

Tuesday, 10 November 2009

For the Attention of Catherine Skippington,
First Assistant Secretary,
Department of the Environment, Water, Heritage and the Arts.
GPO BOX 787
CANBERRA ACT 2601.

**Re: Submission from the Australian Antique and Art Dealers Association,
Reforms to the Act: Aboriginal and Torres Strait Islander Heritage Protection Act**

Dear Catherine,

Thankyou for the invitation to provide comment on the proposed changes to the Aboriginal and Torres Strait Islander Heritage Protection Act. The Australian Antique and Art Dealers Association (AAADA) is the peak Industry body in Australia representing those merchants trading in Fine and Applied Art. Our members are at the front line of the production, purchase and sale of Aboriginal and Torres Strait Islander Moveable Heritage and Art. For this submission, on behalf of the AAADA, I have spoken with a number of our members, who represent Aboriginal and Torres Strait Islander artists and their families, as well as private and institutional collections and their curators. This represents the gamut of traded items in this area. By the nature of the AAADA, this submission can only deal with moveable heritage and the nature of its production / trade.

The AAADA supports the free trade of Cultural Heritage objects in the spirit that they were produced, though notes that significance of objects to cultures often changes with time. The present *Protection of Moveable Cultural Heritage Act (1986)* continues to function adequately in this area.

Your discussion document and proposals are written in legalise. Given the nature of the communities asked to provide input in the subject, this seems unfair. Many of the 'proposals' are complex and poorly written, as are many of the key definitions. This is a present problem. The relationship of Federal, State and Traditional laws and customs is fundamentally as unclear as before. It is therefore difficult to make succinct or useful replies to many of the proposals for change to the ATSIHP Act. For example;

Proposal 8: Addressing gaps in state and territory laws to ensure respectful treatment of Indigenous secret sacred objects and remains.

Response:

The AAADA supports this and the definitions in principle. However, two areas require further clarification;

1/. "a ban on displaying secret sacred objects would not go so far as some state legislation that regulates trading or owning these objects, and returns them to their traditional custodians"

Which law therefore applies? What is the position of traditional laws and customs? How does this affect a shopkeeper or gallery?

.....2/

2/. "it would remove the need for case by case applications to the Australian Government to prevent the public display of these objects".

Who thence would enact this law, if National Standards and best practice are to be implemented? The introduction of National Standards and best practice is at odds with regional knowledge and law. Does this mean that individual communities are responsible for the definitions of 'offensive' or prohibited to display 'objects' and their physical withdrawal?

Question 8.3: How would prohibiting the public display of these objects affect your business?

Response: 'Sacred object' is not defined. Generally it would therefore affect business. Display is questionable of any items incorporating human hair, teeth, bone – for personal ornaments or vessels. Much common indigenous material incorporates these materials as part of their production technique. Who determines the item illegal is the problem, as it is the subject of an undefined culture, enforcement agency or expert. Native title should extend to and be applied to, traditional objects, therefore clarifying this area.

Proposal 14. Enforcement.

Enforcement officers and their powers needs clarification.

The most contentious part of this proposal is "an offender is penalised for each day that they knowingly display the object". Does this apply from the time an enforcement order is given, or when an undefined officer makes a declaration on a 'sacred object'.

These are but a few examples of the many Proposals and Questions throughout the discussion paper. A larger number of clear definitions at the beginning and a simpler set of questions would provide clearer direction for the rest of the document and help with drafting amendments to the Aboriginal and Torres Strait Islander Heritage Protection Act.

Please do not hesitate to contact myself or the Executive Secretary, Keren Lewis to discuss this submission.

Yours Sincerely
Warwick Oakman
President
The Australian Antique & Art Dealers Association