



Culture First.

Supporting Aboriginal
Art Centres of
Central Australia

**Desart Submission to the Productivity Commission
Issues Paper: Aboriginal and Torres Strait Islander
visual arts and crafts**

December 2021

Background

Desart is the peak arts industry body representing 37 independently governed Central Australian Aboriginal art centres. In 2021, the Desart membership represents more than 11,000 artists, whose first language is one (or more) of the 16 distinct First Nation languages spoken in Central Australia.

Desart member art centres are located in the southern portion of the Northern Territory, the APY Lands of South Australia and extend into the Ngaanyatjarra Lands of Western Australia and beyond. Desart member art centres are community-based arts businesses, owned and governed by Aboriginal people, for which they are a vital source of economic, social and cultural benefits.

Established in 1992, and incorporated in 1993, Desart is governed by a 10 member Aboriginal executive committee elected from our art centre membership. We currently employ seven staff, servicing members across an area of 1.221 million square kilometres. For almost 30 years, Desart has delivered programs that respect and protect the unique cultural integrity of First Nations creativity and cultural expression.

Desart has two core functions: to provide a collective voice for art centres and advocate on matters of shared interest, and deliver programs that build strong business practice, improve infrastructure, support governance and promote Aboriginal art and culture.

Our programs are designed and delivered on the principle of ‘culture first’ and industry best-practice, through rigorous and ongoing consultation. Each art centre has its own set of governance and business needs, opportunities and challenges. We emphasise collaboration with our membership and key industry stakeholders, including arts and Aboriginal community organisations, business, government(s) and industry professionals.

Desart has unique and essential insights into the cultural, community, economic and industry drivers that have made the art of Aboriginal and Torres Strait Islander people an internationally recognised phenomenon.

Introduction

Desart welcomes the Productivity Commission's study of Aboriginal and Torres Strait Islander visual arts and crafts. Desart acknowledges that this study is being undertaken during a complex time for the sector. There have been a range of initiatives and interventions from governments and funding agencies recalibrating their support for the sector, and while broadly welcomed, these are taking place during the significant and ongoing uncertainty caused by the COVID-19 pandemic and its impact on the art market and – crucially – on the wellbeing of remote communities.

This submission sets out Desart's response to the questions raised in the Issue Paper released by the Productivity Commission in September 2021. Further, this submission builds on information and advice already provided by Desart to previous inquiries and research projects; these can be sourced on Desart's website: <https://desart.com.au/publications/>. Additionally, Desart publishes an annual report that provides a snapshot into the sector; these have been supplemented by two reports that have taken a more detailed look at the impact of COVID-19 on sales and participation.

Response to questions

1. What is this study about?

What issues should this study focus on?

Given the number of previous inquiries into the Aboriginal and Torres Strait Islander visual arts and

crafts markets, what are the main contributions this study can make?

Desart believes the additional issues to those identified in this submission are that a deeper and more comprehensive understanding of the gallery and retail/wholesale sections of the supply chain – the loosely defined ‘secondary market’, including the production, manufacture and sale of art and craft products as well as more traditional works of fine art, such as paintings. Included in this is an attempt to assess the scope and scale of inauthentic product that is made and sold.

Additional focus areas for the study recommended by Desart are:

- ▶ Analysing the impacts, opportunities and barriers created by potential import restrictions on all ‘Aboriginal and Torres Strait Island style’ products.
- ▶ The behaviour, preferences and biases of consumers of Aboriginal and Torres Strait Islander art and craft.
- ▶ Return on investment from government support of the Aboriginal and Torres Strait Islander sector and its impact on individual and community wellbeing.
- ▶ The impact and costs/benefits of a longer-term consumer awareness initiative that informs and educates buyers. What lessons have been learned from any similar campaigns, nationally or internationally?
- ▶ The scope and scale of domestic sales vs international sales of Aboriginal and Torres Strait Islander art and craft.
- ▶ A comparison of the scope, scale and supply chains used by the fine art and souvenir/merchandise markets.
- ▶ Analysis of the volume/value of inauthentic/imitation products and of the benefits that could be generated if these were displaced by genuine products.
- ▶ The number and distribution of non-art centre Aboriginal and Torres Strait Islander artists, and, where possible insights into the supply chain they participate in. The issues facing independent Aboriginal artists is most acute in Central Australia; consequently, Desart recommends that such research be located there.
- ▶ The scope and scale of the Aboriginal and Torres Strait Islander art market as a proportion of the overall art market in Australia.
- ▶ Opportunity cost to the sector from the lack of coordination between levels of government and different government agencies.

2. The markets for Aboriginal and Torres Strait Islander visual arts and crafts

Have we characterised the markets accurately? Are there any aspects of the supply chains that we have missed?

In addition to the sources listed above, what other data sources are there on the size and value of the overall market or parts of the market? What shares of income flow to artists, art centres, galleries, dealers, manufacturers, wholesalers and retailers?

What information sources can we draw on to examine how many independent Aboriginal and Torres Strait Islander artists operate in the markets, including those in urban and regional areas? What information is there on how independent artists make their works, bring them to market and make a living? What data is available on production and sales of souvenirs and other merchandise (licensed or otherwise)? We know that some Indigenous-style arts and crafts are produced and sold without the authority of Aboriginal and Torres Strait Islander artists and communities. How can we estimate the extent of this type of market activity?

In general, Desart agrees with the Productivity Commission's characterisation of the overall market for Aboriginal and Torres Strait Islander art in Australia. However, Desart would encourage the Productivity Commission to undertake nuanced and fine-grained analysis of the art market as there are significant regional variations across the art centre network.

Similarly, there are a spectrum of practices and attitudes throughout the commercial art market supply chain. Understanding and analysing these are crucial in responding to a complex situation in a comprehensive way.

As set out above, Desart, is the peak body for Central Australian art centres. As such, we have detailed and encompassing knowledge of the issues facing art centres as they engage with the commercial art market and look to provide professional opportunities for artists. Additionally, Desart's location in Alice Springs means the organisation is aware of some issues facing independent artists. However, Desart has no direct engagement with the commercial and secondary art sectors. We would encourage the Productivity Commission to explore possible data sources for these sectors – many claims have been made about the scale and nature of the secondary art market, but Desart is not aware of any that are evidence-based.

In all instances, Desart's work is informed by consultations with artists and art centres. The voice and aspirations of artists and their enterprises shapes our work. As such, Desart can provide information on the scope and scale of art centres in a way that reflects the cultural and creative priorities of its members.

3. The role of governments

How effective are government investments in independent artists and artists working with art centres, such as grant funding programs administered by the Australia Council and State Governments?

How effective are programs administered by the Office for the Arts and State Governments to support art centres?

How can government programs be improved?

The Federal Government's Indigenous Visual Arts Industry Support (IVAIS) program is crucial to the vitality and diversity of the Aboriginal and Torres Strait Islander art sector. It is long-running, highly regarded and, Desart believes, an extremely effective investment into the sector. While there remain calls for IVAIS to provide new and/or additional resources, the strength of the program is its uncomplicated commitment to supporting the core operations of art centres and initiatives in every Australian state and territory.

Desart believes that IVAIS represents an extraordinary return on investment for the Federal Government; for a modest level of industry assistance, around 80 art centres are supported, directly improving the livelihoods of around 20,000 Aboriginal and Torres Strait Islander people, the majority from very remote areas that have extremely limited economic and professional options. Without IVAIS support, many remote communities would not have an art centre, thereby losing their only source of non-welfare income, their only means of self-employment, their only small business, their primary social hub and a vital means of engaging their youth to value and maintain cultural practices.

Further, IVAIS funding has been instrumental in supporting important initiatives that have kept the sector at the forefront of creative innovation and community development, including art fairs, the Indigenous Art Code, Arts Law and the deployment of the industry-standard SAM database. The public face of these many, inter-related and often complex factors is the vibrant and distinctive Aboriginal and Torres Strait Islander art that is showcased at events small and large, and often used as a marker of Australia's national identity.

Desart has previously – and continues to – advocate for a dedicated infrastructure fund, as an extension of the current IVAIS funding. Capital works are a significant and sustained challenge for remote area social enterprises and a tailored program of vision and scale will multiply the operational investments already made.

Central to the functioning of any future infrastructure fund is coordination between layers of government and between different agencies. This coordination is something that Desart would strongly encourage for all areas where art centres and government intersect. Desart believes art centres have suffered significant and long-term missed opportunities by poor communication and coordination of government services.

Desart welcomes the new National Indigenous Visual Arts Action Plan and the increased investment and policy focus it appears likely to trigger. However, Desart has some concerns about the ability for the Plan to create genuine and lasting impact at the art centre/community

level – something Desart believes should be the key performance measure of the Plan’s effectiveness. On a simple level, operational focus – the single most important element of the Federal Government’s support for the sector – is static. Similarly, the Aboriginal Arts Worker component is not responding to art centre needs.

While independent artists are beyond Desart’s immediate remit, we are aware of the complex zone in which many of them work in Central Australia. As a point of equity, some structured interventions and support for these artists, starting with a deeper understanding of their circumstances is called for.

Overall, Desart believes the Australian Government has the authority and resources to support more actively in the following areas:

1. Strengthen the art centre ecosystem

Government policy can assist the community art sector economy by greater support and resourcing of art centres and the peak bodies that support them. In particular, targeted resourcing for business development of sustainable ethical licensing models of Aboriginal art for merchandise and souvenirs would directly boost the ability of art centres and the artists they represent to develop product to meet local and tourist demand for Aboriginal and Torres Strait Island craft, merchandise and souvenir product. It would assist art centres to diversify from the current predominant reliance on the fine art market into commercial homeware and merchandise, tapping into existing demand and enabling business growth less reliant on individually produced items.

In consultation with our membership, it has been identified that there is reluctance in art centres to enter the merchandise and souvenir sector even though it has the capacity to generate long term growth and employment. Art centres require support to develop marketing plans, identify ethical partners, secure initial investment and acquire appropriate skills. To maximise the opportunities presented by ethical licensing and to make it sustainable, thoughtful and strategic investment is needed. Such investment should be across the sector and long-term in nature. Desart acknowledges that across different government agencies some support already exists (e.g., business development through relevant government departments), but these may not be targeted to social enterprises or delivered in a way that is accessible to remote area and under-resourced organisations. A coordinated, sustained and multi-disciplinary approach is essential to maximise commercialisation and product innovation by artists and art centres.

2. Best Practice Procurement and Preferential Dealing

Desart recommends that a proposal be developed for a thorough and best practice approach to procurement of Aboriginal and Torres Strait Islander art products. Such a government-mandated approach for all government departments and government operated or funded businesses, as well as all businesses operating on Commonwealth owned property (such as retail outlets in airports and national parks) would have a profound impact on the production, sale and perception of Aboriginal and Torres Strait Island art products. It is anticipated that state/territory and local governments would follow suit.

The features of such a protocol would vary depending on the nature of the relevant entity (whether collecting institution, government body, government lessee) but could include:

- ▶ Where the public is provided with Aboriginal and Torres Strait Island art works and related merchandise, responsibility only to provide such product if it is ethically sourced and produced.
- ▶ All Indigenous art or products for sale or display to be sourced from Indigenous suppliers or companies with valid licence agreements in place.
- ▶ An Indigenous Advisory Committee to advise on the acquisition and licensing of artwork.
- ▶ Commitment to ensure that licence fees are paid to all artists whose work is reproduced.
- ▶ Membership of the Indigenous Art Code and adherence to its principles.
- ▶ Staff training to understand the importance of sourcing genuine product and to recognise product which is not genuine.
- ▶ Educating visitors and purchasers about the significance of Australia's unique Indigenous cultural heritage and the importance of authentic cultural experiences and products.

Desart also proposes that all businesses contracted by or on behalf of government to produce Australian merchandise to promote tourism or sporting events (such as the Commonwealth Games) as well as any tourism activities funded or supported by Tourism Australia, or its state/territory equivalents be required to use Aboriginal or Torres Strait Island artwork for at least 50% of such promotional activities and that such product must be authentic and ethically sourced.

Australia is proud of its unique Indigenous cultural heritage and the government can show leadership by ensuring its survival through ethical procurement policies supporting authenticity.

3. Showcase Aboriginal and Torres Strait Islander art internationally

Strengthening the appreciation of overseas markets and collectors for Australia's unique Aboriginal and Torres Strait Islander art has flow-on effects that strengthen the sector domestically and contributes to visitors to Australia developing enhanced appreciation and understanding of the significance of engaging with authentic cultural experience.

Desart recommends greater government support for art centres and local galleries to participate in overseas exhibitions at prestigious public and commercial galleries to showcase Aboriginal and Torres Strait Islander art. Desart would like to see greater representation of Aboriginal and Torres Strait Island art at international art fairs such as those in Basel, Hong Kong and Miami. This is only possible with financial support.

4. Educate buyers and increase public awareness

A broad-based public education campaign to raise awareness both in Australia and overseas of the significance of Australia's Indigenous cultural heritage and the unique value of the authentic cultural experience is vital.

Desart emphasizes that a public education campaign on its own is unlikely to create significant change. Such a campaign must be part of a total approach including measures to prohibit dealing in inauthentic product and measures to support those producing authentic product.

For further details, see the [Desart Submission to the House of Representatives' Inquiry into the growing presence of inauthentic Aboriginal and Torres Strait Islander "style" art and craft products and merchandise for sale across Australia](#). November 2017

4. What is (in)authenticity and how is it determined?

What constitutes authenticity? When does it matter?

What criteria should be used to determine authenticity?

Who should have the authority to make judgments regarding the authenticity of Aboriginal and Torres Strait Islander arts and crafts?

What processes should there be for artists to obtain permission from the relevant cultural authorities when needed?

Authentic Aboriginal and Torres Strait Island art and craft products can be defined as artworks, craft items and artefacts which are the legitimate expression of Aboriginal and Torres Strait Island culture. This means that the 'author' or 'creator' **must** be an Aboriginal or Torres Strait Island artist or group of artists.

Authentic art and craft products can range from manufactured products, small handmade baskets and wooden carvings through to a significant collaborative painting or large-scale multimedia installation. Regardless of the size or scale of the art or craft product, to be authentic it must have:

- ▶ Been created by Aboriginal or Torres Strait Islander artist/s or craftspeople, either individually or collaboratively.
- ▶ Been decorated by Aboriginal or Torres Strait Islander artists or craftspeople, either individually or collaboratively.
- ▶ Ethical licensing arrangements in place with the Aboriginal or Torres Strait Island artists and craftspeople who created the original version for any merchandise and other reproductions of such art and craft products.

In Desart's view, there is no need to complicate the definition of Aboriginal / Torres Strait Island art and craft by reference to a certain visual style or technique or source of creative expression. If the work is the original creative expression of an Aboriginal or Torres Strait Islander person, then it is authentic Aboriginal or Torres Strait Islander art. To argue otherwise prevents the dynamic evolution that is the hallmark of the development of contemporary Aboriginal or Torres Strait Islander art.

It is simple: authentic products are those made by Aboriginal and Torres Strait Islander peoples. This includes reproductions of such products made with the permission of the original creators.

5. What are the effects of inauthentic arts and crafts?

What are the negative effects of inauthentic art? Do they vary between different types of misuse or inauthentic product? What does respectful, meaningful and mutually beneficial collaboration across different cultures look like?

Inauthentic art and craft, or more simply 'fake art', is essentially theft of culture. Jane Young, artist at Tangentyere Artists, Mparntwe - Alice Springs and former Desert Chair explains:

Our art is who we are ... it helps us carry our culture from the past, to now and into the future for our children and grandchildren. The stories we paint are from our grandmothers and grandfathers and theirs before them. We must pass this on to our grandchildren, so they can know who they are and be strong and proud Aboriginal people - the first people from this land. Our art is about where we come from, our apmere [land} and our atweye [family} - it belongs to us and our atweye - no one can take this away from us - it doesn't belong to anyone else but us.

It hurts us when people make fake Aboriginal art because that breaks our Law, our rights to our apmere and our atweye. When Aboriginal Law and our Ancestors are disrespected we feel terrible pain and fear for ourselves and our families. We don't know how to make it right, to heal the pain and protect the Law again, unless we get support from the wider community in solving this problem.

In the old days we painted on our bodies, on the ground and in caves - we still do this today, but we also paint on canvas and make all kinds of art in our art centres. In this way we are able to earn money that supports our atweye but also its another way we can share our culture with our young ones and other people from across Australia and the world.

Our art is altyerre [creation of] our culture, painting, dancing and singing, it is all part of our altyerre and this makes us strong. We must keep our culture strong because that is what makes our art strong and makes us strong. (from Desert Submission to the House of Representatives Inquiry)

Desart has previously conducted a survey of its member art centres (accounting for approximately 40% of all remote Aboriginal and Torres Strait Island community art centres in Australia) which confirms that 'fake art' has a negative impact on Aboriginal or Torres Strait Islander artists culturally and economically.

The survey results reveal that:

- ▶ 80% of respondent art centres had not seen the work of their own member artists appropriated or copied suggesting that the best practice, culture first approach of the art centre model does provide strong protection for their individual artist members against exploitation. Desart believes that Aboriginal artists living in remote Australia whose art

is most often the direct target of unscrupulous operators are those without the protection of an art centre.

- ▶ Over 90% of art centres and the artists they represent have been adversely affected, with the three most significant impacts of the widespread availability of inauthentic product being:
 - Over 60% finding it harder to compete in the market due to the prevalence of lower priced inauthentic product with one respondent explaining "the sale of fake art products makes it harder for traditional artefacts to compete as our scale of production cannot match mass produced items in price or volume".
 - Over 50% finding it more difficult to get access to retail and wholesale outlets
 - Over 50% reporting that their artists were distressed and upset by what is seen as a gross lack of respect for their culture not only by those that sell such products but by the lack of any government response to protect them. As one respondent explained "artists are often unaware of how their culture is being abused and are livid when they find out. It creates disengagement. It is destructive to their career development, especially longer term."
- ▶ Over 25% of art centres had made a deliberate choice not to engage in third party licensing of artwork for fear of competition with inauthentic work.
- ▶ Over 90% of art centres felt that many consumers were unable to distinguish between authentic and inauthentic product and over 80% believe that many consumers do not see the value in authentic product if a cheap alternative is available. In Desart's view, these responses refer principally to consumers in the souvenir and merchandise markets rather than the fine art market; however, it is also true of paintings and fine art sold in retail outlets other than art centres and established commercial galleries - such as pop-up auctions, online and in souvenir shops.
- ▶ While over 80% of art centres were interested in undertaking third party licensing to produce merchandise and homewares (77% interested in producing textiles, 55% in homewares, over 40% interested in creating jewellery and stationery), they are hesitant to develop these new businesses out of concerns about the risks of engaging in third party licensing of artwork on merchandise and souvenirs in a market flooded with cheap fake product. 80% identified that knowing who to deal with was a threshold barrier - is the manufacturer ethical or not and will copyright be respected?

6. What policy options are there to address inauthentic arts and crafts?

How effective have previous initiatives been at reducing the incidence and negative effects of inauthentic art? What gaps and problems have they encountered? When are approaches to verify or demonstrate authenticity inappropriate?

What else could be done to increase consumer awareness and demand for ethically produced art?

Would further education campaigns be effective? What about labelling schemes or requirements?

What are the limits of the existing intellectual property protections? How can existing intellectual

property laws be amended to improve protections for Indigenous Cultural and Intellectual Property, or do we need standalone legislation?

What are the merits of, and concerns about, amending the Australian Consumer Law to prohibit the sale of inauthentic arts and crafts? Are there more effective ways to restrict the supply of inauthentic arts and crafts?

What have been the barriers to implementing any of these initiatives to date?

What can we learn from other countries' efforts to protect First Nations people's legal rights over their arts and cultures?

Desart, in collaboration with other agencies, has strongly and consistently defined the issues facing art centres and the barriers to change and growth in the sector. Central to Desart's advocacy is the importance of a multi-layered response, delivered by different agencies and coordinated to address the complex, cross-cultural environment in which artists and art centres operate. No single policy or legislative change will be sufficient; a sustained program that works with grassroots organisations (art centres and their peak bodies) through to nationally focussed entities such as ACCC and other compliance bodies can significantly change the dynamic around 'inauthentic' art and craft.

As an example of what is possible, in this section we will cover the current legal framework and highlight the Desart Digital Labelling Pilot Project. While this project is only working with a selection of art centres, it is an example of art centres being part of the change they wish to see in the sector more broadly.

The current legal framework relied on by Desart and its members to protect the supply of authentic art product is based primarily on contract, copyright, moral rights and the Australian Consumer Law. Desart's member art centres take care to respect the legal rights of the thousands of Aboriginal artists they represent by adopting best practice in all their dealings. They use legal contracts to make sure that the terms on which sales are made are clear and agreed, written copyright licences are put in place to deal with all reproductions for merchandise or other publications, and respect for moral rights (crediting the artist and respecting the integrity of the work) is embedded both in practice and in all contracts.

This legal framework operates in the context of a commitment to best practice - the bedrock of which is a deep respect and understanding of the cultural practices and traditions of the Aboriginal peoples and communities to which the artists belong.

This cultural framework is consistent with the principles of cultural respect set out in the [Australia Council Protocols for Using First Nations Cultural and Intellectual Property in the Arts](#) which has been available since 2002 and is now in its second edition, and the standards of the Indigenous Art Code which was launched in 2010 and grew out of the recommendations of the 2007 Senate Inquiry Report: Indigenous Art- Securing the Future. All art centres also have access to best practice legal advice from the Arts Law Centre of Australia through its Artists in the Black program as does Desart.

Best practice in the legal and ethical conduct of the business of selling Aboriginal art and merchandise is the foundation of the support provided by Desart to its members. Desart is guided by its values of culture first, diversity, autonomy, consultation and ethical transparency.

The difficulty is that while these laws and protocols provide a practical working framework for businesses committed to ethical conduct, they are woefully inadequate to deal with the businesses who compete with our members by supplying inauthentic product and have no interest in best practice. Currently:

1. Copyright law treats artwork by an artist who died more than 70 years ago as in the public domain so does not protect the images of Australia's ancient and extraordinary rock art which is sacred to Australia's first peoples. It arguably prevents certain unauthorised reproductions of contemporary works but does not prevent the appropriation of Aboriginal iconography and symbols. It doesn't prevent fake artworks 'in the style of' certain artists which are not direct copies. As the onus is on the artist to pursue and prove infringements, this requires legal representation and court proceedings which are beyond the means of our members - the support provided by the Arts Law Centre does not extend to pursuing legal proceedings.
2. Contract law is often used as a weapon against Aboriginal artists. Unscrupulous dealers hold up a signed piece of paper to justify their actions in purchasing or reproducing the work of vulnerable artists on terms that grossly undervalue the work and permit conduct which doesn't meet even minimum standards of ethical dealing. Artists often do not understand the document and have no access to legal advice before signing. Usually, the artist has no copy of whatever they have signed and is effectively deprived of any legal redress at the first hurdle due to lack of evidence.

Alternatively, there is no written document just assertions that an artist 'agreed' and accepted 'payment' of some sort and so has entered a binding legal agreement. Aboriginal artists who are economically and socially vulnerable - true of many artists living in remote Australia - are not able to disprove the legal claims made by those exploiting them. Again, the onus is on the artist to seek a remedy with the practical result that such behaviour is unchecked.

3. Australian Consumer Law prohibits misleading and deceptive conduct in trade and commerce. Our understanding is that dealing in Aboriginal looking artworks or products is not unlawful if the word "Aboriginal" is not used in the marketing. Certainly, the proliferation of souvenir businesses selling fake souvenirs sometimes adjacent to genuine (usually more expensive) Aboriginal products bears this out.

The well-known example is the case of an art centre that did complain to the ACCC that an exhibition of paintings by a non-Indigenous artist described as being paintings depicting sacred Aboriginal spirit figures or Wandjina, amounted to misleading and deceptive conduct. The art centre argued that the subject matter and style of the artworks meant that the public would believe the paintings were created by Aboriginal artists from one of the three language groups which have cultural authority to depict such images. The ACCC's response was along the lines that the paintings couldn't be misleading because it was made clear that the artist was not Indigenous. Further, even accepting the images were culturally sacred, the ACCC observed that as there was no law requiring a non-Aboriginal person to obtain the permission of the traditional cultural Aboriginal custodians to paint such images, it couldn't be the case that the exhibition was misleading or deceptive - presumably even if consumers were deceived into thinking that the artworks were authentic.

The underlying rationale seems to be that as the current law in Australia doesn't prevent non-Indigenous creators making artworks or objects that 'look like' Aboriginal art, it is not misleading to do so if there is no overt claim that the creator was Indigenous. Essentially this creates an open invitation to businesses wanting to trade off the unique cultural traditions of Australia's Aboriginal and Torres Strait Island communities.

4. The Australian Consumer Law also prohibits unconscionable conduct in trade and commerce. As the 2007 Senate Inquiry report: Indigenous Art- Securing the Future shows, this has not prevented the gross exploitation of Aboriginal artists by carpetbaggers. A recent example is the [ABC's 2016 Story Hunters: Aboriginal art fraud](#) show last year where artist Brandon Porteous explains he "made the mistake of selling a couple of paintings to someone and they keep reproducing" them.

The Wandjina example above clearly highlights the fundamental problem of the current legal regime which does not provide any legal mechanism to protect the misappropriation of Aboriginal forms of traditional cultural expression except incidentally and tangentially. But this has been known since at least 2009 when Terri Janke's much quoted *Beyond Guarding Ground, A Vision for a National Indigenous Cultural Authority*, was published. There is no law which requires non-Aboriginal businesses and artists to respect the Australia's unique cultural heritage and prevents them from making and selling fake or look-alike Aboriginal items if they don't label them as "Aboriginal".

Other laws intended to protect Australia's cultural traditions and unique flora and fauna in fact positively hinder the sale and supply of authentic product enabling a further competitive advantage to fake or inauthentic product. The *Protection of Moveable Cultural Heritage*

Act 1986 regulates the export of cultural objects, distinguishing between Aboriginal and Torres Strait Island artworks and other artworks. The former requires export approval for paintings older than 20 years and valued at over \$10,000. The latter only require export approval for art over 30 years and valued at more than \$250,000.

Similarly, *the Environment Protection and Biodiversity Conservation Act 1999* (Cth) regulates the use of native species and can prevent the export of genuine Aboriginal artworks.

Article 31 of the Declaration on the Rights of Indigenous People requires signatories to "take effective measures to recognise and protect the exercise of ... rights" to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures.

Despite the Federal Government's expressed support for the Declaration, Australian law contains no general legal right of community cultural heritage, which would support a right to prevent the manufacture and sale of inauthentic product. There is no legal obligation on businesses making or selling artwork or merchandise to respect traditional knowledge which could be the basis for regulating the supply of inauthentic product. Other than laws inapplicable in this context relating to native title and protected areas and objects, there is no legal right of ownership of Indigenous cultural heritage capable of enforcement by the Australian legal system in a way which can protect our members from the unfair competitive advantages exercised by makers and sellers of inauthentic product.

In summary, the current legal framework works only to the extent it is supported by a commitment to best practice and respect for culture. Unfortunately, best practice and respect for culture are, under Australian law, optional and voluntary practices studiously and legally able to be ignored by those who make and sell inauthentic product.

Desart Digital Labelling Pilot Project Evaluation

In 2018, the Australian Government provided a \$150,000 grant to Desart to test the feasibility of remote art centres using digital labelling technology on Aboriginal and Torres Strait Islander art and merchandise, to improve customer access to information regarding authentic Aboriginal and Torres Strait Islander products. The two-year pilot initially involved three Aboriginal art centres (Girringun Arts Centre, Queensland; Martumili Art Centre, Western Australia; and Tangentyere Artists, Northern Territory) each of whom developed new label content, read via Quick Response (QR) codes, incorporated into labels placed on Aboriginal and Torres Strait Islander products. After receiving an additional grant of \$58,500 in 2020-21, Desart extended the Pilot to two additional art centres (Iltja Ntjarra (Many Hands) Art Centre and Walkatjara Art Centre, both Northern Territory).

The QR code, which links to the Stories Art Money (SAM) database (also administered by Desart), provides the consumer with immediate access to detailed information about the artist and the artwork/ product, including their story and background, as well as multiple images of the item (often taken with the artist or in the community where it was produced).

Benefits

In respect to improving consumer impact, all pilot art centre respondents reported that the pilot had had a positive impact, specifically in respect to customers:

- ▶ Understanding and knowledge of the Aboriginal or Torres Strait Islander product.
- ▶ Value and appreciation of the product.
- ▶ Engagement with the product.
- ▶ Influenced consumer choice.
- ▶ Overall retail experience or satisfaction.
- ▶ A practical tool to confirm Aboriginal provenance.
- ▶ Educates about authenticity.
- ▶ Assists in product sales management.
- ▶ Useful marketing tool, including rebranding.
- ▶ Complements and develops skills and opportunities for Aboriginal art workers.

Overall, pilot art centre respondents were less confident that the labels had:

- ▶ Influenced purchasing behaviour
- ▶ Assisted Aboriginal and Torres Strait Islander artists and producers to market their products

“QR codes are a powerful communication tool to assist people in understanding, they are extremely useful in that regard” industry stakeholder.

“I really think there is limitless potential with a QR code” pilot art centre.

Challenges

- ▶ Capacity of art centres to sustain and resource.
- ▶ Capacity of SAM and information management system.
- ▶ Constraints on Aboriginal art workers demand – skills, capacity, interest.
- ▶ Quality assurance of label content.
- ▶ Does not prevent inauthentic art and products per se - false content is still possible.
- ▶ Could create inequity between art centres/ artists.

A few stakeholders were concerned that QR codes are easy to produce and therefore easy to replicate. This perspective leads some to worry that *“if QR codes became widely used, absolutely producers of fake and unethical art would start using them too”*.

Some stakeholders also mentioned that the issue around authenticity is more about businesses that make and sell inauthentic art and products, rather than about education and changing consumer behaviour. As one art centre respondent commented: *“At the end of the day, the reality is that technology doesn’t fix the problem unless you’ve got changes to consumer laws”*.

Further, others observed that *“those who don’t care about authenticity won’t be inclined to scan a QR code”*, with the implication being that the pilot was not a *“cure all”* and other initiatives to address the inauthentic art and product market were still needed.

Overall, digital labels were shown to be a positive tool for art centres that have the capacity to implement them. It was recommended that the Digital Label Steering Committee regroup to assess which art centres can implement digital labels and assess the potential for creating inequity between bigger art centres, smaller art centres and independent artists.

The evaluation found that despite the positive impact of the digital labelling pilot, and its benefits in terms of proof of authenticity, the sale of inauthentic art and products in retail stores across Australia and widely available on the internet continues to remain a major issue for art centres and artists.

Many stakeholders emphasised the importance of changes in consumer and copyright laws, as well as of nation-wide education on Aboriginal and Torres Strait Islander culture.

The evaluation concludes that there are multiple benefits to proceeding to an expanded rollout of digital labelling, noting that any expansion would require appropriate resourcing as well as additional training and capacity building in participating art centres.

Digital labelling should not be approached as a solution to preventing inauthentic art and products, but rather as a single method for confirming and promoting authenticity. Lobbying for widespread education on Aboriginal and Torres Strait Islander art and history, as well as on consumer and copyright laws, should remain a focus.

7. What issues arise in the interactions between artists and dealers?

What do 'fair' and 'ethical' dealings between artists and dealers look like? How can best-practice ethical trade of Aboriginal and Torres Strait Islander arts and crafts be nurtured? How prevalent are unfair and unethical dealings between artists and dealers? What information sources can we draw on to estimate the scale of harmful practices? What are the merits and costs of amending the Australian Consumer Law to prohibit unfair treatment of artists? How well is the Indigenous Art Code working? How could it be improved? What are the pros and cons of moving to a mandatory code? How well are other educative and advocacy initiatives working? What limitations do these face? What else should be done?

Desart acknowledges the important role that the Indigenous Art Code (IAC), Copyright Agency and Arts Law Centre of Australia's *Artists in the Black* program undertake in protecting artists cultural, legal and financial rights. These organisations are at the forefront of addressing artists rights and entitlements, and as important partners of Desart, bring knowledge, skills and resources into our region that we do not have.

Given the scale and complexity of the industry, the differing needs and context (remote, regional, urban) of artists across the country, the need for bespoke strategies and responses to issues, coupled with an accelerating digital arts economy demands further financial investment be given to the Indigenous Art Code, Artists in the Black (ArtsLaw) and Copyright Agency to ensure communication and support to artists/art centres is relevant, timely and reflects the diverse contexts in which artists are working.

This requires more than just 'truth in labelling'. Such a solution would not be enough to ameliorate the cultural and economic harm the presence such products cause. Giving consumers a choice whether to buy authentic or inauthentic (each clearly labelled) and hoping the market will sort it out is not enough when the availability of cheap foreign made rip-offs can still entice the tourist and keep ethical merchandise at bay – the responses of the Desart survey make that clear.

Desart submits that the solution must include amendments to the Australian Consumer Law to prohibit the sale of inauthentic art and craft product altogether, making it an offence to supply or *offer* commercial goods that include Aboriginal and Torres Strait Islander cultural expression unless supplied by, or in accordance with a transparent arrangement with an Indigenous artist or relevant Indigenous community. The focus cannot be solely on whether consumers are misled; the policy needs to start from the foundation that inauthentic product is damaging – damaging to the Aboriginal and Torres Strait Islander art sector, damaging to the businesses that support that sector, damaging to Aboriginal and Torres Strait Islander people and their communities – both culturally and economically, damaging to Australia's international reputation and damaging to consumers.

Such a policy could be supported by the Indigenous Art Code's dealer registration system. Desart would like to see registration of dealers and retailers made mandatory and dependent upon an application process that required applicants to demonstrate ethical best practice. It would be an offence to sell or deal in Aboriginal and Torres Strait Island product unless registered.

8. How can the contribution arts and crafts make to remote communities be sustained?

What government investments in the Aboriginal and Torres Strait Islander arts and crafts sector are working well to support communities? Are there better ways for governments to use these investments in arts and crafts to support Aboriginal and Torres Strait Islander communities. How well is the art centre model working in supporting artists and communities? What could be done to improve the model? Where are the gaps? Is there insufficient focus on independent artists, or artists in particular regions? Can you point us to any examples of art or art centres being used to facilitate broader social, health and community objectives? How can the economic, social and cultural contributions that arts and crafts make to communities be maximised?

Aboriginal art centres are the primary places of art production, marketing, sales and employment for Australia's Aboriginal and Torres Strait Islander sector. They are the organising logic and creative powerhouse of the Aboriginal art industry, a place where creative apprenticeships, artistic excellence and social and cultural wellbeing unfold in dynamic relationship to each other.

The Australian Government's IVAIS program has for many years provided the funding that sustains and grows these community art enterprises. This partnership has been crucial to the diversity, innovation and success of art centres everywhere. The future of art centres is tied to the continuity and adaptability of the IVAIS program; while operational funding is crucial, infrastructure and human resources are significant, constant and complex issues.

In short, Desart assert that current levels of operational funding and funding to acquire, maintain or replace art centre infrastructure are too low or inaccessible. Resilience and stability for art centres and sustainability and development for the sector rely on an improved funding environment.

Desart recommends increasing IVAIS funding to a level:

- ▶ That recognises the cost of doing business in regional and remote central Australia is significantly higher than in more populated urban areas.
- ▶ That enables art centre wages to be offered at competitive levels required attract and retain professional qualified staff.
- ▶ Which enables flexibility to respond to market opportunities and challenges.
- ▶ That can support existing art centres/art communities who currently do not receive IVAIS funding due to limited pool of existing funding available.
- ▶ That enables new art centres to be established in those communities that currently do not have an art centre.

Desart works across several state and territory jurisdictions. Each state/territory provides differing opportunities that support art centre acquisition and/or renewal of infrastructure. The funding amounts and administrative processes required vary depending on the jurisdiction (opportunity and process) and dependant on art centre management to secure funding: this situation has created an uneven landscape whereby acquiring essential infrastructure including buildings, vehicles, IT equipment, studio and office equipment is very much reliant on funding programs of each state /territory in which the art centre is located.

Desart request serious consideration be given to IVAIS supporting the development of a National Infrastructure Fund (with inputs from the Australian, state and territory governments and private philanthropy) that enables art centres:

- ▶ To be built, replaced and/or maintained to standards that ensure workspaces are fit for purpose, are safe and align with relevant building codes.
- ▶ Staff and visiting professionals to be accommodated in fit-for-purpose accommodation facilities. Limited and/or inadequate housing has significant impact on recruiting and retaining professional staff. Lack of staff housing is a significant contributor to transient management, in turn contributing to cycles of disruption to art centre business.
- ▶ To acquire/ replace critical operational assets including motor vehicles, office equipment (computers etc), studio equipment, etc.

Aboriginal artworkers fulfill significant cultural, mediation/communication, studio and administrative roles within art centres. Aboriginal artworkers are critical in mitigating risks when art centres are in management transition, mediating and communicating issues between management/artists/governing committees/industry in ways that are relevant to context (e.g., they *may* act as interpreters of the artists money story or communicating to rights to be exercised regarding arts law matters).

Desart places high priority on supporting Aboriginal artworker professional development, providing opportunities to broaden industry knowledge/skills and facilitate access to information, resources and process regarding their employment rights and entitlements.

Artworkers generally work in isolation from their broader cohort of artworkers, providing challenges for management, Desart and registered training organisations to deliver relevant, cost effective and sustainable support and professional development activities.

Desart is concerned that:

- ▶ The trend toward casualisation of artworker employment will inhibit and disadvantage Aboriginal artworkers employment, career and professional development and employment entitlements (superannuation, long service entitlements etc.).
- ▶ Inconsistent management support and knowledge regarding HR legal obligations capacity of management to effectively fulfill these obligations (which compete with other art centre priorities such as art production, grant administration, marketing and sales etc).
- ▶ Disconnect between funding and legal (Fair Work) obligations due to lack of oversight by regulatory bodies ultimately disadvantage Aboriginal artworkers.

Desart strongly urge a review of the IVAIS Artworker program, with consideration of the following:

- ▶ Adequacy of current funding relative to operational needs, including consideration given to those communities, art centres and arts business who aim to employ Aboriginal artworkers but are limited due to limited financial support.
- ▶ Professional development priorities, opportunities and challenges.
- ▶ Factors inhibiting employment and training in the remote community context including capacity of art centre management relative to art centre business priorities.
- ▶ Strategies that support capacity building which further supports the development, recruitment and retention of an Aboriginal arts workforce.

Access to NBN

Currently there is uneven internet connectivity amongst remote and regional communities. This inhibits an art centre's ability to effectively connect and restricts the many art centre functions that are now online. This exacerbates their remoteness, limiting access to markets and creating business efficiencies.

Existing mobile and satellite technology can be unstable and inefficient for higher volume producing art centres who are using the SAM database. A fixed line is preferred to ensure there is always a reliable service and that data is not lost when using online management tools. Higher volume producing art centres require a minimum of 400GB of data and up to 1TB of data per month. Currently there are no business plans that adequately service NFP art centres in regional and remote communities. Existing business plans are often cost prohibitive for art centres.