

**SENATE STANDING COMMITTEE ON THE
ENVIRONMENT, COMMUNICATIONS, INFORMATION
TECHNOLOGY AND THE ARTS**

**Inquiry into Australia's Indigenous Visual Arts and Craft
Sector**

DATE RECEIVED: 6 December 2006

SUBMISSION NO: 60

NAME: Australian Competition & Consumer
Commission

Report 1 - National Indigenous Consumer Strategy – Role of the ACCC

The National Indigenous Consumer Strategy (NICS) is a five year action plan entitled Taking Action, Gaining Trust that adopts a whole of government approach to Indigenous consumer issues. It was launched on 1 September 2005 with three broad objectives:

1. To improve Indigenous consumers' knowledge of their rights and obligations under consumer protection laws and achieve greater Indigenous access to consumer protection programs
2. Improving the behaviour of traders, through education and compliance activity, to reduce detriment experienced by Indigenous consumers.
3. The promotion of effective engagement and partnership between consumer protection agencies, Indigenous organisations, business and other government agencies to improve consumer outcomes for Indigenous people.

The strategy identifies specific actions to be taken by each participating agency under eight key priority areas. Indigenous art and craft is one of the priorities under the plan.

The ACCC as a member of the NICS Reference Group is responsible for monitoring progress against the eight key priorities laid out in the plan. The first annual report on the implementation of the action plan will be released early next year. The ACCC's submission to the draft annual report which outlines the ACCC's progress towards the action items listed under each of the eight NICS priority areas is included below.

National Indigenous Consumer Strategy Implementation: ACCC Progress Report

National Priority 1 – Employment of Indigenous Staff in Consumer Agencies

| Actions | Responsibility | Timeline | Actions carried out by (insert Jurisdiction) |
|---|-------------------------------|---|--|
| Employment of Indigenous officers in consumer agencies as a priority in accordance with employment plans, with the purpose of increasing the long term or permanent representation of Indigenous staff. Employment plans should take into account service delivery issues such as language barriers, geography, agency responsibilities and population distribution. Consumer agencies should identify and use existing public sector guidelines for the employment of Indigenous people, if there are no existing guidelines, identify others that can be adapted. | All Australian SCOCA members. | Agencies to develop employment plans by June 2006. Maintenance and implementation of plans is ongoing. | <p>In accordance with the APS values, the ACCC provides a reasonable opportunity to all eligible members of the community to apply for APS employment. As the recruitment of graduates is an important avenue for the staffing of the ACCC, the ACCC graduate campaign contains a specific strategy to attract Indigenous applicants.</p> <p>The ACCC enables Indigenous employees to participate fully in:</p> <ul style="list-style-type: none"> the APS Employment and Capability Strategy for Aboriginal and Torres Strait Islander employment and the ACCC's professional development program. <p>The ACCC is actively investigating options to increase the number of Indigenous project officers employed in the organisation as an integral component of its Indigenous Consumer Strategy.</p> |
| Consumer agencies should also seek to work with non government organisations with Indigenous staff to assist with service delivery. | All Australian SCOCA members. | Ongoing. | The ACCC sits on the Indigenous Consumer Assistance Network (ICAN) steering committee. The ACCC, as a member of the Australasian Consumer Fraud Taskforce, has also developed a partnership arrangement with ICAN for raising Indigenous consumers' awareness of scams during Scams Awareness Month (12 February and 15 March 2006). |

National Priority 1 – Employment of Indigenous Staff in Consumer Agencies (cont.)

| Actions | Responsibility | Timeline | Actions carried out by (insert Jurisdiction) |
|--|-------------------------------|---------------------------------------|---|
| Consumer agencies to provide cross cultural awareness training for non Indigenous managers and staff inline with a plan that requires it to obtain promotion/employment in future. | All Australian SCOCA members. | June 2006 as part of employment plan. | Cultural Awareness training is provided annually to all ACCC Info Centre staff. The training is designed to assist staff to provide simplified advice to Indigenous callers and also enable staff to better understand Indigenous culture and issues. Similar training is planned for the ACCC's Regional Outreach Managers, who directly deal with Indigenous persons and organisations. |
| Consumer agencies to seek alternative funding for employment of Indigenous officers where necessary and appropriate. | All Australian SCOCA members. | Ongoing. | |
| Establish a national Indigenous consumer officer's network to enable Indigenous staff employed by consumer agencies to share ideas and work collaboratively. | SCOCA | September 2005. | |

National Priority 1 – Employment of Indigenous Staff in Consumer Agencies (cont.)

| Actions | Responsibility | Timeline | Actions carried out by (insert Jurisdiction) |
|---|-------------------------------|----------|---|
| Consumer agencies to simplify complaint procedures to meet the needs of Indigenous consumers. | All Australian SCOCA members. | Ongoing. | <p>The ACCC has an Indigenous Services Hotline and ACCC staff record all Hotline calls relating to Indigenous Issues. These calls are recorded in a monthly report and on the ACCC's complaints database, and the report is analysed to consider what follow-up action may be required.</p> <p>The ACCC's Regional Outreach Managers (ROMs) also undertake ongoing rural and regional liaison with Indigenous persons and organisations in order to both pass on information about the ACCC activities and to gather information and complaints in relation to Indigenous issues.</p> <p>The ACCC has also produced and distributes a Referral Guide to enable consumer and community organisations that deal with vulnerable and disadvantaged consumers to refer appropriate complaints to the ACCC</p> <p>The ACCC is currently developing a flyer highlighting consumer statutory rights and the steps consumers can take to make a complaint. The ACCC will target Indigenous consumers in the distribution strategy for the publication and will evaluate the possibility of reproducing the flyer in a manner specifically targeting Indigenous consumers.</p> <p>The ACCC has re-released two posters for distribution amongst Indigenous communities. The posters; Don't get Tricked: Buying a Car and Know the Rules are designed to increase Indigenous consumer awareness of their rights and obligations. The posters are available from the ACCC's website and in hardcopy.</p> |

National Priority 2 - Advocacy of Indigenous Consumers' Interests

| Actions | Responsibility | Timeline | Actions carried out by (insert Jurisdiction) |
|--|--|----------|--|
| Identify regulatory agencies other than consumer agencies that have responsibility for laws that affect consumers and develop relationships to influence policy. | All Australian SCOCA members. | Ongoing. | |
| Promote the Indigenous Consumer Education website nationally. | Australian Government to continue to host and maintain the National Indigenous consumer website. | Ongoing. | <p>A website containing Indigenous specific consumer educational material was transferred to the ACCC from the Treasury late in 2005. The ACCC is currently coordinating with DOCEP to investigate the benefits of a proposal for DOCEP to publish this information on its website.</p> <p>The ACCC has completed an audit of the content and structure of the website and other available Indigenous consumer educational material and has agreed to transfer all contents to DOCEP. The ACCC proposes to link to this material from the ACCC website.</p> <p>If DOCEP is unable to publish this material, the ACCC will look at developing a specific Indigenous consumer education page on its website.</p> |

National Priority 2 - Advocacy of Indigenous Consumers' Interests (cont.)

| Actions | Responsibility | Timeline | Actions carried out by (insert Jurisdiction) |
|--|---|---|--|
| <p>Consumer agencies to develop ongoing relationships with Indigenous policy and representative organisations to:</p> <ul style="list-style-type: none"> • increase awareness of consumer issues in those organisations; • increase consumer protection agencies' awareness of Indigenous issues; and • develop effective referral processes. | <p>All Australian SCOCA members, in partnership with other government organizations, in particular the Commonwealth Office of Indigenous Policy Coordination.</p> | <p>December 2005 and ongoing.</p> | <p>The ACCC sits on the Indigenous Consumer Assistance Network (ICAN) steering committee.</p> <p>The ACCC, as a member of the Australasian Consumer Fraud Taskforce, has also developed a partnership arrangement with ICAN for raising Indigenous consumers' awareness of scams during Scams Awareness Month (12 February and 15 March 2006).</p> <p>The ACCC has also met with staff of DCITA and the Office of Indigenous Policy Coordination (OIPC) on Indigenous issues. The ACCC is in the process of identifying other Indigenous Policy and representative organisations with a view to developing ongoing relationships and distributing the ACCC's referral guide for complaints involving vulnerable and disadvantaged consumers. The ACCC's Regional Outreach Managers currently undertake liaison with remote Indigenous community organisations and distribute the Referral Guide and other ACCC consumer orientated publications.</p> |
| <p>Consumer agencies to review their enforcement policies and processes to take into account the development of the "Best Practice Enforcement Guide".</p> | <p>All Australian SCOCA members.</p> | <p>Review of enforcement policies and processes by December 2006.</p> | <p>The ACCC and ASIC have completed a Best Practice Enforcement Guide, which has been made available to consumer agencies.</p> <p>The guide has been made available to ACCC Investigative staff and has been promoted on the ACCC intranet. It will also be incorporated in the ACCC Investigations Training Course for new staff.</p> <p>The guide will be reviewed and updated following any future ACCC enforcement actions involving Indigenous consumers.</p> |

National Priority 2 - Advocacy of Indigenous Consumers' Interests (cont.)

| Actions | Responsibility | Timeline | Actions carried out by (insert Jurisdiction) |
|---|---|----------|--|
| Consumer agencies to support appropriate levels of funding for advocacy organisations supporting Indigenous consumers and to work with advocacy organisations to improve their capacity for advocacy work (e.g. secondments, CDEP). | All Australian SCOCA members in partnership with other appropriate government agencies, in particular the Office of Indigenous Policy Coordination. | Ongoing. | |

National Priority 3 - Housing

| Actions | Responsibility | Timeline | Actions carried out by (insert Jurisdiction) |
|---|--|------------|--|
| Develop a program for the delivery of discrimination awareness training in partnership with anti-discrimination agencies, for real estate agents, landlords, public housing providers, tenancy advocates and non government organisations. | State and Territory consumer agencies (acknowledging that in some jurisdictions responsibility for tenancy lies with other government agencies). | July 2006. | Priority not within ACCC's jurisdiction |
| Recognising that legislation is a matter for governments, State and Territory consumer agencies responsible for tenancy laws will seek to ensure as far as they can that legislation regulating real estate agents includes penalties for non compliance with anti-discrimination laws, including revocation of real estate licences. | State and territory consumer agencies responsible for tenancy laws to make appropriate recommendations to government. | Ongoing. | Priority not within ACCC's jurisdiction |
| Agencies responsible for anti-discrimination laws to adopt education programs to educate Indigenous consumers about their rights and responsibilities in relation to discrimination and about avenues for resolving complaints. | State and Territory consumer agencies, in partnership with agencies responsible for anti-discrimination laws. | July 2006. | Priority not within ACCC's jurisdiction |

National Priority 3 – Housing (cont.)

| Actions | Responsibility | Timeline | Actions carried out by (insert Jurisdiction) |
|--|---|-----------------|---|
| Agencies responsible for tenancy laws to ensure simple information on key rights and obligations under lease agreements is provided to Indigenous tenants prior to a tenancy. | State and Territory consumer agencies responsible for tenancy laws. | Ongoing. | Priority not within ACCC's jurisdiction |
| Agencies responsible for tenancy laws to ensure access to dispute resolution and conciliation processes that are relevant to Indigenous consumers. | State and Territory consumer agencies responsible for tenancy laws | Ongoing. | Priority not within ACCC's jurisdiction |
| States and Territories to recognise that independent advocacy for tenants is necessary and encourage relevant agencies to provide appropriate funding for community based advocacy services to promote tenancy rights and obligations. | All Australian SCOCA members. | Ongoing. | Priority not within ACCC's jurisdiction |
| Consumer agencies to provide better and more targeted information to Indigenous consumers about assistance available to purchase homes; including development of a "How To" guide to buying a home and resourcing the non government sector to deliver information about assistance available to purchase homes. | All Australian SCOCA members. | Ongoing. | Priority not within ACCC's jurisdiction |

National Priority 3 – Housing (cont.)

| Actions | Responsibility | Timeline | Actions carried out by (insert Jurisdiction) |
|--|--|----------|--|
| States and Territory consumer agencies to encourage utility providers to explore capacity to pay issues when they enforce debts; and to explore other payment options for consumers. | State and Territory consumer agencies in partnership with other government agencies responsible for utilities. | Ongoing. | Priority not within ACCC's jurisdiction |
| Recognising that legislation is a matter for government, State and Territory consumer agencies responsible for tenancy laws seek to ensure as far as they can that residential tenancy laws apply to all Indigenous tenants. | State and Territory consumer agencies, where necessary in collaboration with other government agencies that fund tenancy services. | Ongoing. | Priority not within ACCC's jurisdiction |

National Priority 4 - Financial Management and Banking

| Actions | Responsibility | Timeline | Actions carried out by (insert Jurisdiction) |
|---|---|----------------|--|
| Agencies to commit funding to ensure existing and future consumer and financial education programs will be developed and delivered in a culturally and appropriate way. | SCOCA Working Party on Consumer and Financial Literacy as well as each Australian SCOCA member. | Ongoing. | Priority not within ACCC's jurisdiction |
| <p>SCOCA to establish Indigenous banking/financial issues liaison group. This group will work with banking and other credit providers including the Australian Bankers Association, Credit Union Services Corporation of Australia, Australian Association of Permanent Building Societies, the Australian Financial Conference, the Reserve Bank and Australian Prudential Regulation Authority to promote the development of:</p> <ul style="list-style-type: none"> • special rural, regional and remote policies to be adopted by banks, building societies and credit unions; • culturally appropriate services for Indigenous customers; and • education initiatives to enhance the financial literacy of Indigenous consumers, having regard to the recommendations of the Consumer and Financial Literacy Taskforce. | SCOCA | December 2005. | Priority not within ACCC's jurisdiction |

National Priority 5 - Motor Vehicles and Boats

| Actions | Responsibility | Timeline | Actions carried out by (insert Jurisdiction) |
|--|---|-----------------|---|
| <p>Recognising that legislation is a matter for governments, State and Territory consumer agencies will seek to ensure that:</p> <ul style="list-style-type: none"> • legislation provides for a common safety/roadworthy or defect certificate to be provided when vehicles are offered for sale; • legislation provides for warranties to be linked to kilometres/age rather than price of vehicle; • civil as well as criminal enforcement options are available for breaches of laws regulating motor vehicle dealers and sales; • legislation requires vehicles under a statutory warranty to be assessed and repaired at the trader's expense and that there is no obligation on the consumer to return the car to the trader; and • legislation requires dealers to display prices (full prices including dealer delivery) on cars offered for sale. | <p>State and Territory consumer agencies to make recommendations to governments for legislation, or amendments to legislation, where necessary.</p> | <p>Ongoing.</p> | <p>In early 2005, the ACCC issued Guidelines for the Motor Vehicle Industry which covered conduct under the Trade Practices Act 1974 relevant to the industry, including misleading or deceptive conduct, the use of qualifications and disclaimers in pricing, price representations generally, and bait advertising.</p> <p>Since issuing the Guidelines, the ACCC has actively monitored advertising in this industry and has warned companies that they risk formal legal action by the ACCC should they not meet the obligations imposed on them by the Trade Practices Act 1974.</p> <p>Earlier this year the ACCC accepted court enforceable undertakings from GM Holden in relation to its recent high profile "You pay what we pay" advertising campaign, and from a Western Australian motor vehicle dealer, Sken Pty Ltd, trading as Premier Suzuki, in resolution of the ACCC's concerns that it had failed to include all charges applicable to the advertised price of its Suzuki swift motor vehicles. The ACCC also accepted a proposal from a Brisbane based company, Denmac, in relation to an admission that it had accidentally stated a pre-sale recommended retail price for a Ford Focus model that was more expensive than the one on sale.</p> <p>The ACCC has also obtained Federal Government support to amend the Trade Practices Act to ensure that traders, when making a part price representation, also state the full cash price of a vehicle.</p> |

National Priority 5 - Motor Vehicles and Boats (cont.)

| Actions | Responsibility | Timeline | Actions carried out by (insert Jurisdiction) |
|---|--|----------------|--|
| Joint action between consumer agencies, Police, and road transport authorities to develop compliance plans to deter unlicensed dealing and the sale of unroadworthy cars. | State and Territory consumer agencies in partnership with Police and road transport authorities. | June 2006. | |
| Develop a best practice enforcement guide that will include information about effective enforcement of laws that should be protecting Indigenous consumers. | ASIC/ACCC with support from all Australian SCOCA members.. | December 2006. | As mentioned above, A Best Practice Enforcement Guide has been developed by the ACCC and ASIC. |
| Form partnerships with industry, including the Motor Trades Association, to develop initiatives such as community based mechanics and remote area policies for the sale, servicing and financing of motor vehicles and boats. | State and Territory consumer agencies in partnership with industry. | Ongoing. | |

National Priority 6 - Trading Practices

| Actions | Responsibility | Timeline | Actions carried out by (insert Jurisdiction) |
|--|-------------------------------|----------------|--|
| Compliance and enforcement activity by consumer agencies to penalise inappropriate behaviour by traders. | All Australian SCOCA members. | Ongoing. | In September 2004, the ACCC instituted proceedings in the Federal court in Darwin against a trader from Perth, Mr Ramon Keshow, for alleged unconscionable conduct and misleading and deceptive conduct in the promotion and supply of educational materials to Indigenous communities in the Northern Territory. On 21 July 2005, the Court ordered Mr Keshow pay compensation to eight Indigenous women totalling \$26,530. In May 2006, the Court banned Mr Keshow and any of his servants or agents from entering Northern Territory Indigenous communities to conduct his business after finding that he had engaged in unconscionable conduct. |
| All consumer agencies should adopt a uniform policy that does not endorse the retention of PIN number or other information (re passwords for internet banking) by traders. | All Australian SCOCA members. | December 2005. | <p>The ACCC has adopted this policy which is reflected in its FairStore Publication, which was released in July 2006, and continues to be distributed to community stores catering to Indigenous consumers.</p> <p>The ACCC is also currently developing a FairStore consumer brochure to educate Indigenous consumers about their rights and obligations when dealing with rural stores.</p> <p>This brochure will accompany the FairStore booklet produced as a guidance document for to operation of such stores.</p> |

National Priority 6 - Trading Practices (cont.)

| Actions | Responsibility | Timeline | Actions carried out by (insert Jurisdiction) |
|---|--|-----------------|--|
| Through the SCOCA Indigenous Banking and Financial Issues Liaison Group explore ways to discourage traders holding customer PIN numbers as a condition of credit, including the possibility of a prohibition in EFTPOS contracts on traders holding PINs. Breaches of the provision could result in traders losing their EFTPOS capacity. | SCOCA Indigenous Banking and Financial Issues Liaison Group. | Ongoing. | |
| Promote the use of ASIC's "Dealing with Book Up: A Guide" which contains ideas and strategies for communities and traders to manage book up. | All Australian SCOCA members. | Ongoing. | The ACCC publication FairStore promotes the use of ASIC's BookUp Guide. |
| Ongoing monitoring of door to door and itinerant traders including coordinated action between agencies to address emerging problems. | All Australian SCOCA members. | Ongoing. | The ACCC will continue to monitor this area and vigorously pursue enforcement action against any traders found to be breaching the Trade Practices Act 1974. |

National Priority 6 - Trading Practices (cont.)

| Actions | Responsibility | Timeline | Actions carried out by (insert Jurisdiction) |
|--|---|-----------------|---|
| <p>Promotion of ACCC's FairStore as best practice so that traders and communities have a benchmark for fair trading in remote communities.</p> | <p>ACCC to continue to set the standards through FairStore. State and Territory agencies to liaise with the Commonwealth Office of Indigenous Policy Coordination and Indigenous Coordinating Councils to promote store management.</p> | <p>Ongoing.</p> | <p>The ACCC will continue to set the standards for fair trading through the promotion of FairStore as a Best Practice Guide.</p> <p>A road trip throughout the Northern Territory was conducted in September by the ACCC's Darwin Regional Outreach Manager to promote the ACCC's FairStore publication and conduct general outreach initiatives.</p> |
| <p>Consumer agencies to collaborate with communities and private sector to improve store management in regional areas.</p> | <p>ACCC to continue to set the standards through FairStore. State and Territory agencies to liaise with the Commonwealth Office of Indigenous Policy Coordination and Indigenous Coordinating Councils to promote store management.</p> | <p>Ongoing.</p> | <p>In 2001, the ACCC commissioned the Centre for Aboriginal Economic Policy Research (CAEPR) at the Australian National University (ANU) to undertake a research project into the implications of the TPA for Indigenous Australians. The report entitled 'Competition and Consumer Issues for Indigenous Australians' includes a case study of the competition and consumer issues associated with the operation of Indigenous community stores.</p> <p>The findings of this research provided direction to a number of Indigenous specific initiatives and strategies progressed by the ACCC. One such initiative aimed at addressing some of the issues identified was the production and dissemination of FairStore and its predecessor StoreCharter.</p> <p>The ACCC will continue the production and distribution of its FairStore trader and consumer publications to establish best practice in the area of store management.</p> |

National Priority 6 - Trading Practices (cont.)

| Actions | Responsibility | Timeline | Actions carried out by (insert Jurisdiction) |
|---|-------------------------------|----------|--|
| Consumer protection agencies to provide relevant and appropriate information for Indigenous consumers on warranty rights and obligations. | All Australian SCOCA members. | Ongoing. | <p>The ACCC publishes and distributes a brochure on warranties and refunds which contains advice for consumers.</p> <p>The ACCC is currently developing an information kit of ACCC publications for its Regional Outreach Managers to distribute to remote Indigenous community organisations and businesses that deal with Indigenous consumers. The kit will include the warranties and refunds brochure, 'Don't take Advantage of Disadvantage, which is a compliance guide for businesses dealing with disadvantaged or vulnerable consumers, Dealing with debt, your rights and responsibilities (a joint ACCC and ASIC publication aimed at consumers) and the Referral Guide.</p> <p>The ACCC has re-released the 'Don't get tricked: Know the rules' poster and is also developing a Know how to complain flyer (see above).</p> |
| Identify appropriate matters for enforcement to improve marketplace behaviour. | All Australian SCOCA members. | | <p>The ACCC continually monitors market behaviour to identify any potential breaches of the Trade Practices Act 1974 and assesses matters for enforcement action in this area. For example see above in relation to the ACCC's proceedings against Mr Ramon Keshow.</p> |

National Priority 7 - Arts Industry

| Actions | Responsibility | Timeline | Actions carried out by (insert Jurisdiction) |
|--|-------------------------------|----------|--|
| Acknowledge that misleading and deceptive conduct in relation to Indigenous art is a responsibility of consumer agencies. | All Australian SCOCA members. | Ongoing. | The ACCC maintains a watching brief and assesses any matters involving allegations of misleading or deceptive conduct in relation to Indigenous art. |
| Undertake education campaigns with consumers, communities, artists, dealers, retail outlets, auction houses, galleries and manufacturers to alert them to their protections and obligations under the law. This might include adopting pre-packaged training, such as the Artists in the Black initiative. | All Australian SCOCA members. | Ongoing. | <p>The ACCC is working with DCITA and others on this issue, and as issues and opportunities arise, the ACCC will liaise with Indigenous stakeholders to discuss their rights in this area and deal with any enquiries or complaints.</p> <p>The ACCC will also await the outcome of DCITA's investigation of this industry and related consultancy work by the National Association for Visual Arts, Desart and ANKAAA in relation to the development of a Code of Practice to cover commercial dealings involving Indigenous art, and the National Australia Council program, "The Other Side of the Coin", which will protect Indigenous intellectual and cultural property.</p> <p>The ACCC's internal Indigenous reference group comprising staff experienced in Indigenous affairs ensures that a holistic Indigenous strategy is developed and maintained. This group is currently investigating the benefit of developing an educational campaign specifically targeted at the Indigenous art industry.</p> |

National Priority 7 - Arts Industry (cont.)

| Actions | Responsibility | Timeline | Actions carried out by (insert Jurisdiction) |
|---|--|-------------------|--|
| <p>Identify a lead agency to develop a national Indigenous Arts Charter in order to improve marketplace behaviour and voluntary compliance with the law. The charter would be a 'best practice' document for all parties in the industry.</p> | <p>ACCC to liaise with the Commonwealth Department of Communication, Information Technology and the Arts, Office of Indigenous Policy Coordination to identify a lead agency to develop a charter.</p> | <p>July 2006.</p> | <p>The ACCC is currently liaising with DCITA and is awaiting the outcome of the Senate inquiry into Indigenous arts and craft as it represents the current position on the Arts Charter project. The ACCC also notes the proposed development of a Code of Practice by National Association for Visual Arts to cover commercial dealings involving Indigenous art, and the National Australia Council funded program, "The Other Side of the Coin", which will protect Indigenous intellectual and cultural property.</p> |
| <p>Monitor the structure of the industry and anti-competitive behaviour involving artists, dealers, auction houses, galleries and art centres.</p> | <p>ACCC and State and Territory consumer agencies.</p> | <p>Ongoing.</p> | <p>As mentioned above, the ACCC commissioned the Centre for Aboriginal Economic Policy Research (CAEPR) at the Australian National University (ANU) to undertake a research project into the implications of the TPA for Indigenous Australians. The report (completed in 2002) entitled 'Competition and Consumer Issues for Indigenous Australians' includes a case study of the competition and consumer issues associated with the Indigenous art and craft industry.</p> <p>The findings of this research offered valuable insight into the industry and provided direction to a number of Indigenous initiatives and strategies progressed by the ACCC. The ACCC continues to monitor the industry and any emerging industry initiatives and related research and actively investigates instances of anti-competitive behaviour.</p> |

National Priority 8 - Managing Indigenous Community Organisations

| Actions | Responsibility | Timeline | Actions carried out by (insert Jurisdiction) |
|---|--|-----------------------------------|--|
| <p>Agencies responsible for laws that govern community-based organisations to develop:</p> <ul style="list-style-type: none"> (a) culturally appropriate guide/training manuals and advice to assist Indigenous organisations to interpret the law and comply with legal obligations; and (b) guides and information for funding bodies to understand the laws applicable to Indigenous organisations and to assist them to address issues and reduce risks associated with funding such organisations. | <p>State and Territory consumer agencies and ASIC (for all actions) in partnership with other appropriate agencies such as the Office of the Registrar of Aboriginal Corporations.</p> | <p>December 2005 and ongoing.</p> | <p>Priority not within ACCC's jurisdiction</p> |
| <p>Provide assistance and advice to Indigenous organisations on the options for incorporation to ensure it meets the needs of its members and the community.</p> | <p>State and Territory consumer agencies and ASIC (for all actions) in partnership with other appropriate agencies such as the Office of the Registrar of Aboriginal Corporations.</p> | <p>Ongoing</p> | <p>Priority not within ACCC's jurisdiction</p> |

Report 2 - ACCC Enforcement and Compliance Activity

1.0 An Overview of the Role of the ACCC

The Australian Competition and Consumer Commission (ACCC) is a national law enforcement agency that was established in 1995 by the Commonwealth Parliament to protect the rights of consumers and business. It does this by encouraging vigorous competition in the marketplace and enforcing the consumer protection and fair trading laws contained within the *Trade Practices Act 1974* (TPA). The objective of the TPA is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.

One of the principal aims of the TPA is to protect consumers. In relation to consumer protection issues, key aspects include prohibiting business conduct which is misleading or deceptive, or which is likely to mislead or deceive and prohibiting unconscionable conduct by businesses in their dealings with consumers. Part V of the TPA, which contains these and other similar provisions, applies across the economy including the market for Indigenous arts and crafts.

2.0 ACCC General Enforcement Activity

The ACCC has a strong commitment to protect consumers through vigorous enforcement action. The ACCC focuses its enforcement activities on industry-wide conduct and areas of widespread consumer detriment to achieve outcomes that will improve overall compliance with the TPA while making the most effective use of its resources. While it actively uses enforcement action to obtain compliance, the ACCC's preferred option is to show business how to take preventative steps to ensure that contraventions do not occur.

Generally matters may come to the attention of the ACCC in a number of ways including:

- Telephone calls to the ACCC's Infocentre
- Telephone calls to the ACCC's Indigenous hotline
- Direct contact with ACCC staff via email or telephone
- Referral from other Commonwealth government agencies
- Referral from State government offices of fair trading
- Referral from consumer advocacy groups and other
- Matter identification by Regional Outreach Managers (described below)
- Monitoring activity that has received media attention

Issues are evaluated at the point of contact/identification and decisions are made regarding possible enforcement activity by the ACCC. Irrespective of the mode or source of contact, all information obtained from individual complainants is recorded on the ACCC's national database and used to establish a pattern of behaviour by particular trader/s or in a particular industry. Reports are generated from this database on a regular basis and analysed to identify additional matters that may require further investigation.

While matters involving Indigenous consumers may come under the scrutiny of the ACCC via general compliance activities, it may also be alerted to other issues which may result in enforcement actions through the watching brief that it maintains over Indigenous consumer and business issues as a part of its campaign to protect the vulnerable and disadvantaged.

3.0 The ACCC's 'Disadvantaged and Vulnerable Consumer' campaign

In 2003, the ACCC and its Consumer Consultative Committee ("CCC") - a consultative body consisting of consumer and community agencies - launched an ongoing campaign focusing on commercial and business practices that target or seek to exploit disadvantaged and vulnerable consumers.

Although protecting disadvantaged and vulnerable consumers, including Indigenous consumers, has always been a priority for the ACCC, the campaign acknowledges that these consumers rarely complain to an agency like the ACCC. Experience has shown that these consumers are more likely to complain to a shop front or community based organisation than an agency like the ACCC or state offices of fair trading. In particular Indigenous consumers tend to be less likely to complain at all than other consumer groups. This stems from a number of factors including cultural issues, major systemic issues such as health, welfare, literacy etc and a general distrust of bureaucracy.

In broad terms, the campaign recognises that consumers who experience some form of vulnerability or disadvantage may be especially at risk in the marketplace because they generally experience greater levels of information asymmetry, have fewer means to combat unfair behaviour and / or less money to cushion the impact of unlawful behaviour and may also have lower levels of financial literacy.

For the purposes of the campaign, the phrase 'vulnerable and disadvantaged' refers to a person experiencing a vulnerability that places them at a significant disadvantage in their everyday business and commercial dealings (including their interactions with the ACCC). The campaign defines 'vulnerable and disadvantaged' by reference to:

- low income;
- culturally and linguistically diverse background;
- disability;
- illiteracy;
- ***Indigenous origin;***
- homelessness;
- remoteness;
- old age or youth; and
- serious or chronic ill-health.

Indigenous communities, particularly those in remote areas, often experience multiple forms of disadvantage or vulnerability and a general lack of awareness of competition

and fair trading laws and as such may be more exposed to market exploitation relative to other consumer groups.

The ACCC's Disadvantaged and Vulnerable Consumer Taskforce

The ACCC has an internal taskforce dedicated to disadvantaged and vulnerable consumers to enable it to undertake the following activities as part of the campaign:

- assess and fast-track complaints involving consumers flagged as at risk due to particular disadvantage or vulnerability that are received by the ACCC, including those referred to it by its CCC members and other consumer representatives;
- target enforcement action to stop illegal conduct;
- assist small and large businesses to identify, prevent and / or cease offending practices to ensure that their business practices are fair for all consumers; and
- work with other government, business and consumer organisations to promote the campaign.

The ACCC's Internal Indigenous Reference Group

The ACCC's internal taskforce deals exclusively with issues impacting on Indigenous consumers and businesses. This working group of senior staff maintains a watching brief over issues affecting Indigenous communities and ensures a dedicated strategy is applied consistently across the organisation. Previous experience in this area has highlighted the need to develop specific strategies for vulnerable communities such as those consisting of Indigenous people. This group ensures ACCC efforts are focussed on pertinent trade practices issues for Indigenous communities and provide a framework for the development of future mechanisms to enhance the welfare of these people. A particular focus for the group over the next year will be the Indigenous art and craft sector. The ACCC has agreed to participate in the interdepartmental committee established by DCITA to identify issues affecting Indigenous art. Issues identified by the committee will be addressed by the strategy recommended by the group where they fall under the ACCC's jurisdiction.

Disadvantaged and Vulnerable Consumer Access to the ACCC

The ACCC has a network of offices in all capital cities and Townsville to handle public complaints and inquiries. Staff can provide advice to consumers (and businesses) about their rights and obligations under the TPA and can assist in resolving a dispute by directing parties to appropriate complaint resolution options. The ACCC's website (www.accc.gov.au) and its freecall Infocentre hotline (1300 302 502) ensure that the ACCC is accessible to all consumers with concerns.

The Indigenous Consumer Hotline

The ACCC has a dedicated hotline for Indigenous consumers (1300 303 143) and ACCC staff record all calls relating to Indigenous issues in the ACCC's complaints database. Monthly reports are generated from this database and the data is analysed to identify trading trends and consider where further investigation may be required.

The ACCC's Referral Guide

The ACCC recognises that an important aspect of encouraging the referral of appropriate complaints from consumer and community organisations is for its staff to do all they reasonably can to ensure that complainants' experience of dealing with the ACCC is a positive one – both at the time of referral and during any ensuing investigation. To this end, internal guidelines assist ACCC staff in their operational interactions with people who may be experiencing some form of vulnerability or disadvantage. This illustrates the ACCC's commitment to ensuring that barriers to Indigenous consumers seeking the assistance of the ACCC are minimised.

The ACCC's Referral Guide enables consumer and community organisations dealing with vulnerable and disadvantaged consumers, including Indigenous consumers to refer appropriate complaints to the ACCC.

4.0 Compliance Initiatives for Indigenous Consumers

The ACCC is committed to improving business and consumer knowledge of their rights and obligations under consumer protection laws and ensuring Indigenous consumers are aware of the avenues for redress.

A Best Practice Guide for Enforcement of Indigenous Matters

The ACCC, in conjunction with ASIC, has produced a Best Practice Enforcement Guide for matters involving Indigenous consumers, which has been made available to other consumer agencies. The guide is available to all ACCC investigative staff and has been promoted on the ACCC intranet. The guide will be reviewed and updated following any future ACCC enforcement actions involving Indigenous consumers.

Regional Outreach Managers

The ACCC has Regional Outreach Managers in each state and territory who regularly undertake ongoing rural and regional liaison with Indigenous persons and organisations. This is designed to raise awareness of ACCC activities in these communities and to gather intelligence about issues impacting on Indigenous consumers.

Cultural Awareness Training

Cultural Awareness training is provided annually to all ACCC Infocentre staff. The training is designed to assist staff to provide simplified advice to Indigenous callers and also enable staff to better understand Indigenous culture and issues. Similar training is planned for the ACCC's Regional Outreach Managers, who directly deal with Indigenous persons and organisations.

Coordination with Other Agencies and Consumer Bodies

The ACCC is a member of the Indigenous Consumer Assistance Network (ICAN) steering committee and the Australasian Consumer Fraud Taskforce (ACFT). In March 2006 ICAN in partnership with ACFT participated in promoting Indigenous consumer awareness of scams during the Scams Awareness Month campaign.

The ACCC is in the process of identifying other Indigenous Policy and representative organisations with a view to developing ongoing relationships and distributing the ACCC's referral guide for complaints involving vulnerable and disadvantaged consumers.

Publications

The ACCC has developed and distributed a suite of publications dealing with its functions and the legislation for which it is responsible in an endeavour to increase both consumer awareness of and business compliance with the TPA. Some of the publications relevant to the ACCC's disadvantaged and vulnerable consumer campaign including those specifically targeted at Indigenous communities are outlined below. The ACCC actively seeks opportunities to disseminate such publications to interested individuals and stakeholder groups. Consumer education and awareness remain priorities for the ACCC.

FairStore

The ACCC has recently produced a best practice guide for businesses servicing Indigenous communities in rural and remote areas of Australia. This publication was developed in consultation with other Commonwealth and State/Territory consumer agencies as part of the National Indigenous Consumer Strategy to help businesses and their staff comply with fair trading laws, warranties and refunds and the provision of store credit or 'book-up. An accompanying FairStore consumer guide, providing advice to Indigenous consumers dealing with these stores is also being produced.

How to comply with the Trade Practices Act: a guide for small business

This brochure sets out the basic elements of a trade practices compliance program.

Best and fairest

Best and fairest is a training package designed to help businesses comply with the TPA. The program can be completed online on a module by module basis and is also available in hardcopy. The ACCC plans to distribute this publication among Indigenous community councils, to give them some element of TPA knowledge and a useful resource. Jointly the ACCC's Regional Outreach Managers and the various Offices of Indigenous Policy Coordination are working to identify and develop distribution strategies.

Don't take advantage of disadvantage

This brochure is designed to help businesses recognise when they are dealing with disadvantaged or vulnerable consumers and outline the factors they may need to consider in these situations with reference to recent court decisions.

Advertising and selling

This guide outlines the consumer protection provisions of Part V and VC of the TPA. These provisions contain simple rules to ensure that businesses trade fairly with consumers. The guide also contains a brief explanation of Part IVA (unconscionable conduct) provisions.

ACCC/ASIC debt collection guideline

This guideline reflects the ACCC's and ASIC's view of how relevant provisions of the TPA and the ASIC Act apply to debt collection conduct. It covers significant recent developments in industry practices, case law, jurisdictional changes and the level and substance of complaints made to the ACCC and ASIC.

Guide to unconscionable conduct

This guide explains how the unconscionable conduct provisions of the TPA apply in the dealings between businesses, and between businesses and consumers.

5.0 Specific Enforcement Outcomes

Enforcement action has been taken on a range of matters that target Indigenous communities and businesses. Some specific examples of action taken by the ACCC involving Indigenous consumers over the last few years are outlined below.

National Maths Academy

In May 2006 the Court banned Mr Ramon Lal Keshow (of National Maths Academy) and any of his servants or agents from entering Northern Territory Indigenous communities to conduct his business after finding that he had engaged in

unconscionable conduct in the promotion and supply of children's educational materials (and some household goods) to Indigenous communities in the region. Mr Keshow was also ordered to pay compensation to eight Indigenous women totalling over \$26,000.

Australian Icon and Australian Aboriginal Art

In July 2003 the ACCC received an anonymous email complaint regarding the activities of Australian Icon Products Pty Ltd (Australian Icon). Australian Icon was one of Australia's largest manufacturers of Aboriginal-style souvenirs and claimed to supply over 1700 retailers nationally and export to 38 countries around the world. The ACCC subsequently investigated the complaint and successfully took action against Australian Icon under s52 of the Trade Practices Act for misleading and deceptive conduct due to the company's false claims about the authenticity of certain Aboriginal-styled souvenirs.

Australian Icon was making representations that its range of hand painted or hand carved Indigenous oriented souvenirs was "authentic", "Australian Aboriginal Art", and "authentic" Aboriginal art, produced by artists who were "Australian, Aboriginal by descent and Aboriginal" and also labelled its products as "certified authentic" when in fact they were painted by a pool of Indigenous and non-Indigenous artists and no certification process was in place.

The company later commenced trading as Australian Aboriginal Art Pty Ltd (AAA), and made identical representations. In this case, the name of the company was alleged to be the vehicle for the misrepresentation. The ACCC then took a second action against the new company in relation to the continued conduct. The court held that the representations were likely to mislead or deceive consumers, in contravention of the TPA. The company settled by consent, with injunctions restraining the conduct of the company and its directors and an order that the directors undertake trade practices compliance training, declarations and costs.

Other

The ACCC has also investigated a number of complaints of other traders of Indigenous artworks suspected of conduct potentially breaching the TPA and achieved compliance/resolution without taking court action. The majority of these matters related to false representations regarding the aboriginal authenticity or origin of artwork. Some complaints related to company names being used to give the impression that the products they produce or sell are authentic. Concern was also expressed by some complainants that some consumers (particularly foreign tourists) may assume 'Australian Made' means 'Authentic Aboriginal' when in fact this may not be the case. The ACCC is working with various groups to help educate the wider community about this issue and to encourage the public to report any suspected misleading conduct to the ACCC.