



Productivity Commission report submission – Trading Blak

Aboriginal and Torres Strait Islander Visual Arts and Crafts

Who we are

Trading Blak is an 100% Aboriginal-owned-and-run social enterprise and retail business collective. We stand for self-determination and empowerment for Aboriginal people through retail and are committed to creating a sustainable economic pathway for Aboriginal businesses and people.

Trading Blak was established in 2020 by a group of 11 Aboriginal business owners who saw and were subject to damaging exploitation from well-resourced, non-Aboriginal businesses that trade in Aboriginal culture and actively prevent opportunities for Aboriginal retail businesses. Trading Blak was established in direct response to the growing issue of misleading “business blackface” models and their marketing approaches.

Currently, Trading Blak has a growing online and brick-and-mortar retail presence, stocking products from over 80 Aboriginal businesses and providing consumers from Australia and around the world a platform through which they can confidently buy authentic products from 100% Aboriginal owned businesses. When you buy from a Trading Blak business you can be sure that you are investing Aboriginal entrepreneurs and communities.

What we do

We Provide Reassurance

Trading Blak has changed the retail landscape by creating awareness around exploitative behaviours in the industry regarding Aboriginal products and driving critical shifts of mainstream consumer spending to 100% Aboriginal-owned businesses.

In general, consumers do not know who they are buying from when purchasing Aboriginal products. A report released by the Australian government’s Productivity Commission this year revealed that the majority of Aboriginal souvenir and art products have no connection to Aboriginal people, dominating market share and representing hundreds of millions of dollars of deprived income for Aboriginal communities, as well as unquantifiable disrespect and exploitation of culture.

Historically, consumer access to products featuring Aboriginal design has been through Non-Aboriginal businesses licensing - or in many cases, complete absence of licensing- Aboriginal art. This model excludes Aboriginal people from being in the “drivers seat” in business models, denies access to profits and long-term sustainability and creates a dependency model that continues to go unchallenged by regulatory bodies.

To combat this, Trading Blak sought to challenge this issue by creating a direct-to-consumer platform for consumers to #buyblak. This pathway provides reassurance for consumers that they are in fact, buying from 100% Aboriginal-owned businesses and the entire proceeds of their purchase has



impact in Aboriginal communities.

We Provide Year-Round Mainstream Access and Awareness

Previously the only physical retail opportunities for Aboriginal businesses have been markets or centred around NAIDOC week or other calendar events. Recent years have seen growth in online retail for Aboriginal businesses, though mainstream awareness has been minimal, with the market saturated with inauthentic or non-Aboriginal owned products.

This platform provides much needed direct, year-round, mainstream access for Aboriginal retailers to sell consistently. We are the only store nationwide, both online and instore, that sell only 100% Aboriginal owned products. Via our platforms we readily promote all Aboriginal owned businesses.

In addition to championing Aboriginal businesses and products, we publicly advocate and campaign via social media on the critical importance of #buyblak, educating consumers on the aforementioned exploitative practices and key actions they can take to make more conscious purchasing decisions.

Trading Blak achieves these objectives through three main channels:

- Online shopping platform – www.tradingblak.com
- In store shopping (bricks and mortar store) - located at Westfield Warringah Mall (in partnership), Brookvale
- Social Media – Instagram/Facebook @tradingblak, we have an organic following of 58K (IG) 6k (FB)

Trading Blak submission

Please note we use the terms Aboriginal, First Nations, Indigenous and Aboriginal & Torres Strait Islander within this document.

Fake and inauthentic art is one piece of a much larger picture that drives exploitative non-Aboriginal businesses to trade in Aboriginal culture. Countering the mass fake art industry will have minimal effect without addressing the **fake business** industry with which it is intrinsically linked. These Fake businesses (purporting to be Aboriginal-owned, either directly or indirectly through marketing and branding) complement and uphold much of the fake art industry with lasting harmful and disempowering effects across all Aboriginal communities.

The statements made and information collated within this document are derived from lived experiences of First Nations people at Trading Blak navigating the saturated market who have been victim or witness to the exploitation of blackface businesses and fake art.

Blackface Businesses

Fake/inauthentic/untransparent Non-Aboriginal owned business models that are misleading consumers in their marketing to believe they are Aboriginal and/or Torres Strait owned have been operational and profiting for as long as it has been lucrative to profit off Aboriginal culture – primarily the 1980s boom.



The business blackface industry – retail - is one that has not been regulated despite the existence of legislation designed to counter misleading marketing. The Australian Consumer and Competition Commission (ACCC) is the regulatory authority, however it has failed to take adequate action against the countless non-Aboriginal owned businesses who continue to successfully trade in this manner.

Marketing practices, especially across all social media channels, are entirely unregulated in how blackfaced businesses present to consumers around their Aboriginality and/or ownership. Social media is the primary space blackface business models are able to market themselves with little to no accountability, however this marketing approach is also found in bricks and mortar stores, and on physical product.

Websites and advertising campaigns are also apparently unregulated and unpenalised for deliberate misleading tactics that are very effective in translating to sales, utilising 'feigned benevolence' tactics to sell product.

Blackfaced businesses owned by Non-Aboriginal people are actively infiltrating business support spaces designed for Aboriginal people as an equality pathway and are participating in government and social movements designed to support First Nations businesses. This is only possible due to the sophisticated marketing and appearance of their businesses leading organisers to believe they are Aboriginal owned enterprises.

In 2020, in order to address this in the absence of sufficient regulations or frameworks to protect Aboriginal businesses, Trading Blak publicly named a handful of long standing non-Aboriginal owned businesses that trade solely and/or commonly in Aboriginal culture, as being Non-Aboriginal owned. The response from the public in their feelings of being misled was overwhelming. This included many from First Nations communities who felt deceived, particularly as many non-Aboriginal consumers see their own 'buy in' as endorsement of authenticity in an unregulated industry.

The backlash we experienced in naming a list of non-Aboriginal businesses as non-Aboriginal, was violent, ongoing and threatening. We were called derogatory names and trolled online from blackface business owners and their supporters and legal action was threatened repeatedly. No legal action was ever taken. Some of our team members were threatened individually requiring the appropriate authorities to take action.

The stress and anxiety caused by the online behaviours of blackface business to our team was exorbitant and deeply distressing. This is an ongoing issue that we continue to face in our work and the burden of responsibility is due to the legislated authorities not regulating the industry within their remit.

As a result Aboriginal and Torres Strait Islander people, particularly those in retail business, are being readily exploited, and then attacked online, simply for talking about the targeted exploitative predatory behaviours across the industry, despite these practices being now widely researched and proven through government reports.

This is happening regularly and with no support for victims and community.

This is also happening at a time that simultaneous mass encouragement is in overdrive for First Nations people to step into enterprise.



The issue being that once First Nations people take that risk and go into business, the landscape is an unsafe, exploitative and saturated market that First Nations people must battle with no support from appropriate agencies in combating active and very effective blackface businesses.

Retail spaces trading in **giftware, clothing and apparel, bushfoods and tourism** anecdotally appear to have the highest representation of blackfaced businesses actively participating.

Trading Blak would be willing to submit a list of businesses we are aware of should the Productivity Commission provide legal safety to do so.

Why are blackface businesses so damaging?

The primary issue around blackface business models is that they are misleading and take up significant space and market share away from Aboriginal owned businesses.

Consumers buy from these businesses expecting to have a solid level of impact in Aboriginal communities, unaware that in most cases, majority of their sale is not going to community at all.

Aboriginal people are effectively blocked from a sustainable, long-term economic pathway built entirely off the back of their own people, culture, art and intellectual property.

This is a deliberate and targeted model of business designed to generate revenue off themed marketing, preying on consumer benevolence, while simultaneously exploiting and oppressing the communities the business itself claims to support.

The model forces First Nations people to be the “labour” while maintaining a non-Aboriginal stronghold in the business mechanism and profits, and creates dependency of Aboriginal labour on Non-Aboriginal owned businesses.

These models actively block succession planning and a sustainable economic future for generations to come in the Indigenous retail business industry.

Joint Ventures and Licensing Art

Many art centres and artists engage in joint ventures, or license art to create products in collaboration with non-Aboriginal owned businesses. This is a good way for some artists and art-centres who are not interested in manufacturing their own products to garner a revenue stream.

This particular aspect of the business arrangement is not the problem.

While the actual impact of this type of business arrangement has in community is unclear and case by case, it is also dependent on the Non-Aboriginal business owner being transparent and trustworthy in their self-evaluation, and claims of impact to the public.

The reason this is important is because consumers want to buy Aboriginal products from Aboriginal people and to feel good about an ethical purchase.



Awareness of the exploitation of Aboriginal people in the product space is growing amongst consumers, largely due to the work of Trading Blak, and therefore consumers are increasingly seeking transparent business information to evaluate the ethics of their purchase.

However, self-evaluated impact statements present a problem for this transparency, and are a readily used marketing tactic employed by blackfaced businesses.

The real issue around joint ventures and/or collaborations is around what happens beyond the licensing agreement and falls into 2 categories - this pertains only to the JV partner who is licensing the art :

- **Lack of transparency in marketing, packaging and websites** – if these types of business models are committed to what they say they are achieving, then the use of misleading marketing should not be a factor in their approach. Finding out the ownership of a business is neither easy nor consistent- consumers must search up the website online, then scroll to the ‘About us’ section and do their own research which even then is not always clear.
- **Lack of succession planning** – Businesses that are non-Aboriginal owned and trade solely in Indigenous culture tend to lend themselves to a ‘benevolence narrative’ as the motivation behind the business: to “help” Aboriginal people. The issue with that perceived benevolence is that impact is rarely measured, and, there is rarely a First Nations divestment strategy, profit sharing or even a skills exchange. Some of these types of businesses have been trading for decades, which speaks to a commitment to revenue not benevolence. A self-determined business model will always have more impact than a paternalistic, Non-Aboriginal controlled model, and yet there is rarely the existence of an exit plan, or genuine investment in creating long-term, sustainable Aboriginal owned models, in feigned benevolent enterprise structures.

The Indigenous Art Code (IAC) and it’s use in blackface marketing

The IAC was designed in its entirety to ensure that First Nations artists were being engaged ethically around artist contracts due to reoccurring exploitation. In concept the code appears to work well in the **business to business** space i.e. supporting artists with contracts and commercial works. We have received both positive and negative feedback from artists who have engaged the IAC.

The issue with the code and the passive role it plays in the **business to customer** marketing is that it is being used in a misleading and manipulative capacity. It is being actively weaponised by Non-Aboriginal owned businesses as a marketing tool of authenticity relating to the business itself.

Non-Aboriginal owned businesses use the IAC code as a marketing tool to reassure consumers that the business itself is ethical. Currently, it is too easy for non-Aboriginal businesses and consumers to **conflate a product featuring authentic Aboriginal art with an Aboriginal owned product/business**. Therefore the IAC code logo, whether directly or indirectly, is used to mislead consumers - these feigned assurances are outside the IAC remit which is to mediate ethical artist contracts – not the overall business.

The code itself, by its own definition, has a remit of only looking at commercial arrangements to protect the interests of the artists engaged.



The code's remit does not include how businesses market themselves to the public consumer.

Issues on blackface businesses utilising the code as a marketing tool for blackface businesses is an issue that has been raised directly with the code. To date there has not been any action taken around this and non-Aboriginal owned companies who blackface their businesses continue to use the code as a “perceived ethical” marketing tool.

Furthermore, the IAC governance itself has a board structure that has significant non-Aboriginal representation, some of which appear to have conflicts of interest in the space. Some non-Aboriginal members on the IAC board own businesses themselves that trade solely or significantly in Aboriginal “themed products”. This in itself is, at least, a perceived conflict of interest that continues to go unregulated or unassessed.

The code has a membership that consists of both Aboriginal and non-Aboriginal member businesses which has the function to elect directors. That means decision making around how the code operates can/could function outside any accountability to the Aboriginal communities the code claims to act in the interest of.

A Business Code

Trading Blak recommends an Indigenous Business Code (IBC) must be developed. It is our position that critical components of the IBC must be that Non-Aboriginal businesses who solely trade in First Nations culture must:

- NOT use language names for business names
- NOT market themselves as Aboriginal-owned
- NOT utilise Aboriginal art in logos
- NOT duplicate an existing Indigenous owned product, and should they find an Aboriginal business in that field already exists, to resource and partner with them in a supportive capacity
- HAVE First Nations succession planning in place and/or exit plans written in policy
- BE TRANSPARENT IN OWNERSHIP (this should be mandatory for all businesses trading in culture and ICIP)

Business Determinations

What is an Indigenous Business? Currently the determination in per the Australian government's definition that a business with majority share holder of 50% or more being First Nations is an Indigenous Business.

This determination is problematic and has led to issues of black cladding and misleading marketing across the Indigenous Business sector. (see black cladding - [Supply Nation | Frequently Asked Questions for Indigenous suppliers and members](#))

Trading Blak utilised the following definitions and recommends that a redefinition should be made as the following :



Indigenous Business – 100% Indigenous Owned

Majority owned Indigenous Business – 51% or more Indigenous Owned

Joint Venture – Less than 51% Indigenous ownership

Non-Indigenous owned business that trades solely in Indigenous Culture – Non-Indigenous owned business

It is the recommendation of Trading Blak that these definitions be used in the development of the Indigenous Business Code, and that part of the code requires businesses to be clear in all marketing about which category of business they are.

Punitive Response

While the ACCC have successfully prosecuted one/some/a small number of misleading businesses around fake art, it is our demand that **STRONG PUNITIVE PENALTIES** must apply to any business that engages in business blackface, including marketing strategies that:

- Mislead the public
- Allow consumers to believe the business is Indigenous-owned
- Profits solely off First Nations culture with no succession planning/exit dates
- Actively competes with First Nations businesses in offering Aboriginal products and services
- Employs ambiguous marketing strategies
- Displays the IAC logo in a misleading capacity
- Utilises Aboriginal art/language/ICIP in its logo and/or business framework (name, logo etc)
- Does not employ (a minimum percentage ie 50% staff) of First Nations people while trading off First Nations culture

The why

Exploitative techniques that negatively impact Aboriginal people while simultaneously claiming to help ie “feigned benevolence” are not limited to the retail industry.

Systems designed to keep Aboriginal people in cycles of disadvantage and exploitation are deeply embedded in many systems across society.

This report pertains to our experience across the retail industry however we note this is not limited to just this space.



Links:

[Two in three Aboriginal artworks are 'fake': Productivity Commission - ABC Radio](#)

[Australia's Indigenous art industry is worth a quarter of a billion dollars, so why do artists only end up with a fraction of the profits? - ABC News](#)

[Trading Blak: First Nations small business collective launches Facebook and Insta stores \(smartcompany.com.au\)](#)

[Amplify change: Trading Blak on how your everyday purchases can make a huge difference | City of Sydney - News \(nsw.gov.au\)](#)

[Wear it Blak - Reconciliation Australia](#)