 Mr Claude Ullin, *Committee Hansard*, 11 April 2007, p. 41.

8 See, for example, Daniel Palmer, 'Interview with Patricia Piccinini and Peter Hennessey', *RealTime*, 2001, <http://www.patriciapiccinini.net/essay.php?id=6>, accessed May 2007.

9 Ms Carole Best, *Submission 69*, p. 4.

The term carpetbagger can be applied to particular individuals, backyard dealers, commercial gallery owners, private agents, or persons operating other legitimate businesses such as car yards or motels.<sup>10</sup> Such a person is usually not Indigenous and seeks to obtain art from an artist at a price well below what that person knows or ought to know is a reasonable market price, with the intention of selling it on at a substantial profit.<sup>11</sup> It often involves taking advantage of the artist's age, poverty, medical condition or other disadvantage. Carpetbagging has become a problem through the combination of the great success of Indigenous art<sup>12</sup> and the weak economic bargaining position in which Indigenous people frequently find themselves.<sup>13</sup>

8.16 Unethical and unscrupulous behaviour by 'carpetbaggers' falls into different categories and is not necessarily illegal. One submission gave an example of a dealer who had paid \$150 for a painting that required a week to paint, and was probably worth \$1500. When confronted, the dealer argued that he had done nothing wrong, and justified his behaviour on the grounds that he was supporting Aboriginals who would otherwise have no income at all.<sup>14</sup>

8.17 Some of the different ways in which Indigenous artists are taken advantage of include but are not limited to:

- circumventing Arts Centres and 'cherry-picking' established artists;<sup>15</sup>
- Indigenous artists working under duress;<sup>16</sup>
- receipt of little or inappropriate payment (such as drugs or alcohol, or vehicles in poor condition),<sup>17</sup> and
- selling misleading or fraudulent artworks. Carpetbaggers may sell fraudulent or sub-standard visual art produced through either:

---

10 Desart, *Submission 49*, p. 7.

11 Desart, *Submission 49*, p. 7.

12 Michael Reid, '2007 Art Market Trends', *Michael Reid* [newsletter], Feb-Mar 2007, p. 1.

13 Ashleigh Wilson, 'Probe into Indigenous artist "exploitation"', *The Australian*, 6 March 2006.

14 Ms Ali Cobby Eckermann, *Submission 56*, p. 1.

15 Ms Ali Cobby Eckermann, *Submission 56*, p.1. The submission gives an example of how established artists are given the pretence of 'special treatment' in return for receiving artwork at heavily discounted prices.

16 Papunya Tula Artists, *Submission 14*, p.3.

17 Papunya Tula Artists, *Submission 14*, p.3. The submission gives a broad overview of how elderly artists are manipulated into producing art for 'new' four-wheel drive cars. See also *Submission 55*, Mr A.P. Bond. Mr Bond's submission provides further detail.

- (i) a non-Indigenous artist;<sup>18</sup> or
- (ii) an Indigenous artist other than the one who signed the painting.<sup>19</sup>

8.18 Even assuming that a legitimate Indigenous artist produced the art, it might be of poor quality or unrepresentative of traditional Aboriginal experience or lore. A number of examples have been highlighted in the submissions whereby artists produce 'rubbish paintings' for the dealer to make quick money.<sup>20</sup> The paintings are of poor quality because they are rushed, the environment in which they are painted is hostile, and the cultural reasons for creating art, such as country and community, are absent.<sup>21</sup> In some cases, art is produced under the most appalling conditions. A deposition by a former employee of a motel describes how Indigenous artists are forced to live in squalid conditions in a motel in Alice Springs. The motel owners encourages the artists to reproduce existing paintings, for which they pay very little, and then demand rent from the artists, which they are unable to pay. This keeps them in a 'debt-trap', obligating them to produce more paintings.<sup>22</sup>

8.19 These works find their way into galleries, or are sold on the internet through e-Bay and similar websites for inflated prices. These paintings are likely to be presented to unsuspecting and ill-educated consumers as high-quality work with questionable if not fraudulent representation of the paintings' authenticity.

8.20 There is no agreement over what constitutes bad practice and what is fair or even good practice. While kidnapping and forcing people to work under duress are illegal, circumventing art centres, for example, is entirely within the law:

- some parties believe only art works sourced from art centres can be both authenticated and be relied upon to have been fairly obtained;
- other parties, such as the Japinka Indigenous Fine Art Gallery, say this is paternalistic,<sup>23</sup>
- Dr Korman believes that art centres do not suit some artists and they should be allowed to work outside the system if they feel they can receive greater remuneration;<sup>24</sup>

---

18 Ms Jennifer Herd, Queensland Art College, *Submission 47*. Ms Herd refers to the Altman Report (2001) which gave an example of backpackers painting didgeridoos for the souvenir market.

19 Northern Territory Government, *Submission 57*. There are two aspects to this: one is the deliberate forgery and fake authorship of artwork by 'carpetbaggers', the other is forgery by other Aboriginal people of other Aboriginal artists.

20 Arnold Bloch Liebler and the Jirrawun Arts Corporation, *Submission 59*, p. 3.

21 Arts Law Centre of Australia, *Submission 36*, p. 6.

22 Desart, *Submission 49*, Appendix 4, pp 36-37.

23 Japingka Indigenous Fine Art Gallery, *Submission 21*, p. 2

24 Dr Ben Korman, *Submission 64*, pp 3-4.

- some artists work where there is no art centre in any case; and
- there are differing views of how much money is a reasonable rate of return to the artists, particularly given the high overheads and different ways of doing business in Indigenous art compared to 'mainstream' art.

8.21 The carpetbagger phenomenon is not, therefore, clear cut. The term is often used in a derogatory sense for many buyers who have worked in the bush over many years and built up a strong relationship with individual artists. One submission from Mr Eccles noted that it also often reflects the gulf between the art-trained gallerist and the rough bushy 'who may well have spent a whole lot longer actually among Aboriginal people'.<sup>25</sup> He also noted the irony of one dealer dismissing another because they 'trade in art as a commodity', as though this was not the business of all commercial art dealers.

8.22 Mr Eccles outlined the difficulty surrounding the judgements made about industry participants:

[Another dealer] himself identified as a carpet-bagger despite running a \$2m. investment fund for Aboriginal art from Abbotsford in Melbourne. He's classic – brought up in the bush, trading in emus and emu oil, picking up the art on the side to the point where he claims he had a turnover of \$200,000 a year, even before he set up full-time art trading....

"But I'm the one who's done the hard yards in the bush since I was 4 or 5 (he's 32 now), and I'm the one who's built relations with the artists. I was a pall-bearer at [Kumantji] Possum's funeral – I bought all his kids tuxedos for that – and his daughter...paints in my gallery".<sup>26</sup>

8.23 The committee does not doubt that stories of unethical treatment of artists by some unscrupulous operators have their basis in fact. However it also recognises that there is not necessarily clear agreement on one 'right' way to do business between artists and galleries or dealers.

## **How do carpetbaggers get away with it?**

### *Artists' circumstances*

8.24 The carpetbagger is at an advantage over the Indigenous artist mainly because, given their general level of poverty, artists are willing to accept up-front cash payments for work rather than wait until existing works are sold through arts centres as they live in remote settlements with an extended family to support. Mr Anthony Oliver, Chief Executive Officer of Jirrawun Arts, gave a practical example by describing the circumstances of a particular artist.

---

25 Mr J Eccles, *Submission 43*, p. 2.

26 Mr J Eccles, *Submission 43*, p. 2.

He might need just that extra \$1,000 because of a family funeral.... Suddenly there is a funeral: 'I need two grand.' So what happens? The unscrupulous carpetbagger will say: 'You poor fella—that Jirrawun is not looking after you, is he? You come, I'll give you \$2,000,' getting a \$12,000 painting or a \$30,000 painting. Can you imagine how we feel, how the collectors that are supporting Freddie as an artist feel and how the galleries that have done the right thing and not taken much commission on a consignment system feel? Everyone just feels deflated and everyone feels that the whole system is being undermined. I understand why Freddie does that; I do.<sup>27</sup>

8.25 Industry body Art.Trade agreed:

Overwhelmingly the problem of unethical behaviour by buyers or dealers, in our experience, happens with direct purchases from artists urgently needing money. Artists frequently find themselves in need of money and are under pressure themselves or from their family to make a quick sale. In these circumstances they will be tempted to accept payment well below a proper market price.<sup>28</sup>

8.26 Other factors can include a lack of education, lack of knowledge about their rights and lack of understanding of western commercial arrangements. A particularly sad example of this was provided during the hearing at Alice Springs:

Talking about exploitation, there is one artist there. He is very old, and through the work of the art centre he has become quite successful at the moment. One day he came to the art centre and he asked me, 'Can you ask the man to give me the money?' I asked, 'Which man? Which money?' He said, 'I painted these canvases, three canvases, and he took them, and he hasn't given me the money.' I asked, 'Who is the man?' He did not know, because the man had not given him a name or anything. He just probably offered him money. I tried to explain to him that, if I do not have a name, if I do not have somebody to tell me who that person is, I cannot chase up the money. That is the kind of thing that has happened with old people.<sup>29</sup>

8.27 Further evidence was presented at the Kununurra hearing indicating a lack of understanding of not the value of the art, but of taxation arrangements. Ms Cathy Cummins, the Manager of Waringarri Aboriginal Arts explained:

I would say that definitely there needs to be a much greater understanding of tax issues and Centrelink issues in some instances. We have trouble explaining to a couple of artists the very basic position: when you sell a

---

27 Mr Anthony Oliver, Chief Executive Officer of Jirrawun Arts, *Committee Hansard*, 19 February 2007, p. 44.

28 Art.Trade, *Submission 19B*, p. 1.

29 Ms Gloria Morales-Segovia, Assistant Manager, Warlukurlangu Artists, *Committee Hansard*, 21 February 2007, p. 39.

painting, you get this much and the arts centre gets this much.... I would say 80 per cent would need support.<sup>30</sup>

### *Difficulty in securing prosecutions*

8.28 Some, perhaps most, carpetbagging is not illegal, though there be an issue of unconscionable conduct under trade practices law (discussed in the next chapter). In those cases where a law may have been broken, few transgressions are reported either to police or to consumer affairs. This may be for a number of reasons which include:

- artists, being unaware of their rights, are likely to be unaware of the illegal behaviour;<sup>31</sup>
- artists may also feel a sense of shame, and reporting their transgression may bring social difficulties for them within the community;<sup>32</sup>
- as artists are sometimes poorly educated, there may be no paperwork such as receipts. Hence, there may be no incontrovertible proof of fraud;<sup>33</sup>
- artists and their communities have limited resources with which to engage the legal profession;<sup>34</sup>
- organisations such as the police may themselves not be fully aware of their existing responsibilities, or the extent of the problems;<sup>35</sup> and
- purchasers of works of doubtful origin or price may be reluctant to undermine the value of their painting by reporting their concerns.

8.29 Carpetbagging has been recognised by almost all the submissions as one of the major problems confronting the Indigenous visual arts industry today. Even where existing laws have provided opportunities to prosecute, successful outcomes have been poor, mainly through the lack of evidence, and the artist's lack of education. Media reporting suggests that there has only been one known conviction, and that was in 2001.<sup>36</sup> Another investigation in Western Australia failed to result in charges

---

30 Ms Cathy Cummins, Manager of Waringarri Aboriginal Arts, *Committee Hansard*, 19 February 2007, pp 23-24.

31 Desart, *Submission 49*, p.19.

32 Desart, *Submission 49*, p.19.

33 The Australian Consumer and Competition Commission (ACCC) commented on 25 March 2006 that there was 'too much difficulty in trying to establish the necessary evidence to prove any breaches'. See John Oster, 'A code to stop the sweatshops' in *The Australian*, 2 June 2006, p. 17.

34 ACCC comment in John Oster, p. 17.

35 Mr Alex Malik, *Submission 6*, p. 35.

36 Katrina Strickland, 'Couple go on trial for Rover's art', in *The Australian Financial Review*, 24 November 2006, p. 3.

being laid.<sup>37</sup> The Australian Consumer and Competition Commission (ACCC) commented that:

the number of complaints that we receive in this area is very low... While there may be a sense in the community that there is a large volume of concern, that has not translated to allegations of breaches of the Trade Practices Act on a regular basis to the ACCC. [It] really assumes that we receive a number of these concerns, which is not actually the case.<sup>38</sup>

8.30 A number of mechanisms have been suggested in submissions to combat the problem including:

- the introduction of new laws or regulatory frameworks;<sup>39</sup>
- mechanisms through which to strengthen and guarantee the provenance of works;<sup>40</sup>
- maintaining or strengthening the permit system for access to Indigenous communities;<sup>41</sup>
- better education for both artists and consumers;<sup>42</sup> and
- more vigorous enforcement of existing law.<sup>43</sup>

8.31 The committee recognises that, even if all these measure were implemented, the issue would not disappear. There will always be a few individuals seeking to profit unfairly from the work of others, whether in Indigenous art or any other industry. However, the committee was concerned at the extent of issues relating to the integrity of the Indigenous art market, and the following two chapters discuss some of the issues and initiatives designed to address these problems.

---

37 Eloise Dortch, 'Federal Minister sets sights on Aboriginal art fraud', *West Australian*, 5 April 2006.

38 Mr Nigel Ridgway, General Manager, Compliance Strategies Branch, Australian Competition and Consumer Commission, *Committee Hansard*, 23 February 2007, p. 65.

39 Arts Law Centre of Australia, *Submission 36*, p. 2. See also The Australia Council, *Submission 38*, p. 3, and Arts Law Centre of Queensland, *Submission 45*, p. 3.

40 Caruana Fine Art, *Submission 31*, p. 3.

41 Maningrida Arts & Culture, *Submission 51*, p. 4.

42 Northern Territory Government, *Submission 57*, pp 19, 23.

43 Viscopy Ltd. *Submission 44*, p. 6.