



AIATSIS

AUSTRALIAN INSTITUTE OF ABORIGINAL
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Ms Melissa Price MP
Committee Chair
House of Representatives Standing Committee on Indigenous Affairs
Parliament House
CANBERRA ACT 2600

Dear Ms Price

Inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products inquiry

The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) welcomes the House of Representatives Standing Committee on Indigenous Affairs' inquiry into the growing presence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise for sale across Australia. The inquiry is a valuable opportunity to raise awareness of the harm done by inauthentic Aboriginal and Torres Strait Islander art, and also promote authentic Aboriginal and Torres Strait Islander art.

AIATSIS is a collecting, exhibiting, publishing, and research institution based in Canberra. AIATSIS is established and authorised by the *Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989*. A majority Indigenous Council provides strategic direction and oversight across AIATSIS operations. AIATSIS has expert knowledge and research capabilities of its staff, and the respectful relationships with communities that have been built over time. This expertise informs the policies and strategic direction of this organisation.

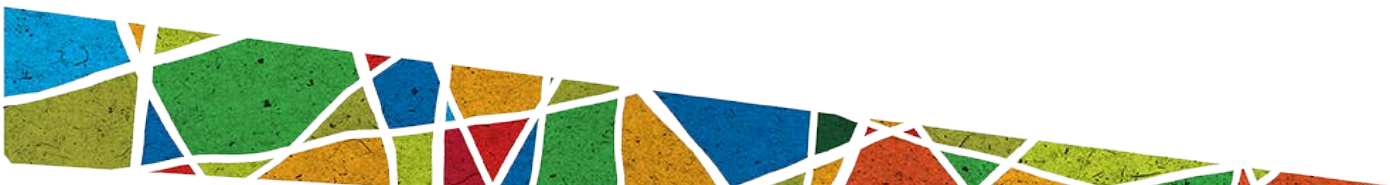
AIATSIS views the prevalence of inauthentic Aboriginal and Torres Strait Islander art and craft as an important issue that impacts on AIATSIS and our stakeholders in a number of ways, including:

- Respect for Aboriginal and Torres Strait Islander knowledge and cultures;
- Protection of Indigenous Cultural and Intellectual Property Rights; and
- Ethical practices for the collection and sale of Aboriginal and Torres Strait Islander artworks.

Recognising and respecting Aboriginal and Torres Strait Islander knowledge and cultures

AIATSIS' vision is a world in which Aboriginal and Torres Strait Islander knowledge and cultures are recognised, respected, celebrated and valued. AIATSIS' legislative functions include:

- a) To develop, preserve and provide access to a national collection of Aboriginal and Torres Strait Islander culture and heritage;



- b) To use that national collection to strengthen and promote knowledge and understanding of Aboriginal and Torres Strait Islander culture and heritage;
- c) to provide leadership in the fields of:
 - i. Aboriginal and Torres Strait Islander research; and
 - ii. ethics and protocols for research, and other activities relating to collections, related to Aboriginal and Torres Strait Islander peoples; and
 - iii. use (including use for research) of that national collection and other collections containing Aboriginal and Torres Strait Islander culture and heritage;
- d) to lead and promote collaborations and partnerships among the academic, research, non-government, business and government sectors and Aboriginal and Torres Strait Islander peoples in support of the other functions of the Institute;
- e) to provide advice to the Commonwealth on the situation and status of Aboriginal and Torres Strait Islander culture and heritage.¹

Accordingly, AIATSIS supports efforts to end the production and sale of inauthentic 'Aboriginal-style' arts and crafts.

We submit that the production and sale of inauthentic arts and crafts, often of inferior quality, perpetuates a homogenisation and misunderstanding of Aboriginal and Torres Strait Islander cultures, identities, and heritage. The proliferation of inauthentic works also exploits the knowledge and stories embodied in authentic works, devalues the work of Aboriginal and Torres Strait Islander cultural producers, and diminishes the efforts of AIATSIS and others to promote respectful recognition and understanding of Aboriginal and Torres Strait Islander knowledge and cultures.

Recognising and protecting Indigenous Cultural and Intellectual Property Rights

The growing presence of inauthentic Aboriginal and Torres Strait Islander 'style' art and craft products and merchandise for sale across Australia also impinges on Indigenous Cultural and Intellectual Property (ICIP) rights and artists' moral rights. In this context we support Terri Janke and Company's statement that:

Indigenous people's ability to protect and practice their Indigenous knowledge and cultural expression according to their cultural laws is limited in the existing Intellectual Property framework. Legal change is needed to provide better recognition of their rights.²

Recognition of Aboriginal and Torres Strait Islanders cultural expression within a framework of intellectual property rights is crucial to protecting against inauthentic art and craft products and merchandise for sale across Australia.

In a related context, in 2016 AIATSIS made a submission to the Productivity Commission's inquiry into Australia's Intellectual Property Arrangements (at Attachment A). This submission outlines the broader argument to better protect ICIP rights and we draw the Inquiry's attention to the section on 'Copyright, Trade Marks and Design'. This section explains the inadequacies of current Intellectual Property protections for ICIP. We maintain the failure to adequately protect ICIP rights undermines communities' and individuals' ability to control expressions of

¹ [Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989](#) (Cth), Section 5(a), (b).

² Terri Janke & Company. 2012, *New tracks : indigenous knowledge and cultural expression and the Australian intellectual property system* / Terri Janke and Company IP Lawyers. Terri Janke & Company Rosebery, p. 27 viewed 2 November 2017 N.S.W http://www.terrijanke.com.au/documents/New_Tracks_Janke_Dawson_17Aug12_11am.pdf

culture, to profit from their commercial exploitation, and to safeguard against the detrimental impacts of their misappropriation and misrepresentation.

Ethical collecting practices and authenticity

One of AIATSIS' legislative functions is to provide leadership in principles and practices for managing collections related to Aboriginal and Torres Strait Islander culture and heritage. AIATSIS rigorously applies this practice when developing its own collection of significant materials of Aboriginal and Torres Strait Islander culture and heritage. The AIATSIS *Collection Development Strategy 2017-2021* shapes the acquisition of works of art for the AIATSIS collection. AIATSIS strongly prefers the acquisition of items directly from Aboriginal and Torres Strait Islander artists, their appointed representatives, from Indigenous organisations, or where the provenance of the items is verifiable. This is to ensure the artworks are authentic.

The AIATSIS working definition of authenticity in Aboriginal and Torres Strait Islander artworks requires that the works are produced by, or under the direct instruction and/or control of, Aboriginal or Torres Strait Islander peoples. Inauthentic art work purports to be produced by Aboriginal or Torres Strait Islander people.

AIATSIS supports ethical collecting by undertaking appropriate due diligence provenance checks when acquiring material and acts in accordance with the principles outlined in the Commonwealth Government's Australian Best Practice Guide to Collecting Cultural Material.

AIATSIS is an active purchaser of contemporary works of art and supports Aboriginal and Torres Strait Islander artists through art markets. While AIATSIS has a focus on collecting works of art with a strong contemporary focus, older materials are acquired when an item is of significance and has been determined to have been acquired ethically and legally.

As a national institution and leader in culturally respectful and appropriate collecting practices, AIATSIS advocates for, and models, ethical practices for the collection of contemporary and historical works of art. Ethical collecting practices are important because they affirm the rights of Indigenous peoples to determine the ways in which their cultural and intellectual property is used. Furthermore, ethical collecting practices ensure that income streams from the sale of genuine artworks and crafts are protected.

Facilitating ethical sales

AIATSIS facilitates the sale of artworks through annual art market days to encourage ethical collection practices and promote the authentic products for the benefit of Aboriginal and Torres Strait Islander artists, as well as consumers. The art centres involved are all part of the Australian Government Indigenous Visual Arts Industry Support. AIATSIS' support is through providing space for the art market stalls next to the AIATSIS building and promoting the art markets. All sale proceeds go directly back to the community art centres and artists. Since its inception, the markets have proven valuable for the art centres with all reporting profits. The market days are one model of how organisations can support ethical sales practices and promote Aboriginal and Torres Strait Islander cultures and heritage.

An opportunity for Australia

AIATSIS affirms the rights of Aboriginal and Torres Strait Islander peoples to maintain and protect their traditional cultural expressions, as articulated in the United Nations' Declaration



on the Rights of Indigenous People (UNDRIP).³ A firmer stance against inauthentic Aboriginal and Torres Strait Islander art provides an opportunity to demonstrate Australia's recognition of Aboriginal and Torres Strait Islander peoples and the importance of cultural expression. Accordingly, as part of Australia's ongoing commitment as a signatory to UNDRIP, and as a way of exercising international leadership on an issue that is of international concern, AIATSIS encourages this inquiry to make recommendations to the Government to protect these rights.

AIATSIS is committed to promoting better understanding of Aboriginal and Torres Strait Islander culture and heritage and sees this inquiry as an opportunity to promote better understanding of authentic Aboriginal and Torres Strait Islander art. I would like offer AIATSIS' assistance to the committee to support this important inquiry and would be pleased to discuss this submission and any details of our principles and practices, should the Committee wish.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'L Hope', written over a horizontal line.

Letitia Hope

Chief Executive Officer (a/g)

16 November 2017

Attachment A – AIATSIS submission to the Productivity Commission's inquiry into Australia's Intellectual Property arrangements

³ UNDRIP was adopted by the United Nations General Assembly in 2007 and Australia in 2009. For example, tangible rights attached to the expression of 'traditional knowledge' and 'traditional cultural expression' find their origins in Article 31 of UN DRIP.