

Chapter 10

Enhancing the market for Indigenous art – II

Introduction

10.1 This chapter discusses a range of measures that have been proposed to help ensure the integrity of the Indigenous art market. It complements the previous chapter, which was concerned with the policing of the market.

10.2 It has been recognised by organisations involved in the Indigenous arts and craft industry, such as the National Indigenous Council, the National Association for the Visual Arts, and the Australian Indigenous Art Trade Association, that more needs to be done to deal with issues of establishing the provenance and authenticity of Indigenous art products and to deal with issues of unethical conduct. To this end, various proposals have been put forward, such as for:

- certificates of provenance and/or labels of authenticity;
- changes to the administration of the tax system;
- art dealer accreditation; and
- a code of conduct for the industry.

10.3 All these initiatives are targeted at minimising the damage that unscrupulous activities are having on the sector.

10.4 The consideration of two distinct groups is required when looking for solutions to some of the problems that appear to be affecting the Indigenous arts and craft industry in Australia. These two groups are (1) the consumers, i.e. those on the receiving end of Indigenous arts and crafts products, and (2) those involved in the industry itself, i.e. those creating the products or involved in their sale and distribution.

10.5 When it comes to the consumer end of the market, not only are there concerns about the authenticity of such things as Aboriginal souvenirs, t-shirts, boomerangs, etc., which may have actually been imported from other countries, but there are also concerns at the fine art end of the market where investors and other buyers need definite assurance that the expensive art work they are buying is indeed genuine. There have been some cases where the work of well-known Indigenous artists has been forged and this type of activity is suggested to have impacted at times on industry confidence. One such forgery case was the recent alleged attempt by a Melbourne couple to pass off four forged Rover Thomas paintings to buyers through

leading auction houses at a total cost of more than \$330 000.¹ So issues of provenance and of authenticity are of particular importance to the market.

10.6 When it comes to looking at those people involved in the industry itself, there are a number of issues to consider, including concerns about 'carpetbagging', the exploitation of Indigenous artists, and of other forms of unethical and unscrupulous conduct, outlined in chapter 8. There are also concerns that unscrupulous traders retailing products of questionable authenticity may be undermining businesses which deal only in goods created by Indigenous artists.²

10.7 To understand what may be required to deal with such problems, this chapter will examine the various schemes that have been proposed or implemented in the past to deal with concerns about authenticity and unscrupulous conduct. It will also look at what solutions are currently under consideration by various key players in the industry and how they may assist in addressing these problems. This includes looking at both the failed National Indigenous Arts Advocacy Association (NIAAA) label of authenticity trademark scheme, as well as the proposed code of conduct currently being drafted for the industry by the National Association for the Visual Arts (NAVA) in conjunction with Desart, the Association of Northern Kimberly and Arnhem Aboriginal Artists (ANKAAA), and supported by the Australia Council for the Arts.

Certificates of provenance

10.8 As discussed in chapter eight, provenance concerns the history and authenticity of an object or artwork. There is a strong emphasis in the Indigenous arts and craft sector on the use of provenance certificates, driven at least in part about concerns about the origins of some paintings in the sector. Legitimate certificates of provenance are currently issued by art centres and can include the following:

- a picture of the artist and the work;
- a description of the size and appearance of the work;
- a description of the story that the art work represents;
- the name, location and contact details of the arts centre or association that is identifying the work; and
- an authorising signature from a person representing the art centre or association.³

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

2 The Rainbow Serpent, *Submission 17*, p. 2.

3 See Appendix 7. This is an example of a Certificate of Provenance from the Warlukurlangu Artists Aboriginal Association.

Similar certificates are generally issued by commercial dealers.⁴ There is frequently little difference between the levels of documentation provided by art centres and those provided by other retailers in the market.

10.9 Suggestions that artwork be sold with accompanying photographs of the artist are problematic. Such a mechanism, while it may provide some degree of protection, will not necessarily guarantee the authenticity of the work.⁵ At the same time, one collector was dismissive of one art centre's certificates precisely because they did not include 'the obligatory working photographs'.⁶ The Arts Law Centre of Australia noted examples of artworks being fraudulently identified with particular artists through disingenuous 'authenticity' certificates.⁷

10.10 On a similar level, Arnold Bloch Liebler and the Jirrawun Arts Corporation have in their submission argued for the introduction through discrete legislation of 'certificates of authenticity' to accompany every initial sale of Indigenous artwork and/or artists representative organisation to the purchaser.⁸ Indeed:

Each certificate would include the name of the purchaser, artists and/or artist's representative organisation and their signatures. This mechanism would not involve any quantitative assessment of the 'fair value' of the work [and] a complementary register of certificates would exist that, excluding privacy details, would prescribe similar information.⁹

10.11 However, a less ambitious scheme has been tried previously in Australia. The 'label of authenticity' scheme operated from 1999 to 2003, and there were a number of reasons for its demise. The reasons for this are discussed in more detail below. A centralised scheme for provenance certificates would be extremely difficult to organise, and would place Indigenous art on a very different footing to non-Indigenous art, as well as increasing costs for an industry already facing high cost barriers particularly related to remoteness.

Label of authenticity

10.12 Attempts have been made in the past to deal with issues surrounding the authenticity of Indigenous products, in order to protect both consumers and the interests of Indigenous artists. Many art centres across Australia have developed their

4 See for example Central Art Aboriginal Paintings, web site, *Provenance*, <http://www.aboriginalartstore.com.au/provenance.php>, accessed 21 March 2007.

5 Mbantua Gallery, *Submission 24*, p. 5. See also Ashleigh Wilson, 'Aboriginal art fraud rampant', *The Australian*, 9 March 2006, p.8.

6 Dr B Korman, *Submission 64*, p. 4.

7 Arts Law Centre of Australia, *Submission 36*, p. 7.

8 Arnold Bloch Liebler and the Jirrawun Arts Corporation, *Submission 59*, p. 5.

9 Arnold Bloch Liebler and the Jirrawun Arts Corporation, *Submission 59*, p.6.

own authenticity labelling systems and verification processes, but there is no national scheme in place at present which does this.

10.13 The failed 'label of authenticity' trademark scheme, administered in the late 1990s through to the early 2000s by the now defunct National Indigenous Arts Advocacy Association (NIAAA), was one such attempt to establish a nation-wide authenticity verification and labelling scheme. This scheme was set up in response to calls from many Indigenous art and craft industry representatives who were frustrated with the increasing numbers of fake Indigenous art products infiltrating the market.¹⁰

10.14 Under the label of authenticity scheme, NIAAA registered two certification marks – an authenticity mark and collaboration mark. The authenticity label was designed to signify the authentic work of an Aboriginal or Torres Strait Islander. The collaboration mark was to identify a work, such as a T-shirt, being the result of collaborative work in which an Aboriginal or Torres Strait Islander had significant creative input. A fee was charged for the processing of each application, and the fees were used to contribute towards management of the project. The marks operated under the *Trade Marks Act 1995* and were licensed by NIAAA as a not-for-profit Indigenous body controlled by Indigenous people and supported with funding from the Commonwealth. There was also an expectation that the Australian Competition and Consumer Commission (ACCC) would take action under the *Trade Practices Act 1974* if unauthorised use of the labels occurred. Although some 160 creators had used the marks, primarily the collaboration mark, since the scheme's inception, the scheme went into abeyance in 2003.¹¹

10.15 It was initially expected that the marks would provide a number of benefits, including being an easy method for consumers and retailers to identify authentic Indigenous products, serving as a focal point for efforts to promote authentic Indigenous works, and becoming a platform for educating the public about authenticity, the 'rip-off' problem and the scope of Indigenous creative expression.¹²

10.16 Despite these positive expectations, there were many criticisms of the scheme, both during its use and after its demise. Some of the criticisms were that the label was not well promoted, that it was poorly administered at the Commonwealth level, and that many artists who applied to use the mark were rejected. It became apparent that the 'one size fits all' approach did not factor in the individual needs and differing

10 Caslon Analytics, *Caslon Analytics note indigenous marks*, February 2006, p. 1. www.caslon.com.au/indigenoumarknote1.htm, accessed 27 February 2007.

11 Caslon Analytics, *Caslon Analytics note indigenous marks*, February 2006, p. 2. www.caslon.com.au/indigenoumarknote1.htm, accessed 27 February 2007.

12 Caslon Analytics, *Caslon Analytics note indigenous marks*, February 2006, pp 2–3. www.caslon.com.au/indigenoumarknote1.htm, accessed 27 February 2007.

situations of Indigenous communities, and that the test for Aboriginality was too complex with over 75 per cent of applicants failing the requirements.¹³

10.17 The stylised 'tick of approval' symbol representing the mark of authenticity was also criticised, as it was thought that this was overly exclusive in that Indigenous artists not using the mark would be perceived as being inauthentic. It was suggested that some Indigenous communities, retailers and arts centres were indifferent or even hostile towards the scheme, as many regional arts and crafts centres were already using their own trademarks and logos, and did not feel the need to apply for the NIAAA marks to show their products were authentic.¹⁴

10.18 DCITA observed:

The label was not successful for a number of reasons, including being expensive and administratively complex and not distinguishing between fine art and manufactured tourist art. As such it did not have broad support across the sector. If a national Indigenous art label was to be introduced in Australia, significant research and consultation would be necessary to ensure that it was developed appropriately and was supported by Indigenous artists and art centres.¹⁵

10.19 Despite the winding up of the NIAAA scheme in 2003, a number of witnesses to the inquiry continue to seek some type of national authenticity labelling scheme for the industry. One of the groups advocating for this is the National Association for the Visual Arts (NAVA):

NAVA recommends that models for authenticity branding need to be re-examined..... In the past a number of authentication systems have been proposed, including the Label of Authenticity administered by the National Indigenous Arts Advocacy Association. These initiatives however have not succeeded in creating a sustainable national Indigenous art database and/or trademark of authenticity..... However, as the establishment of authenticity and provenance are key requirements of the art industry generally, limited instances should not determine the whole. The aim is to reduce the instances of fraud and misrepresentation. For this reason, the demand for a uniform standard of documentation of artworks and clear authentication processes remains.¹⁶

10.20 The National Indigenous Council (NIC) also supports a national authenticity scheme, rather than the current practice of authentication that differs in practice between art centres and between regions:

13 Arts Law Centre of Australia, *Trade Mark Protection and ICIP: How does Australia Fare?*, www.artslaw.com.au, accessed 28 February 2007.

14 Caslon Analytics, *Caslon Analytics note indigenous marks*, February 2006, pp 4–5. www.caslon.com.au/indigenoumarknote1.htm, accessed 27 February 2007.

15 DCITA, Answer to question on notice, 10 April 2007 (received 24 May 2007).

16 NAVA, *Submission 27*, p. 8.

Certificates of authenticity from art centres and gallery and retail labelling can assist buyers to establish the identity and origins of works. This is especially important for resale value. Although there is currently authenticity certification available in some regions, the NIC recommends that the Government investigate the feasibility of a national scheme for authentication of works of art and craft.¹⁷

10.21 It is not just Indigenous and art advocacy groups who are concerned about the lack of a national authenticity scheme. Some retailers of and dealers in authentic Indigenous art and craft products also have concerns because, in the absence of any standardised authenticity labelling scheme, they rely heavily on consumer discretion to purchase the genuine article and are therefore competing against dealers of inauthentic products. The Rainbow Serpent galleries stated that:

There is a proliferation of aboriginal art and craft produced by non aboriginal peoples but being sold as the genuine article. Many stores which were selling authentic Aboriginal art and craft have ceased trading or only deal in fine art as they can't compete with these fakes. Since the demise of the National Indigenous Arts Advocacy Association (NIAAA) it seems as though nobody cares that this is occurring and Aboriginal people are being robbed of work that should be exclusively theirs.¹⁸

10.22 While many witnesses argued for a uniform authenticity labelling scheme, there were others who felt that this was not necessary, as there were already systems in place to deal with this problem, especially if buyers were well educated about the products they were purchasing. Professor Howard Morphy, who has long-term involvement in the field of Indigenous art, discussed this issue during the Canberra hearings:

It is good to set up a system where you have an educated buyer who will buy works that are well provenanced. In a sense that should be the guiding principle that people who are wanting to build collections of Aboriginal art follow.... All arts centres have excellent ways of provenancing work. An awful lot of the major commercial galleries do. The main galleries in places like Sydney and Melbourne have extremely good ethical practices and they will make sure that the works that they gain are authenticated... You are never, ever going to be able to stop people who do not have the knowledge being duped and you can certainly find people, just as the people who sell fraudulent share deals because the stock market is going up, who will say, 'I've got this series of Aboriginal art in the car here. It's fantastic.'¹⁹

10.23 While the education of buyers would probably work well at the higher end or fine art end of the market, this would not necessarily work with the general tourist trade in Indigenous arts and craft. Tourists often would simply want to buy a t-shirt or

17 NIC, *Submission 23*, p. 3.

18 The Rainbow Serpent, *Submission 17*, p. 2.

19 Professor Howard Morphy, *Committee Hansard*, 9 February 2007, p. 76.

boomerang to commemorate their visit or to buy as a gift for someone else, and would possibly be considering factors such as the cost of the goods and the aesthetics of the object as more immediate concerns than authenticity or provenance. Therefore, an authenticity labelling scheme or similar venture would involve many layers of the industry and would not be a straightforward exercise.

10.24 The Arts Law Centre of Queensland suggested that the problem lies not necessarily with the labelling or identification of Indigenous products, but with current legislation:

Similarly, while attempts and suggestions have been made to use Trade Mark and Designs laws to protect Indigenous cultural expression and traditional knowledge, ALCQ asserts that these laws are also unlikely to be a suitable means of protection. Instead, ALCQ suggests that the Government should enact a new intellectual property law, separate from but complementary to existing intellectual property laws (including copyright, trade marks, designs, patents, circuit layout rights and plant breeder's rights) to provide enforceable economic and moral rights to the custodians of Indigenous cultural expression and traditional knowledge.²⁰

Indigenous trademarks or labels in other countries

10.25 While a labelling scheme has not succeeded in Australia, the committee is aware that the experience in other countries has been different. In Canada, the 'Igloo' trademark has been in use since 1958, and appears to have been relatively successful in achieving its aim of promoting authentic Indigenous art products. The 'Igloo' trademark contrasts with the failed Australian 'label of authenticity' scheme in terms of its longevity and continued use today.

10.26 The Igloo trademark is registered with and administered by the Department of Indian Affairs and Northern Development (DIAND) in Canada. The trademark is the property of the Canadian Government and Dene, Metis and Inuit artists and craftspeople are required to apply for a licence through DIAND to use the trademark and must abide by specific conditions of use. DIAND also has responsibility for the promotion of Indigenous art and craft in the region.²¹

10.27 Goods displaying the Igloo tag are certified by the Canadian Government to be genuine Indigenous products. One Canadian Indigenous art gallery, Galerie Inuit Plus, states on their web site:

To protect the consumer and Inuit carvers, the Canadian government has registered the symbol of the igloo as a trademark. Sculptures bearing this

20 Arts Law Centre of Queensland Inc., *Submission 45*, p. 3.

21 Ross Stein, Arts Law Centre of Australia, *Trade Mark protection and ICIP: How Does Australia Fare?*, www.artslaw.com.au, accessed 28 February 2007.

"igloo tag" or sticker are CERTIFIED by the Government of Canada to be handmade by an Inuit.²²

10.28 Although the Igloo trademark has been in use for almost 50 years and has increased consumer confidence in Indigenous products while protecting the work of Indigenous Canadians, the system has been a victim to trademark imitation. The Igloo trademark has at times been faked by some manufacturers to give the impression that the Indigenous products are authentic, however the government has now restricted printing of the Igloo tag to one company to protect the trademark and any future imitation attempts.²³

10.29 So while there appears to have been some problems surrounding the imitation of the Igloo tag system, the program has apparently been successful overall. The longevity and success of the system may relate to the fact that the scheme has been managed directly by the Canadian government since its inception in 1958, and therefore resources have been consistently applied to the scheme. In addition, the government has continued to educate the public about authentic Indigenous arts and craft during this time. The committee was advised that a review is currently underway, and results will be available in coming months.²⁴

10.30 In a similar attempt to protect Indigenous works, in 2002 the New Zealand Government launched the 'Toi Iho' Maori made mark as a way to assist with the protection of the intellectual and cultural property rights of Maori artists. It was also brought in to protect the integrity of Maori culture, create a premium for Maori artworks, provide direct economic benefits to registered artists, and add promotional value to New Zealand's cultural tourism strategy.²⁵

10.31 Under the New Zealand trademark system, there are actually three marks which can be utilised. Two of these are for artists, the Toi Iho Mainly Maori Mark for those of Maori descent, and the Toi Iho Co-production Mark for Maori artists who produce work in partnership with non-Maori artists or business partners. The third mark is the Toi Iho Licenced Stockist Mark for art and craft retailers and galleries who sell the work of at least six artists and 'adopt culturally sensitive sales practices'.²⁶

10.32 Currently the system has 135 registered Toi Iho artists across a range of disciplines, and 15 Toi Iho licensed stockists. The success of this initiative in the five

22 Galerie Inuit Plus, *Authenticity of Inuit Art: Our Guarantee*, www.inuitplus.com/authenticity.asp?ID=2044, accessed 28 February 2007.

23 Ross Stein, Arts Law Centre of Australia, *Trade Mark protection and ICIP: How Does Australia Fare?*, www.artslaw.com.au, accessed 28 February 2007.

24 DCITA, Answers to questions on notice, 10 April 2007 (received 24 May 2007).

25 Te Manatu Taonga, Ministry for Culture and Heritage, *Submission 84*, p. 2.

26 Te Manatu Taonga, Ministry for Culture and Heritage, *Submission 84*, pp 2–3.

years since its inception is yet to be fully assessed and a review is being undertaken by Creative New Zealand to determine whether the program's objectives have been met.²⁷

Recommendation 16

10.33 The committee recommends that DCITA analyse the failure of the NIAAA label of authenticity, and examine the reviews of labelling schemes in Canada and New Zealand. The Department should then, in consultation with key stakeholders, commence planning for a new Australian scheme.

Indigenous art and the tax system

10.34 Certificates of provenance and labels of authenticity are designed to ensure that the origins of Indigenous art works are transparent to prospective buyers, and to make the primary and secondary markets for art more robust through mechanisms allowing people to trace the origins of individual works. Receipts and tax invoices perform a different function, helping to make clear who was paid, and how much they were paid, for art works. This has the potential to help prevent 'carpetbagging' and unscrupulous dealing in the market.

10.35 While certificates of authenticity or provenance may provide documentary evidence over the authenticity of the art, it does not provide a guarantee that it will be sold at a suitable price, and that the artist who created it will receive sufficient payment, or indeed payment at all.

10.36 Proof of sale, such as receipts or other such documentation, in conjunction with taxation compliance measures can be used to establish a paper trail which will undermine the carpetbaggers. Arnold Bloch Leibler and the Jirrawun Arts Corporation explain in their submission:

Awareness and understanding of tax obligations remain extremely low in Australian Indigenous communities. In many respects, the low level of understanding of and compliance with tax obligations provides fertile ground for the "carpetbaggers" to operate under the radar and ensure that their unscrupulous purchases are not open to scrutiny. This is because the "carpetbagger" can proceed reasonably confident that the transaction records and documentation usually brought into existence for tax compliance purposes will not be produced. In the result, by preying on the tax ignorance of the artist, the "carpetbagger" and its unscrupulous purchases in the field all but go unnoticed. By increasing tax compliance and creating paper trails, the "carpetbagger's" operations will be undermined.²⁸

10.37 Apart from hampering the carpetbaggers, such a mechanism would also greatly assist in bringing transparency to the Indigenous arts industry.

27 Te Manatu Taonga, Ministry for Culture and Heritage, *Submission 84*, p. 3.

28 Arnold Bloch Leibler and the Jirrawun Arts Corporation, *Submission 59*, p. 9.

The ATO's role

10.38 Evidence presented to the committee through submissions and other evidence has consistently indicated that lack of education in Indigenous communities, and with Indigenous artists in particular, was a problem and can lead to exploitation of artists.²⁹ The argument has been made that the ATO could be used as a vehicle to promote education. Mr Anthony Oliver testified that:

I think we have to put it also in a context where many people, Indigenous artists, in the north of Australia are illiterate and innumerate, and this is part of the problem. So people are easily exploited outside of an arts centre protected system because of this issue of innumeracy and there is no understanding that there are taxation issues involved. I think the taxation issue is part of the exploitation issue.³⁰

10.39 Arnold Bloch Leibler and the Jirrawun Arts Corporation see the ATO as having a positive role in educating Indigenous artists about the importance of tax compliance. They see this as crucial in terms of assisting Indigenous artists understand their tax compliance obligations and as an opportunity to contribute to the collective well-being of their communities through reducing exploitation.³¹

Potential problems

10.40 Thus far, ATO initiatives for Indigenous communities have been reported as having mixed success. Arnold Bloch Leibler and the Jirrawun Arts Corporation list some of these initiatives, and comment on their outcomes.

We are aware of the following initiatives implemented by the ATO in assisting Indigenous artists to comply with their tax obligations:

- (a) the establishment of the Aboriginal and Islander Resource Centre in 1996 which employs culturally aware tax officers to assist Indigenous persons in tax compliance issues; and
- (b) release of NAT 12066-09.2004 entitled "How tax applies to indigenous artwork" which explains how pay as you go ("PAYG") withholding, the goods and services tax ("GST") and the Australian business number ("ABN") apply to Indigenous artworks sold at art centres;

In addition to the initiatives listed above ..., the ATO has provided, over the last 10 years, the following facilities to assist Indigenous communities to comply with tax obligations:

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

30 Mr Anthony Oliver, Chief Executive Officer, Jirrawun Arts, *Committee Hansard*, 19 February 2007, p. 40.

31 Arnold Bloch Leibler and the Jirrawun Arts Corporation, *Submission 59*, p. 8.

- (a) establishment of the National Indigenous Project which works with internal and external stakeholders to establish and maintain relationships within communities;
- (b) the work of the Indigenous Tax Advisory Group (“ITAG”) which provides a mechanism to get discussion on delivery of government initiatives to Indigenous people and organisations;
- (c) a quick reference guide to tax obligations;
- (d) educational visits to explain the tax laws and help community organisations comply with their tax responsibilities;
- (e) seminars for community leaders, coordinators of local land councils and administrators of community organisations; and
- (f) a newsletter (launched 16 July 1998) to assist Indigenous organisations to comply with their business tax obligations.

In our collective experiences, we firmly believe this area needs additional focus by the ATO and more resourcing to allow larger scale initiatives. The ATO initiatives outlined... above have not resolved the serious lack of understanding amongst Indigenous artists of their tax obligations. There must be a significantly increased effort to educate Indigenous artists as to their tax obligations through culturally sensitive initiatives.³²

10.41 The fundamental problems remain the lack of education and familiarity by Indigenous artists with western methods of business; and their family obligations in terms of wealth distribution.

10.42 Further testimony by Mr Oliver illustrates the potential mismatch between ATO tax requirements and Indigenous family obligations:

[T]hese guys are paying 48c in the dollar already. We started that 4½ years ago with poor old Freddie here. We came clean because we felt that we could not articulate the issues if we did not lead by example. We knew that working through the tax issues gave strength to Aboriginal people because you could leverage from that. It is not like black fellows get a special deal; they do not get a special deal. Freddie pays 48c in the dollar. He had to pay back the ATO 10 years of tax, so you can imagine what it is like for him. He lives in an obligation society and he is the sole income earner for a very large family. There is a lot of pressure on people like Freddie; there is pressure on artists at Waringarri; there is pressure on artists at Warmun. They are the sole income earners, other than people who have got mining royalties or whatever. There is so much pressure on the art centres. Artists like Freddie have huge obligations. They have their own social welfare system with their capital.³³

32 Arnold Bloch Leibler and the Jirrawun Arts Corporation, *Submission 59*, pp 8–9.

33 Mr Anthony Oliver, Chief Executive Officer, Jirrawun Arts, *Committee Hansard*, 19 February 2007, p. 43.

10.43 When greater engagement with the tax system was raised with other witnesses, there was some support, but also some concerns. It is possible that greater scrutiny will end up catching 'small fish' such as artists earning modest sums, rather than the unscrupulous dealers who might be the intended target of enforcement.³⁴ The lack of educational and compliance support makes engagement with the tax system difficult for some. The committee heard, for example, that no ATO materials are produced in Aboriginal languages.³⁵ There also needs to be sensitivity to the different economic structures in Indigenous society, as well as to the lack of education of some Indigenous people. Mrs Alfonso talked about the example of an elderly artist in a remote community whose earnings from painting get distributed widely amongst her family members:

This is an old woman who does not understand and you are trying to corner her and get her to pay tax when she does not really get to keep the money. All of the money goes back into the economy anyway and exponentially grows in terms of what it brings into the Territory and into Australia. Further, people are paying taxes on what she creates as soon as it leaves her control.

We have a real problem in that these people do not speak English. They do not understand. You are going to threaten a fantastic industry. They do not pay tax, but you cannot make those people pay tax. They are never going to understand. The answer to that is education. People here are not literate... At the end of the day, I have to say that the fact that these people are supported is very small rent to pay for the real estate that Australia has. Australia can afford to wait and educate these people. It is going to take time. First contact for some of these areas was only recently. You cannot undo an economic system that is thousands and thousands of years old and expect them to pick up a new one overnight.³⁶

10.44 Improving the use of receipts for the sale of art works still presents issues. Illiteracy and innumeracy of Indigenous artists means that they may not be able to interpret the veracity of receipts and other paperwork given to them by art dealers. An unscrupulous art dealer may provide a receipt describing a handover of an artwork for \$5000, when the amount itself was only \$500. The artist would then have to pay tax on the full \$5000 notwithstanding that they only received only a fraction of that amount.

10.45 The argument that the ATO become more pro-active in terms of educating artists and establishing frameworks to help ensure provenance and scrupulous art dealer behaviour may be problematic. Previous initiatives may have been only partially successful. It is possible that efforts by the ATO to ensure tax compliance

34 Ms Marion Scrymgour, NT Minister for Arts and Museums, *Committee Hansard*, 20 February 2007, p. 6.

35 Mr John Oster, Desart, *Committee Hansard*, 21 February 2007, pp 31–32.

36 Mrs Cecillia Alfonso, Warlukurlangu Aboriginal Artists Association, *Committee Hansard*, 21 February 2007, p. 43.

could offer incidental improvements, but not be able to address the fundamental issues of exploitation in the Indigenous visual arts sector.

Dealer accreditation

10.46 It has been suggested that some type of system of accreditation for Indigenous arts and craft dealers would afford the industry better protection. Accreditation and licensing systems have long been applied to other industries, and some argue that the same could be done in Indigenous arts. As two witnesses pointed out:

The formal accreditation of art dealers is a most important and long overdue accreditation process. Doctors, dentists and builders are all accredited to statutory industry bodies- and so should all art dealers. The accreditation body should be a semi-government authority, one with teeth to regulate the conduct of members.³⁷

We would definitely agree that there needs to be some sort of accreditation or licensing system for Indigenous art dealers. I think that is one way of providing some sort of standard—having a set of criteria that people have to meet in order to work in this area... it is not unusual to see professionals being required to be accredited and maintain their accreditation. If they do the wrong thing then action can be taken against them and they can lose the ability to practice in that particular area. Lawyers, doctors, real estate agents—there is a gamut of people working in professions where they have to be accredited.³⁸

10.47 There is strong support for the concept of an accreditation system for dealers, even by some of the dealers themselves. One of the reasons for this is that some of them feel that it is the unscrupulous dealers who bring a bad name to the industry through exploitation of the artists. They see regulation of the industry as a benefit to those who wish to do the right thing. One Indigenous art dealer expressed his support for accreditation to the committee by stating:

You are heading in the right direction. You can understand that where there is a market that is fairly unregulated—and situations that are unregulated—there is more opportunity for exploitation. That does not mean to say that it happens every time. But the opportunities are there. One of the things that the committee may look at, too, is the notion of accreditation of people dealing in Aboriginal art. If you compare the situation you mentioned with the arts centre models, they are vastly different in terms of the opportunities for exploitation.³⁹

37 Mr Michael Reid, *Submission 2*, p. 4.

38 Ms Robyn Ayres, Arts Law Centre of Australia, *Committee Hansard*, 23 February 2007, pp 81–82.

39 Mr Wally Caruana, Caruana Fine Arts, *Committee Hansard*, 9 February 2007, p. 31.

10.48 There are concerns however, about how such a system of accreditation could be readily introduced and established into the industry. Papunya Tula Artists raised such concerns:

It is something that could be considered. How you introduce that monitor, I have no idea... I was thinking about it over the weekend and an ad for a furniture business cropped up on television. At the end of the commercial they made it a point to note that this company was an accredited furniture removalist business who was therefore monitored by the Institute of Furniture Removalists. I thought, 'You have to be accredited to move a chair from Sydney to Perth and yet millions of dollars are flying around the country virtually completely unmonitored.' I believe there is room for consideration. I would not know where to start in terms of introducing it but it is something that could be thought about.⁴⁰

10.49 Even if some type of accreditation system were established, questions have been raised about how people would be eligible to be considered for accreditation, and what the criteria would be:

What that licensing or accreditation would be based on is something that would be very contentious, and it would be very long and involved to determine who was eligible and what would restrict people from being approved, accredited or licensed... I am not completely sold on something being set up to nationally license dealers in the Aboriginal art industry, but it is certainly worth looking into. What would be difficult would be breaking it down into what the terms of reference were and what made people eligible to be licensed through that system.⁴¹

10.50 Also of concern is the issue of how a system of accreditation within the Indigenous arts industry would be monitored and policed. It has been suggested that it would require significant resources and funding to manage such a system. Despite this concern however, the ACCC did note there are existing accreditation frameworks under which the industry could apply a scheme:

There is a process under the Trade Practices Act called the authorisation process and, if the industry wanted to have an accreditation process not organised by the commission but organised by industry, that process could be authorised by the commission if there was a public benefit that outweighed the effect on competition.⁴²

10.51 In this regard, there is also an issue regarding the maturity of industry organisations in the sector. The committee notes that both the Australian Commercial Galleries Association and the Australian Indigenous Art Trade Association effectively allow membership by invitation only. The process for application to the ACGA is:

40 Mr Paul Sweeney, Papunya Tula Artists Pty Ltd, *Committee Hansard*, 21 February 2007, p. 14.

41 Mr Paul Sweeney, Papunya Tula Artists Pty Ltd, *Committee Hansard*, 21 February 2007, p. 16.

42 Mr Michael Kiley, ACCC, *Committee Hansard*, 23 February, p. 66.

When an individual applies or is invited to approach the ACGA, the processes operate in the following way:

- 1 Interested party is proposed by state members or contacts ACGA and is sent 'Information about Membership'.
- 2 Application form is submitted with all required support material.
- 3 The applicant's nomination is circulated for approval at state level.
- 4 Subject to state approval, all members are informed of the membership nomination.
- 5 Subject to national response, full application is viewed and presented for ratification to the National Board of Management or a nominated sub-committee of members.
- 6 Applicant is notified of the outcome by mail.

Applicants are asked to respect that for reasons of member confidentiality the ACGA upholds the right to reject applications at its absolute discretion and without reason.⁴³

10.52 Art.Trade indicates that 'Membership is by invitation only and is not transferable' and the process is similar as for the ACGA:

Every applicant for membership must be proposed by one and seconded by another financial Member of the Association.

Application for membership shall be made in writing to the Secretary and shall be signed by the applicant and its proposer and seconder and shall be in such form as the Board may from time to time prescribe.

The Secretary shall advise Members of the application and request them to advise the Board within 30 days as to any objection that they may have to the applicant's grant of membership.

All objections to proposed membership shall be treated in confidence, both by the objector and the Board. Within ninety days the Board shall decide the admission or rejection of the applicant and advise its decision to the Secretary. The decision to admit an applicant to membership requires a two-thirds majority of the Board.

The Secretary shall advise the applicant of its acceptance or rejection. In no case shall the Secretary be required to give any reason for the rejection of an applicant.⁴⁴

10.53 These procedures appear to lack transparency. They could be used by members to prevent access of others with whom they are in commercial competition, or against whom they merely have personal animosities. The committee has also

43 ACGA, Information about membership, <http://www.acga.com.au/membership.doc>, accessed May 2007.

44 Art.Trade, Membership conditions for Art.Trade, <http://www.arttrade.com.au/membership.htm>, accessed May 2007.

observed that while many retailers of Indigenous art are members of one or the other organisation, a large number are members of neither.

10.54 The low density of industry association membership, the restrictive rules governing access to the associations, and the lack of transparency in the process, all have the potential to act as barriers to effective industry organisation. This in turn has the potential to inhibit effective industry organisation and the capacity for dealer accreditation to operate, should it ever be desired.

10.55 The committee considers that both the Australian Commercial Galleries Association and Art.Trade should review and reform their joining requirements to create a more open procedure not reliant on invitation by an existing member.

Indigenous Art Commercial Code of Conduct

10.56 Many of the organisations representing the interests of Indigenous art industry participants do have codes of ethics or conduct in place which members of that body are expected to abide by. The Australian Indigenous Art Trade Association (Art.Trade) is one such organisation:

Art.Trade was established in 1998 as a national body to set standards of excellence in all dealings in Indigenous art. All Members are bound by our Code of Ethics and Code of Business Practice. Currently Art.Trade has 26 financial members in all States and Territories.⁴⁵

10.57 Art.Trade's Code of Ethics includes stipulations that their members must:

- work toward offering high quality uniform documentation in association with community authorised bodies;
- treat all artists fairly and ensure equitable and timely returns to artists;
- exhibit honesty and integrity in its dealings with the public, artists, other dealers and other industry organisations;
- refuse to deal with anyone who violates Indigenous copyright or improperly appropriates Indigenous imagery; and
- be responsible for the proper disclosure of information relating to the authorship and provenance of any work exhibited.⁴⁶

10.58 In addition, Art.Trade's Code of Business Practice asserts that members must not:

- approach any artist to exhibit his or her work if this would be in direct conflict with that artist's existing representation;

45 Australian Indigenous Art Trade Association, *Submission 19A*, p. 1.

46 Australian Indigenous Art Trade Association, *Submission 19*, Appendix A.

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- hold out itself as representing an artist without an agreement with that artist or the artist's agent;
 - act in any way that may undermine exhibitions at another member's gallery.⁴⁷

10.59 Similarly, the Australian Commercial Galleries Association (ACGA) operates under a code endorsed by the National Association for the Visual Arts (NAVA) and the Australia Council for the Arts. This Code covers issues such as the fair negotiation of payments between artists and galleries, the artist's copyright rights, the protection of the moral rights of the artist and the proper identification of the artist's works.⁴⁸ This is a broad Code that is applicable right across the visual arts sector, and by default also caters for those involved in the Indigenous arts industry.

10.60 While such guidelines are useful in terms of ensuring the members of the various industry bodies practice acceptable behaviour in their dealings within the Indigenous arts and craft market, there are some issues. It is not compulsory for Indigenous art dealers/traders/artists to join an organisation with a code of practice. If they do join, such codes are 'voluntary' and are not necessarily legally enforceable (other than through possible expulsion from the organisation). It seems unlikely that an unscrupulous dealer would want to join such an organisation, and they would thus avoid any restrictions on their questionable activities that a code might have created. As Desart points out:

It is instructive that both the Australian Commercial Galleries Association and The Australian Indigenous Art Trade Association (Art Trade) have substantial clauses in their published Code of Ethics and Code of Business Practice that prohibit members from exhibiting works in conflict with the artist's existing representation as one of the most fundamental tenets of sound trading. It is unfortunate that membership of these associations is comparatively low and that many non-member galleries are either unaware of such codes or are unwilling to comply with their principles.⁴⁹

10.61 Another problem is that such codes of conduct might be catering for the individual organisation's requirements and ideologies, and not necessarily those of the industry as a whole.

10.62 In recognition of this, there is an industry-wide code of conduct – the Indigenous Art Commercial Code of Conduct – currently being drafted by NAVA in conjunction with Desart, the Association of Northern Kimberley and Arnhem Aboriginal Artists (ANKAAA), and supported by the Australia Council for the Arts.

47 Australian Indigenous Art Trade Association, *Submission 19*, Appendix A.

48 Australian Commercial Galleries Association, web site, *Visual Arts Code of Practice*, http://www.acga.com.au/Visarts_code_of_practice.pdf, accessed 15 March 2007.

49 Desart, *Submission 49*, p. 20.

10.63 The proposed code of conduct is due to be finalised sometime during the first half of 2007, and the code aims to cover such issues as:

- the promotion of practices to support Indigenous artists, their culture and communities;
- the promotion of practices to ensure a fair economic return to Indigenous artists;
- the encouragement of ethical practice in all dealings throughout the Indigenous art industry;
- to provide a set of standards that will set an industry benchmark; and
- contribute to the discussion of ethical trader strategies.⁵⁰

10.64 The development of an industry-wide code of conduct has received positive support from various key players in the industry, and during the inquiry many witnesses indicated such support, including the Northern Territory Government:

The art industry, led by both ANKAAA and Desart, has put out a code of conduct. I think that certainly needs to be given the support and commitment across government. As a government, we have signed up to the national code, and we will be putting that code across all our government agencies when dealing with Aboriginal people and their art—in any of our government papers and the contents of those papers. That is the commitment we have given.⁵¹

10.65 Also in supporting a code of conduct, Art.Trade stated:

Voluntary adoption of a code of ethical practice should help to reduce the number of exploitative operators and increase the overall understanding of what constitutes ethical behaviour in the industry. More ethical behaviour by purchasers will lead to greater demand for work provided through ethical channels. Ultimately this benefits artists and ethical dealers.⁵²

10.66 However, Art.Trade also highlighted concerns about the ability of a national code of conduct to fully address the problems that were impacting on the industry because of the difficulties of enforcing such a code:

Art.Trade's experience in enforcing its own Code of Ethics underscores the difficulty of effectively enforcing any industry-wide code of conduct such as that currently being developed by the Australia Council and NAVA. The establishment by Art.Trade of an Indigenous Cultural Council helped the Association in its investigation of possible breaches of its Code of Ethics. We suggest that the Senate Committee give careful consideration to

50 NAVA, Desart and ANKAAA, *National Indigenous Code of Conduct, Section 1, Introduction: Discussion Paper*, 2006, p. 3.

51 Ms Marion Scrymgour, Minister for Arts and Museums, Northern Territory Government, *Committee Hansard*, 20 February 2007, p. 6.

52 Australian Indigenous Art Trade Association, *Submission 19*, p. 3.

mechanisms for encouraging adoption and compliance with a national code, perhaps including an investigative mechanism similar to Art.Trade's Indigenous Cultural council.... Despite difficulties with enforcement, we support the establishment of a national code of commercial conduct for Indigenous artists and have contributed to the work of NAVA as a member of the reference Group for development of the code.⁵³

10.67 It was suggested by the Northern Territory Government that one of the ways in which the enforcement of a national code of conduct could be improved would be through public education and improved advocacy:

Because the code of conduct is a voluntary one there is the need for wider education and advocacy to that sector to get that message through. With the Commonwealth government, the Northern Territory government and the sector there may be a few that will get caught up in that bureaucracy we certainly need to work towards a consistent scheme in relation to that.⁵⁴

10.68 Other government bodies have also recognised the benefits that some kind of code of conduct can bring to the industry. For example the Melbourne City Council has recently taken the initiative to introduce government managed guidelines, implementing the 'Code of Practice for Galleries and Retailers of Indigenous Art'. The code was designed to guide City of Melbourne-based galleries and retailers in appropriate ways to sell and display Indigenous art. The code also guides galleries and retailers in how to conduct their dealings with Indigenous artists, and provides a statement of principles to set a standard of acceptable industry practice and fair dealing.

10.69 The Melbourne City Council's Code of Practice was developed to:

- promote ethical practice in the sale of Indigenous arts products and services by City of Melbourne-based commercial and public galleries and retail outlets by encouraging the sale of authentic Indigenous products and services; promote fair and respectful relationships; and
- promote the sale of Victorian Indigenous artists' products and services.⁵⁵

10.70 Galleries and retailers are invited to subscribe to the Melbourne City Council code by entering voluntarily into a 'Code Agreement', renewed on an annual basis through subscribers providing evidence of compliance. Subscribers to the code are

53 Australian Indigenous Art Trade Association, *Submission 19*, p. 3, and *Submission 19A*, p. 2.

54 Ms Marion Scrymgour, Minister for Arts and Museums, Northern Territory Government, *Committee Hansard*, 20 February 2007, p. 14.

55 City of Melbourne, *Annual Report 2005-06*, 'Our performance', http://www.melbourne.vic.gov.au/rsrc/PDFs/AnnualReport/2005_06/AnnualReport2005-06Part2.DOC, accessed 15 March 2006; Japingka Indigenous Fine Art Gallery, 'Code of Practice for Galleries and Retailers of Indigenous Art', *Submission 2*, Attachment.

recognised as an 'Accredited gallery or retailer' and their details displayed by the City of Melbourne. The promotion of accredited galleries and retailers includes branding stickers and labelling, and the Melbourne City Council is also investigating the creation of an Award for Ethics in the sale of Indigenous Art as part of the annual Melbourne Awards.⁵⁶

Recommendation 17

10.71 The committee recommends that that Indigenous Art Commercial Code of Conduct be completed as soon as possible.

Recommendation 18

10.72 The committee recommends that, once completed, all Commonwealth, state and territory agencies apply the Indigenous Art Commercial Code of Conduct where appropriate, including when purchasing Indigenous art (see also recommendations 23, chapter 10 and 28, chapter 14).

Conclusion

10.73 While this chapter has examined specific proposals to help solve problems being experienced by the industry, it is important to consider the effectiveness of these solutions in a broader context. As Art.Trade pointed out, issues such as authenticity should not necessarily be dealt with separately from other problems that impact on the industry:

Exploitation and fraud harm everyone associated with Aboriginal art and it is essential that all interested parties work together to address these important issues. This requires a wide and inclusive process of consultation with artists, community art centres, dealers, galleries and experienced buyers, looking at the main issues as an interacting system and not considering particular issues (such as authenticity) in isolation from the whole system.⁵⁷

10.74 A mechanism such as an authenticity labelling scheme attempts to deal with one particular issue affecting the industry. In contrast, a voluntary code of conduct is a more general mechanism which attempts to address a variety of concerns and improve practices throughout the industry as a whole.

10.75 The committee heard a range of suggestions about improving conduct in the industry, and there is clearly a good deal of support for, and interest in, the Indigenous Art Commercial Code of Conduct development process currently being led by NAVA and other key organisations. The committee thought the comments by Art.Trade toward the end of the inquiry were significant:

56 Japingka Indigenous Fine Art Gallery, 'Code of Practice for Galleries and Retailers of Indigenous Art', *Submission 2*, Attachment, p. 4.

57 Australian Indigenous Art Trade Association, *Submission 19*, p. 2.

In our submission we said that we primarily supported a voluntary system of registration for anybody who is active in the Indigenous visual arts market. Having had further discussion with members of our board, we can certainly see in the submissions and discussion which your committee has already had that a sound case can be made for at least a little more government intervention in relation to the operation of the market.

So, while we are not unequivocally supporting a more regulatory approach, we are saying that, as a group of people active in Indigenous art trade, we would be willing to support the licensing of dealers in Indigenous art whose turnover exceeds, say, \$50,000 a year, with a requirement that anybody active in that way would be required to register and sign a commitment to a minimum set of ethical standards and practices derived from the commercial code of conduct being developed by NAVA. As I say, this is a shift in our position, saying that we think there may be a degree of enforcement needed in the form of both registration and licensing.⁵⁸

10.76 The committee believes the development, dissemination and adoption of the Indigenous Art Commercial Code of Conduct is likely to be a crucial step in restoring confidence in parts of this industry. This may include subsequent development of specific standards for industry conduct under the code's general principles. It is also crucial that

- lines of responsibility for implementing a code are made clear;
- there is a mechanism for review of the effectiveness of the code; and
- mechanisms by which complaints of breaches of a code can be addressed in a transparent and enforceable manner.

The committee believes all stakeholders in the sector can work toward ensuring these conditions will be met. It commends this process to all in the industry.

Recommendation 19

10.77 The committee recommends that the NAVA Reference Group and other stakeholders include input from experts on industry codes of practice, particularly the ACCC, during and after the preparation of the Indigenous Art Commercial Code of Conduct.

Recommendation 20

10.78 The committee recommends that, once completed, all stakeholders in the industry examine, disseminate and adopt where relevant the Indigenous Art Commercial Code of Conduct.

58 Mr Martin Wardrop, Australian Indigenous Art Trade Association, *Committee Hansard*, 10 April 2007, p. 2.

10.79 The committee recognises that development of a code of conduct is only a first step. It acknowledges that, as Art.Trade observed, some form of government intervention may be necessary to ensure that a code of conduct has the desired effect.

10.80 In 1998, the Commonwealth amended the Trade Practices Act to include fair trading provisions that allowed statutory recognition of industry codes of conduct. These provisions allow the ACCC to play a role in enforcing fair business practices under codes of conduct that have been prescribed in regulations.

10.81 The law recognises three scenarios in which the ACCC may act on industry codes. The first two involve codes that are prescribed under the Act:

- Mandatory codes are binding on all industry participants.
- Voluntary codes are only binding on those members of an industry or profession who have formally subscribed to the code. Prescribed voluntary codes could, for example, apply only to members of the industry association administering the code.⁵⁹

10.82 The third scenario is where the ACCC may be guided by any other industry code (ie. one that has no formal status under the Act) in certain circumstances, such as when bringing a court case in connection with unconscionable conduct:

the Court may have regard to a list of eleven factors, including ... the requirements of any other industry code, if the business consumer acted on the reasonable belief that the supplier would comply with the code.⁶⁰

In all cases, the ACCC is able to use the codes to assist in ensuring that business practices in a sector are fair.

10.83 The committee is supportive of ensuring the ACCC has the capacity to play a role in cleaning up any unethical business practices in the Indigenous arts industry, which is why it has recommended further funding for its activities in the Indigenous arts sector (see chapter 9). However, it recognises that increasing the ACCC's effectiveness may be enhanced by giving recognition to an Indigenous art industry code under the Trade Practices Act.

10.84 In 1999, policy guidelines were issued to explain the process and circumstances under which an industry code of conduct might become a recognised code under the Trade Practices Act, which would then give the ACCC a strong role in ensuring the code was honoured. These guidelines indicate that industry self-

59 Hon Joe Hockey MP, Minister for Financial Services and Regulation, *Prescribed Codes of Conduct: Policy Guidelines on Making Industry Codes of Conduct Enforceable Under the Trade Practices Act 1974*, Commonwealth of Australia, 1999, pp 3–4.

60 Hon Joe Hockey MP, Minister for Financial Services and Regulation, *Prescribed Codes of Conduct: Policy Guidelines on Making Industry Codes of Conduct Enforceable Under the Trade Practices Act 1974*, Commonwealth of Australia, 1999, p. 4.

regulation remains the preferred option. The guidelines set out criteria that must be satisfied before a code of conduct will be prescribed under the Trade Practices Act:

- the code would remedy an identified **market failure** or promote a **social policy objective**; and
- the code would be **the most effective means** for remedying that market failure or promoting that policy objective; and
- the **benefits of the code to the community as a whole** would outweigh any costs; and
- there are **significant and irremediable deficiencies** in any existing self-regulatory regime – for example, the code scheme has inadequate industry coverage or the code itself fails to address industry problems; and
- a **systemic enforcement issue** exists because there is a history of breaches of any voluntary industry codes; and
- a range of self-regulatory options and 'light-handed' quasi-regulatory options has been examined and **demonstrated to be ineffective**.⁶¹

10.85 The committee believes that many in the sector would argue that some of these conditions have already been met. For example, there appears to be wide support for a social policy objective of ensuring some of Australia's most disadvantaged citizens are not ripped off by unscrupulous operators exploiting their market power.

10.86 However, it is too early to say whether all these conditions are met. In particular, the committee believes the new Commercial Code of Conduct, and the industry associations that will have a stake in its implementation, must be given an opportunity to reform practices in the sector.

10.87 If problems persist with fair business practices in Indigenous art, the committee believes it may be appropriate to review this situation and consider movement toward a prescribed code of conduct under the Trade Practices Act. The committee notes that this would require extensive consultations by DCITA, and the preparation of a Regulation Impact Statement.⁶²

10.88 The committee notes that the industry's capacity to self-regulate will obviously affect whether further government intervention is required. If the industry wishes to avoid operating under a prescribed code of conduct, participants need to take steps to ensure that trade in the sector is fair. Some responsibility in this area must fall on the industry associations – ACGA and Art.Trade. This is why the

61 Hon Joe Hockey MP, Minister for Financial Services and Regulation, *Prescribed Codes of Conduct: Policy Guidelines on Making Industry Codes of Conduct Enforceable Under the Trade Practices Act 1974*, Commonwealth of Australia, 1999, pp 7–8, emphasis in original.

62 Hon Joe Hockey MP, Minister for Financial Services and Regulation, *Prescribed Codes of Conduct: Policy Guidelines on Making Industry Codes of Conduct Enforceable Under the Trade Practices Act 1974*, Commonwealth of Australia, 1999, pp 14–16.

committee has made some observations about the associations ensuring they have membership and procedures that maximise their ability to ensure that business practices in their industry are sound. The committee hopes that all industry participants will commit to fair business practices in an environment supported by the new code of conduct

Recommendation 21

10.89 The committee recommends that the industry be given the opportunity to self-regulate. If after two years persistent problems remain, consideration should be given to moving to a prescribed code of conduct under the Trade Practices Act.

10.90 Finally, there was one area of policy that could contribute to the integrity of the art market, which went almost unmentioned by all stakeholders: the use of purchasing policies by collecting institutions. One submitter mentioned that he had sought advice from ten major public art galleries about their Indigenous art acquisition and display policies. Of the ten, only three replied, and those replies were not always clear as to what the policies contained.⁶³

10.91 The committee notes that few art collecting institutions engaged with this inquiry, and none provided information in this area.⁶⁴ As 'market leaders', these institutions play a significant role in modelling ethical conduct in the sector. The committee believes this is an opportunity for all collecting institutions to take a stand against carpetbaggers and unethical dealers.

Recommendation 22

10.92 The committee recommends that all public and private collecting institutions implement the Indigenous Art Commercial Code of Conduct as appropriate, and that all such institutions aim to purchase from dealers and art centres that have adopted the Code.

10.93 The committee also encourages all buyers of Indigenous art to only purchase works in a manner consistent with the Commercial Code of Conduct, and from dealers or art centres that have agreed to the Code.

10.94 The committee did not pursue this matter, however it notes that few public galleries engaged with this inquiry, and none provided information in this area.⁶⁵ As 'market leaders', these institutions may play a significant role in modelling ethical

63 Mr Alec O'Halloran, *Submission 48*.

64 The committee does however note the valuable contribution of a number of Indigenous art curators – see for example *Submission 42*.

65 The committee does however note the valuable contribution of a number of Indigenous art curators – see for example *Submission 42*.

conduct in the sector. The committee believes this is a matter that may warrant further attention, and addresses it in a recommendation below.

10.95 The committee considers that, once the Indigenous Art Commercial Code of Conduct development process has been concluded, the ACGA and Art.Trade review their membership and monitoring processes, to include:

- commitment and adherence to the Indigenous Art Commercial Code of Conduct as a condition of membership; and
- greater transparency and accessibility of processes for addressing complaints against their members.

Recommendation 23

10.96 The committee recommends that, once the Indigenous Art Commercial Code of Conduct has been developed, the Commonwealth undertake a project examining and making recommendations regarding further initiatives to enhance the integrity of the Indigenous art market. This work could include, but need not be confined to considering:

- **what role governments might play in giving effect to an industry code of conduct; and**
- **whether further steps should be taken toward a system of dealer accreditation.**

