

**House of Representatives Standing Committee on Indigenous  
Affairs**

**Inquiry**

**The growing presence of inauthentic Aboriginal and Torres Strait  
Islander 'style' art and craft products and merchandise for sale  
across Australia**

November 2017

## Executive Summary

- The Aboriginal Art Association of Australia serves and represents producers, promoters and supporters of Aboriginal art and cultures. It has spent 19 years considering and advising on ‘authenticity’ and on promoting ethical trade conduct.
- A key event in those 19 years was the failed 1999 attempt by the (now defunct) National Indigenous Arts Advocacy Association to introduce a Label of Authenticity, without the necessary research or consultation with key stakeholders.
- The key messages for this Inquiry from that failed attempt are:
  - Get the decision-making process right; include *all* aboriginal artists, and engage the commercial sector’s consumer knowledge properly.
  - Distinguish between ‘Aboriginal Fine art and craft’, and ‘ATSI style art, craft products, and merchandise for the tourist market’. The inauthentic product is essentially in that tourist market segment.
  - Target new or expanded labelling law, and enforcement, at the correct segment - the tourist sector.
  - Resource enforcement properly; supported by improved information content and delivery to potential tourist customers, to retailers, and their purchasing agents.
- There is no safe way to avoid the rigorous research of the range of issues that are fundamentally important to any regulatory authentication system’s workability.
- Proper enforcement must be properly resourced. Costs of enforcement need to be known up-front, one reason for proper prior analysis of costs and impacts.

## Definitions and current arrangements

- A fundamental distinction is between ‘Aboriginal fine art’ and ‘manufactured tourist art’.
- A useful and important distinction is between ‘*Indigenous and Indigenous-licensed product*’, and ‘*imitations and unlicensed product*’. A workable

authentication system for manufactured ATSI style souvenirs would differentiate indigenous and indigenous licensed artworks from imitations and unlicensed products.

- “The growing presence of inauthentic ATSI style art and craft products and merchandise” should be understood as applying to tourist product, not to Aboriginal fine art.
- AAAA agrees there is a material amount of imitations and unlicensed product in ATSI style manufactured souvenirs and giftware in tourist centres, and that current law is either inadequate or not adequately enforced.
- In AAAA’s view, there is not a meaningful amount of inauthentic art and craft in the Aboriginal fine art market. There is a successful Certificate of Provenance system in place. Current legal arrangements are adequate, but the 2007 Senate Inquiry recommendations to improve demand by improving consumer confidence in art content and trade conduct, remains a work in progress. The well-intentioned but clumsily-worded “fake art” campaign is damaging already fragile consumer confidence in Aboriginal fine art.

### **Why an authentication system could now work effectively**

Previous barriers can be overcome by:

- Focussing effort on the ‘correct’ product market.
- Designing good-quality regulation using good-quality decision-making process that complies fully and faithfully with the Commonwealth Government’s own Best Practice Regulation Making Rules.
- Well-resourced, well-targeted enforcement, starting with knowledge of likely costs, gleaned from good prior analysis and consultation.
- Making the overarching objective the proper enforcement of complete and accurate labelling of ATSI style art and craft product and merchandise in the tourist market.
- Proper labelling, proper licensing, proper education of consumers, wholesalers, producers and retailers, and proper resourcing of properly targeted enforcement is a better option than trying to prevent import of imitation or unlicensed souvenir product.
- Total prohibition at the border is unrealistic, but even if it could work, it would close down tourist retail outlets which are needed by aboriginal artists to distribute authentic product. That’s why (properly enforced) accurate labels that specify 'Aboriginal made', 'Aboriginal designed', and

'not made or designed by an Aboriginal person' make more sense than banning inauthentic tourist product altogether.

- Protecting properly licenced product. A key risk is that a narrow view might result in properly licensed product (which earns indigenous artists significant royalty income) being excluded from sale on the basis that it was not directly produced by an indigenous person.
- Instead of prohibition, encourage the Department for the Arts to help the whole sector to finish the job of building a fully representative, properly-functioning, properly funded, properly marketed, Indigenous Art Code, and use that more effective I A Code to encourage tourism retailers and buyers to move up the value chain, based on well-informed *demand* from properly informed consumers and retailers, but supported by proper enforcement of sensible labelling regulation.
- Any scheme to identify authentic product and remove culturally inappropriate product from any part of the art and craft market must be supported and promoted by a broad industry alliance.
- AAAA remains ready to contribute at the decision-making table – at the design stage. We want to help build the broad industry alliance. Decision-making should involve people with market knowledge and industry experience: - in marketing; in aboriginal art practice; who buys Aboriginal art and craft; how Aboriginal art and craft comes to market; and, especially, people who understand Aboriginal art customers.
- The scheme must become synonymous with branding that customers can trust and seek out because it guarantees that Aboriginal artists will benefit.
- It must be designed so that the consumer is not turned away from Aboriginal art or craft because it is perceived as too problematic.

## **The Aboriginal Art Association of Australia**

Because it exists to serve and represent producers, promoters or supporters of Aboriginal Art, and the cultures that nurture it, the Aboriginal Art Association of Australia Ltd has grappled with the complex and emotive issues of ‘authenticity’ and the promotion of ethical trade practice for all of its 19 years.

AAAA is a not-for-profit, member-based, self-funded organisation with an honorary Board elected periodically by ballot of members. We are now fully constituted as a national and international industry-wide body, representing Indigenous Artists (independent and Art Centre), Galleries, Dealers, Art Centres and Licensors.

The full suite of AAAA objectives is in our Constitution, at S. 3. (<http://aboriginalart.org.au/aaaa/wp-content/uploads/2016/10/Constitution-of-Aboriginal-Art-Association-of-Australia-Ltd.pdf> ). AAAA’s key objectives in the context of this Inquiry are:

- Foster a commitment to excellence in art-content and trade-conduct;
- Foster consumer understanding, trust, and confidence in Aboriginal Art;
- Assist the development and promotion of a standard for authentication of Aboriginal Artworks.

## **Learning from a previous attempt at a Label of Authenticity**

We begin with what we see, in this context, as the most relevant event in our 19 years, namely, the unsuccessful attempt in 2000 by the (now defunct) National Indigenous Arts Advocacy Association to secure sector support for a Label of Authenticity.

AAAA says there is a lot that this Inquiry can learn from that attempt.

We highlight here the key ‘learning’, and ask that this be the subject of a recommendation to decision-makers: – ‘take enough time and money to get the regulatory and policy analysis and consultation right, and provide enough resources to ensure proper enforcement’.

The quality (and viability) of any authentication system will reflect the quality of the decision-making. There is no safe way to avoid the right level of rigorous research at the

right time and including the right people about the range of issues that are of fundamental importance to any authentication system's workability.

In addition, an effective authentication system must make enforcement practically possible, and be accompanied by the dedicated resources necessary to make that happen. Government needs to know, up front, what the costs will be, another reason for rigorous prior analysis of likely impacts and costs.

## **Terms of Reference 1 and 2 - Definitions and Current Licensing Arrangements**

The Committee is to inquire and report on "the growing presence" of "inauthentic ATSI 'style' art and craft products and merchandise".

AAAA agrees there has long been a material presence of inauthentic ATSI 'style' manufactured giftware and souvenirs in tourist centres around Australia.

Subject to the following qualification, AAAA does not agree that there is a material presence of inauthentic Aboriginal fine art and craft.

The qualification is that determining authenticity of Aboriginal fine art sometimes reflects a judgment based on context and circumstances. Attribution is not cut and dried, demonstrated by the fact that experts in the field have developed and use a 'sliding scale of attribution' to manage this cultural and evolutionary complexity.

It is now regarded as acceptable to have works which are assisted, but still culturally authentic, if the degree of assistance is reasonably known to a purchaser, but recognising that 'measurement' can come down to experience and judgment. We set out at p. 8 the definitions or protocols used to help form such judgments.

Collaborative artworks made by multiple artists are currently highly sought-after.

That is to be contrasted with works in the market sold as wholly the work of a single artist, but which are not. The fraud here is the passing off of the works as by a single artist - not accurately describing the works. This has happened, but, in our experience, still not to a material degree.

The Inquiry's Terms of Reference do seem to acknowledge the important distinction between 'fine art' on the one hand, and 'ATSI style art, craft and merchandise for the tourist trade' on the other. If so, the Inquiry has correctly avoided one of the key problems explaining the previous failed attempt at a Label of Authenticity.

It is appropriate to spell out our reasoning:

There is a longstanding distinction between fine art and tourist art, while recognising that there is considerable overlap between the two categories.

It is important to distinguish between individual art practitioners and art manufacturers, the key differentiating factor being the scale and the extent of non-aboriginal involvement; and further to distinguish "cultural appropriation", that is, the exploitative adoption of elements from another culture without consent.

The 1999/2000 attempt to introduce a label of authenticity failed, in part, because it failed to recognise the distinction between fine art and manufactured tourist art. This is not just AAAA's view. Professor Jon Altman is a leading academic and regulatory economist in this field<sup>1</sup>, and recognised that a problem with the NIAAA Label was its failure to make that distinction.

Professor Altman referred to another problem in the same article. The NIAAA attempt wrongly conflated authenticity with aboriginal authorship, an issue we return to in response to specific Inquiry questions.

Several of his conclusions are instructive for this Inquiry:

"...It is unclear if an authenticity label on Indigenous fine art is either required or desirable."

"Nevertheless, an authenticity label *on manufactured products* could be a very useful promotional tool to differentiate Indigenous and Indigenous-licensed product from imitations and unlicensed product". (Our emphasis)

We invite the Inquiry to also consider The Department of Aboriginal Affairs, 1989, "*The Aboriginal Arts and Craft Industry: Report of the Review Committee*", AGPS, Canberra.

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<sup>1</sup> Professor Jon Altman "*The Indigenous visual arts industry: Issues and prospects for the next decade*", Artlink, Vol 20, p 86 at p 92ff.

AAAA understands that that Review did not recommend the establishment of a 'label of authenticity'. There was a view that such an instrument would be costly and inefficient, given the complexity of the Aboriginal Arts industry, and that scarce resources could be better spent to strengthen arts organisations at community and local level.

A predecessor to the now Department for the Arts offered the following observations about the why the label of authenticity failed and how to overcome that failure to the 2007 Senate Inquiry – *"Indigenous Art - Securing the Future"*, reported at 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."

### **Why would any authentication system work now?**

AAAA argues that previous barriers may now be able to be overcome with new regulation, but only by focusing on the correct market products and sector, namely imitation and unlicensed souvenirs in the tourist market; and only if underpinned by a rigorous regulatory analysis of likely costs and benefits, and then properly resourced to enable proper monitoring and proper enforcement, all of which will have to be supported by better information going to potential tourism consumers and tourism retailers, and by a broad industry alliance.

AAAA has always, and still, supports a proper analysis and consultation to make workable rules to ban the unlicensed reproduction of Aboriginal imagery on fake souvenirs.

It is appropriate for AAAA to offer a definition of authentic 'art, craft products, and merchandise'.

Elements of a reasonable definition of 'art and craft product and merchandise' would include:

*Aboriginal or Torres Strait Islander item created in Australia by a member of the Aboriginal and/or Torres Strait Islander community; or*

*Aboriginal or Torres Strait Islander item created either in Australia or outside of Australia under a commercially acceptable licensing agreement by a member of the Aboriginal and/or Torres Strait Islander community,*

*and:*

*Aboriginal or Torres Strait Islander item clearly labelled to exactly define the following: designer, craftsman/manufacturer, artwork application and locations of each process. Examples of Transparent Commerce Markings could be: 'Designed in Australia by xxxxx'; 'made in China under license by yyyyy'; 'royalties paid to the artist'.*

In our view, the key aspect of a workable authentication system is to *enforce complete and accurate labelling*. We offer an example:

Example 1.

Australian Indigenous Artists create an original Artwork; that artwork/design is licensed for reproduction. The reproduction is hand painted in Indonesia.

This work is currently labelled as Aboriginal Artwork, Hand Painted, both of which are true but deceptively incomplete.

We stress again our view that, for an authenticity labelling system to be effective, there must be a 'separation' of Aboriginal fine art from other souvenir style cultural items and merchandise. The latter items are the source of essentially all problematic material.

A current demonstration of why it is necessary to make this distinction is that the well-intended but poorly worded "Fake Art" campaign has and continues to harm customer confidence in the Aboriginal fine art market just by its title alone.

It is also appropriate to recognize, in relation to Fine Art in general, that 'authenticity' in the non-indigenous fine art market is far more problematic than in the Aboriginal fine

art market. Any policy dealing with fakes in the Fine Art market should be universal, and not be discriminatory or paternalistic towards Aboriginal fine art.

### **A summary of licensing arrangements**

- Current licensing laws are generally satisfactory and universal for Aboriginal fine art and craft. AAAA stipulates that members provide a Certificate of Provenance which provides all pertinent information for fine art over \$1000. IAC Signatories have the same obligation, applicable at \$250. The IAC limit is aimed to also include the souvenir market. AAAA's threshold is aimed at the fine art market.
- Current laws are inadequate in relation to the consumer information about production, distribution, selling and reselling of Aboriginal and Torres Strait Islander craft products and merchandise in the tourist trade.
- The flourishing, but still fragile, Aboriginal fine art market is arguably the most successful self-managed economic development in Aboriginal and Torres Strait Islander Communities. That success must not be undermined by new laws driven by anti-competitive motives.
- Subject to that caveat, a complete overhaul of labelling laws is essential.
- We ask the Inquiry to recommend clear, concise and comprehensive labelling requirements for souvenir products and giftware. If a product is properly licensed – with royalties going to the artist, but manufactured overseas, this should be very clearly stated on the packaging and maybe product (tag) itself. If the product is manufactured in Australia, or hand made by Indigenous Artists, this should be clearly marked along with the appropriate Made in Australia logo.
- If the product is using designs meant to look Indigenous but not actually indigenous (passing off), or where unlicensed product such as a boomerang or didgeridoo is entirely manufactured overseas, then they should either be banned from import, or labelling made transparent, complete and accurate, and then properly enforced, as outlined above. We return to this important policy choice between total prohibition and proper licensing, properly enforced, later in this submission.

The Inquiry is to report on “inauthentic ATSI style art and craft products and merchandise”.

Even if the focus is to be on such products *in tourist markets*, it may nevertheless assist the Inquiry if we offer the definitions which AAAA take to be the working definitions used in the Aboriginal fine art and craft sector:

- Authenticity of provenance means that the origin or authorship of a work of art has been correctly identified.
- Cultural authenticity, or authenticity of style or tradition, is concerned with whether a work is a genuine expression of an artistic tradition, even when the author may be anonymous.
- A work of art may be considered an authentic example of a traditional culture or genre when it conforms to the style, materials, process of creation and other essential attributes of that genre.
- Many traditions are thought to be "owned" by an ethnic group, and work in that genre is only considered authentic if it is created by a member of that group. This may help to protect the originators of an art tradition from cultural appropriation.
- Cultural appropriation is the adoption of certain elements from another culture without the consent of people who belong to that culture.
- Cultural appropriation typically involves members of a dominant group exploiting the culture of less privileged groups. Quite often, this is done along racial and ethnic lines with little understanding of the latter's history, experiences and traditions.
- Culture is defined as the beliefs, ideas, traditions, speech, and material objects associated with a particular group of people. Appropriation is the illegal, unfair, or unjust taking of something that doesn't belong to you.
- The following links reference appropriation and protocols and recent reinterpretations of past practices:

<http://www.abc.net.au/news/2017-03-05/aboriginalia-and-the-politics-of-aboriginal-kitsch/8323130>

<https://www.artslaw.com.au/articles/entry/indigenous-protocols/>

The Inquiry will be interested to understand New Zealand's approach on the Maori souvenir market versus authentic Arts and crafts in NZ - described in the first of the following three links. The second one comments on the NZ approach to labelling. These NZ media and governmental articles seem to us to indicate that the approach AAAA is recommending reflects the apparently successful New Zealand policies and regulation

<https://www.comcom.govt.nz/dmsdocument/11579>

<http://idealogue.co.nz/venture/2009/04/kiwi-or-kitsch>

<http://www.stuff.co.nz/national/5392606/Artists-fight-flood-of-fake-Maori-trinkets>

### **More on 'Authenticity'**

There are other aspects of 'authenticity' that AAAA believes appropriate to share with the Inquiry in the hope that they will help the Inquiry better understand the complexities that need to be taken into account.

Many Aboriginal people engaged in the production of tourist product are of mixed indigenous heritage; and/or mixed indigenous heritage and non-indigenous heritage.

For example, all over Queensland, people are the descendants of those who were removed from 'traditional' communities by the welfare authority because they were considered 'trouble makers' and moved to missions like Woorabinda, Cherbourg, Doomadgee, Hopevale, Kowanyama, Lockhart River, Mapoon, Palm Island, Wujal Wujal and Yarrabah. The last of these did not cease being a 'mission' until 1987.

Here they intermarried. Many encountered trouble once more, or were moved on where they had children by others a number of times over. As a direct consequence, a

very large number of Indigenous people are of mixed indigenous blood and their descendants can claim the right to paint in many different 'authentic styles'.....hence artists that mix up dots and various clan patterns and crosshatching in their works.

These artists feel the direct brunt of suggestions by 'pure bred' Aboriginal people who complain that their imagery is being 'appropriated' or used inauthentically/inappropriately. They suffer the added disadvantage that their own cultural background has been compromised due to the breakdown of cultural and ceremonial practices in their mixed blood communities, with all the attendant problems of societal breakdown.

This is mirrored in other States.

### **Term of Reference 3 - Prevalence of inauthentic ATSI style art and craft products and merchandise in the market**

A proper understanding of the prevalence of inauthentic ATSI style art and craft products and merchandise needs to begin by defining what market segment is being considered.

In broad terms, what happens in parts of the tourist souvenir segment does not happen in the fine art and craft segment.

In the tourist, giftware, manufactured souvenir segment, and if the distribution channel is via retailers in the recognised tourist centres of activity who are not members of AAAA, or signatories to the Indigenous Art Code, or not otherwise ethical traders, then AAAA accepts that inauthentic and unlicensed manufactured product is perceived to be present to a material degree.

We note that IAC's and Arts Law's recent check of an (undisclosed) number of retailers in major tourist centres indicated that (up to) 80% of the products on sale could be described as 'inauthentic'. AAAA takes that to mean that the souvenir products were not produced by aboriginal artists, or not produced under proper licensing arrangements with the appropriate Aboriginal interests, but were being offered for sale to tourist consumers on the false basis that the product was made by an Aboriginal, or properly licensed. We also assume that existing 'country of origin labels' are being removed or otherwise hidden from customer view.

There are two separate markets here: one involving people willing to pay premium prices for authentic art works, and one involving low cost souvenirs where authenticity is not a significant issue. It raises the question does the latter market really diminish the former?

Authentic Aboriginal Fine Art and Craft are constantly under threat from low cost imported souvenirs. ATSI style art and craft products and merchandise are tainted by 'copycat' importers. Rising demand for souvenirs stimulates the supply of cheap imports which impacts on the cultural integrity of authentic locally made or licensed Aboriginal arts and craft products and merchandise.

Part of the tourist experience is to purchase a tangible souvenir which will be a reminder of their holiday. Often multiple purchases will be made for friends and family back home. The low cost imported souvenirs are very appealing to the price sensitive tourist.

The proper labelling of authentic Aboriginal art or merchandise, whether made offshore or locally, can in AAAA's opinion, satisfy the demands of the souvenir market as well as maintain and improve a royalty based income for indigenous artists.

## **An overview**

Previous reviews and reports, together with AAAA's own observations indicate:

- Manufactured products have been and remain a significant component of the final value of the Aboriginal Arts Industry.
- Manufactured product is produced by Aboriginal producers; joint ventures between Aboriginal and non-Aboriginal producers; and by non-Aboriginal producers.
- In each case, there is authentic and inauthentic, and licensed and unlicensed manufacture.
- Given the significant size of this sector of the industry, it is understandable that:
  - Aboriginal interests want a larger role in it, especially of the profit captured by unlicensed non-Aboriginal manufacturers, whether in Australia or overseas.
  - Profit making, based on imitations and unlicensed reproductions of Aboriginal cultural products is rightly and universally seen as offensive.
- There is concern in the art world about imitations of regional Aboriginal art styles, such as western desert pointillist decoration, western Arnhem Land mimi

art and eastern Arnhem land cross-hatching. Successful prosecutions of copyright infringers may have *increased* stylised and generic imitations, with such ‘borrowing’ used by both Aboriginal and non-Aboriginal imitators, generally in the manufacture of cheap tourist product. See Janke, T. 1999. *“Our culture: Our Future. Report on Australia’s Indigenous Cultural and Intellectual Property Rights.”*

- An important learning from the NIAAA scheme is to not ignore that Aboriginality is not synonymous with authenticity. Given the enormous variability in, and ownership of, regional art styles, it is quite possible for an Aboriginal artist to produce an item that is not ‘authentic’ (as documented in the 1989 *Review of the Aboriginal Arts and Craft Industry*, Department of Aboriginal Affairs).
- There is lack of correct information provided to the consumer in the tourist markets, not the fine art segment.
- There is deceptive information provided to consumers in tourist markets.
- However, AAAA do not want obstacles that disrupt opportunities for Indigenous people and discriminate against their rights to make an income from fair and commercially acceptable agreements.

The following example uses a recent event to demonstrate AAAA’s views about the marketing of a ‘boomerang’ by an international retailer. We offer this example to show the Inquiry how AAAA treated this instance, in the hope that doing so informs the Inquiry about how this worked in practice.

#### Example 2.

The Chanel boomerang touches on many cultural and sensitive boundaries. The boomerang is an artefact representing many traditional cultures, including Australia’s Indigenous cultures. Fortunately, the product bore no sacred iconography and Chanel has not tried to leverage Aboriginal mythology or dreamtime. We did not recommend to members that AAAA demand that Chanel apologise, or recall the product. We invited Chanel to engage in dialogue with relevant organisations, including commercially and culturally aware bodies such as AAAA, to better understand why this representation is culturally offensive and insensitive to Indigenous Australians.

## **Terms of Reference 2, 4, and 5 - Promoting authentic product, restricting inauthentic product, and licensing arrangements**

Determining the correct option for promoting authentic product (or for restricting inauthentic product) should begin by being clear about ‘what products’ in ‘what markets’.

AAAA submits that the Inquiry should recommend that Government should focus its policy and regulatory attention, and its limited resources, on fixing problems with manufactured products in the tourist souvenir market.

In that product market, AAAA sees the main option as a mix of well-designed and well-resourced law and consumer and trade education (especially traders/retailers) aimed at prohibiting the unlicensed reproduction of Aboriginal imagery and the production and marketing of inadequately labelled ATSI style souvenirs.

Any such new law, however, will need to be carefully crafted in strict compliance with the Commonwealth Government’s own Best Practice Regulation Rules, particularly in respect of wide industry consultation, if it is to succeed in helping Aboriginal artists and ethical dealers working with those artists.

We know this because several AAAA members, both artists and galleries, have already been damaged by misconceived ideas in material published by the Indigenous Art Code Ltd. and others in support of the campaign against “fake art”. As indicated earlier in this submission, the souvenir market and merchandise is *not* art. This misleading language succeeded in attracting attention to an important issue, but damaged and is still damaging customer confidence in the Aboriginal art sector. We ask the Inquiry to recommend the removal or modification of such clumsy language.

To support that request, we offer the further explanations:

*Art can be defined as the expression or application of human creative skill and imagination, typically in a visual form such as painting or sculpture, producing works to be appreciated primarily for their beauty or emotional power.*

Posters and objects representing reproductions of famous art works, sold in museums, are not works of art in themselves, but may be reproduced with

permission from the artist, estate, or gallery. Any reproduction of an artist's IP does not represent an artwork per se, but may not be illegal.

Tourist souvenirs and merchandise which reproduces indigenous iconography should not be sold as works of art, (otherwise viewed as fraud), and should seek permission to reproduce iconography– otherwise viewed as appropriation.

The “Fake Art” campaign materials implied that product not made by an Aboriginal art-centre was ‘fake’, and recommended customers purchase only from an Aboriginal art-centre. This damaged aboriginal artists working independently of art centres as well as dealers and commercial galleries supporting those artists.

AAAA invites the Inquiry to recommend that all industry participants' perspectives are properly considered. The design of an effective education, monitoring and compliance regime will be critical to the success of any form of authenticity labelling or certification. The necessary market knowledge and industry experience must be engaged properly in the decision-making, at the design stage. This can be done by talking to people, including the AAAA, with the appropriate marketing experience, people who understand aboriginal art practice, people who understand who buys Aboriginal art and craft, people who understand how Aboriginal art and craft comes to market, and people who understand Aboriginal art customers.

To the extent that the Inquiry wants to address Aboriginal Fine Art and Craft, it should recommend that the optimal way to drive authentic content and ethical practice is by continuing to use the power of properly informed, confident consumers. That remains the correct principle. But current practice needs significant reworking, especially by improving the effectiveness of the IAC and its bias towards community/art centre only based art production.

But relying on well-informed consumers won't be a complete answer in the tourist art, craft and merchandise market. The information going to tourists about what questions they should be asking and why they should buy from IAC signatories, or AAAA members should be improved. But, even with proper information delivered at the right time to tourists, more needs to be done in respect of existing retailers and their purchasing agents.

When it comes to improving the behaviour of at least some retailers in the tourist market, AAAA assumes that a mix of new law, better education, and stronger

enforcement, even of existing laws and regulation is required. Stronger enforcement is the key. We see this as mostly a resourcing issue for Government, not a 'new law' issue.

'Authentic art' education needs to focus further up the supply chain, not just the end user. The retail Purchasing Managers/buyers have the power to control what lands on the retail shelves for the consumer (end user) to purchase. By educating this segment of the industry we will see less inauthentic souvenirs in the marketplace.

How to execute this? One option is for the IAC to be more effective, to expand focus beyond artists, dealers and consumers and to increase its appeal to manufacturers, distributors and retailers of souvenirs – this will increase pressure on this segment of the industry to adopt Best Practice. However, the IAC Board does not currently have the representation from the sector it would be trying to influence. In any event, necessary steps won't be sufficient unless supported by proper enforcement. Proper enforcement will become more likely given that it will be focused on the narrow segment that has the material inauthenticity problems.

On the practicalities of import prohibition, our view is that it is not feasible to monitor imports. Customs do not have the resources or time to inspect every container. We say that is another reason why the aim should be to disable these importers by educating the retailers and potential consumers. We consider other problems with the notion of prohibition at page 15.

### **Other factors to take into account for promoting authentic content, and ethical conduct**

These factors have been distilled by AAAA members over many years:

- Not all content is produced in remote areas; remember urban Aboriginal artists.
- Develop Aboriginal artists through funding of the grass-roots at the studio level, whether art-centre, private dealer, or independent artist with their own studio.
- Encourage and assist the sector to develop a fully functioning 'whole of arts industry organisation' to promote all Aboriginal art and artists, whether inside or outside the art-centre model.

- Stop funding grass-roots production for production's sake. This policy generates overproduction, often of questionable financial or cultural value, which feeds into consumer suspicion and indifference.
- Get serious about making proper use of the currently underutilised commercial knowledge and experience to build a financially sustainable sector. Instil basic doctrine and discipline.
- Government funding and subsidisation should not continue to be the main game for recipients. Funding should become focussed on growing consumption, not production
- Insist that funding recipients have identified, monitored, and enforced steps to financial sustainability
- Stop the 'them' and 'us' rhetoric, and focus on art and the artists. Certain art-centres, and the bodies funded by government to represent them, have taken 'competitive conduct' to mean bagging their (usually private sector) competitors. This is an illustration of the poor marketing analysis and conduct by too many art-centres. One effect is to drive down consumer confidence, and demand. It is not a productive way to better inform customers and potential customers, or to make better Aboriginal art.
- Individual, independent artists deserve to be properly rewarded for their work.
- Current industry structure is underperforming because of the ideologically driven motives and misguided actions of some. This partly explains why retailers in the tourist markets don't yet see the IAC Code of Conduct as applicable to them or the products they sell.
- We ask the Inquiry to endorse recent efforts by the Dept for the Arts to assist the sector to complete the Task the Senate Inquiry in 2007 correctly identified. The sector needs a 'safe place' to talk to each other, including on how to improve current regulation, and current attempts to educate consumers why buying from IAC signatories, or AAAA Code of Ethics signatories, or other ethical businesses, is the best way to grow a vibrant, healthy, sustainable and inclusive Aboriginal art industry. This discussion on intelligent regulation could include whether it is feasible to have a licensing system for ALL dealers of ALL Aboriginal art, craft, and merchandise, in ALL market sectors.
- The task of building a well-governed, well-funded body that properly understands and represents all sectors of the Indigenous visual art and craft industry is still a work in progress. This body would then be able to discharge the responsibilities identified by the 2007 Senate inquiry. The Senate identified the right solution, even for dealing with inauthentic ATSI style art, craft products and merchandise.

But creating that whole of industry body as the best way of managing the problems, remains to be completed.

- Government funding should focus on consumption, not production. On 'demand', not 'supply'.

## **Protecting Aboriginal artists by protecting the viability of tourist retailers**

Another factor to consider is the matter of the viability of tourist retailers.

For the following reasons, the likely result of any law that *outlaws* inauthentic tourist product will be an appreciable decline in the viability of retail gift and souvenir shops, thereby hurting the very artists we are all trying to protect. It is a complicated scenario.

You can't get an Aboriginal person to make and paint a didgeridoo for under a minimum of \$200. This needs to sell for close to \$600 including GST through a high visibility tourist location.

A didgeridoo made by a non-indigenous workshop and painted by an Aboriginal artist wholesales for a minimum of \$150 to the retailer and retails for around \$400-450.

No Aboriginal people make a didgeridoo that can be retailed for a price of between \$40 and \$160, but these sell every day of the week in many locations. This is a big factor in enabling them to remain profitable and stay open.

This holds for licensed and manufactured products. They fill price points that genuine Aboriginal products don't and never will. Not every tourist is willing to pay a premium just because it is made by an Aboriginal person.

That's why (properly enforced) accurate labels that specify 'Aboriginal made', 'Aboriginal designed', and 'not made or designed by an Aboriginal person' make more sense than banning inauthentic tourist product altogether.

Every tourist shop forced to close its door is another outlet lost to Aboriginal artists looking to sell their genuine product.

## Concluding Remarks

Any scheme seeking to identify authentic product and hoping to remove culturally inappropriate product from any part of the art and craft market must, if it is to succeed, be designed, supported and promoted by a broad industry alliance.

To be effective, it must become synonymous with branding that customers can trust and seek out because it guarantees that Aboriginal artists will benefit.

It must be practical, enforceable, and designed in such a way that the consumer is not turned away from Aboriginal art or craft because it is perceived as too problematic.

The Department for the Arts' advice to the 2007 Senate Inquiry is an apt summary:

The label [in 1999] 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."

Apart from not *expressly* recognizing the critical importance of private dealers and galleries in garnering 'broad sector support', the Department's recommended way forward was correct then, and still is.

We ask the Inquiry to recommend that the Department continue its welcome and useful recent efforts to bring the privately financed and publically financed parts of the Aboriginal Arts sector closer together to improve the reach and effectiveness of what is currently the best option for addressing ethical conduct across the sector – the Indigenous Art Code.