

chapter 1 Introduction

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In May 2001, after a select competitive tender, the Australian Competition and Consumer Commission (ACCC) commissioned the Centre for Aboriginal Economic Policy Research (CAEPR) at the Australian National University to undertake a 12-month research project on the implications of the *Trade Practices Act 1974* (TPA) for Indigenous people in Australia.

Indigenous people, as a distinct social group in Australia, have special characteristics that the ACCC may need to consider. Visits by ACCC staff to remote Indigenous communities in central and northern Australia have indicated that Indigenous consumers and businesses are often unaware of their rights and obligations under the TPA. The ACCC is seeking to take a strategic approach to trade practices compliance and awareness issues within Indigenous communities. As part of this process it chose to sponsor this research to provide better awareness of relevant Indigenous cultural issues and market practices potentially adversely affecting Indigenous communities.

There has been little systematic research on the issue of competition and fair trading in relation to Indigenous people in Australia. Historically, perhaps, there has been a tendency to see many Indigenous communities as operating beyond the market. The research undertaken for this project has focused primarily on remote Indigenous communities. For structural, as well as cultural, reasons remote communities are in an unusual position in relation to mainstream notions of competition and 'the market'. In particular, this research highlights that commercial enterprises such as stores and community controlled art centres operate in ways which go far beyond the commercial role usually ascribed to such ventures, especially in regard to the provision of supplementary cultural and social services. A well-informed understanding of the distinctiveness of Indigenous circumstances must be recognised as essential if education strategies targeted at consumers and businesses in remote Indigenous communities are to prove effective.

Background

The ACCC is an independent statutory authority that has as its principle function the role of administering the TPA. The objective of the TPA is to enhance the welfare of Australians through the promotion of competition and fair trading and

by providing consumer protection. The ACCC seeks to improve competition and efficiency in markets, foster adherence to fair trading practices in well-informed markets, promote competitive pricing, wherever possible, and restrain price rises in markets where competition is less than effective.

CAEPR is a multi-disciplinary social sciences research centre first established at the Australian National University (ANU) in 1990—its main aim is to undertake research on Indigenous economic and social policy issues nation-wide. CAEPR has three principal fiscal stakeholders: the ANU, the Aboriginal and Torres Strait Islander Commission (ATSIC) and the Commonwealth Department of Family and Community Services. CAEPR's research program is currently grouped into five broad themes: economic and community development, governance, welfare reform, population and policy, and equality, difference and diversity. The research undertaken for this project clearly overlaps a number of these themes.

ATSIC was a stakeholder in this project, in part because of its research relationship with CAEPR and in part because of its growing linkage with the ACCC that culminated in the signing of a memorandum of understanding between the two agencies in April 2002. ATSIC was directly involved in the project in an advisory capacity via membership of the project steering committee. ATSIC also assisted by providing feedback on the research and in disseminating research findings to its national centres and regional offices Australia-wide. In April 2002 the ACCC, ATSIC and the Australian Securities and Investments Commission (ASIC) co-sponsored a conference in Alice Springs where some outcomes from this project were presented.

Research aims

The research undertaken by CAEPR was to focus on trade practices issues and the engagement of Indigenous communities in the market. Set within this context, the research had four specific aims:

- to identify and review relevant Australian and overseas literature concerning Indigenous competition and consumer issues
- to identify and develop particular TPA-related issues relevant to Indigenous communities as case studies
- to identify special characteristics of Indigenous communities which make individuals and/or local businesses susceptible to commercial exploitation; which inhibit the competitive process from delivering benefits enjoyed by other (non-Indigenous) communities; and which should be taken into account in any ACCC compliance or education strategies
- to broaden the ACCC's knowledge of TPA-related issues likely to affect Indigenous communities.

Research plan

A research plan to address these aims was developed by a steering committee formed to oversee the project. The committee consisted of senior representatives of the ACCC, ATSIC and CAEPR. Three discrete, but linked, pieces of research were iteratively negotiated and undertaken.

The initial component specified in the project brief consisted of a literature review and annotated bibliography. This research set out to identify and review relevant Australian and overseas research that is of relevance to Indigenous consumer protection and competition matters in Australia. The literature search indicated that most research has focused on issues associated with Indigenous community stores and consumer banking. The main topics covered in the literature include: structural impediments, roles of stores and their quality, commerce and culture, governance, poor consumer information, access to banking facilities and book-up.

The second component of the project was a fieldwork-based analysis which focused on remote community stores in central Australia, with pilots undertaken in Maningrida, central Arnhem Land and Aurukun, western Cape York Peninsula. This focus was influenced in part by ACCC visitation to pastoral stations in central Australia, and the subsequent development of an ACCC *Store charter—a service charter serving remote and Indigenous communities*, launched in April 2002, and interest expressed by the ATSIC Papunya Regional Council and the regional ATSIC Commissioner. Using the concept of the ‘frontier economy’, this research examined key competition and consumer issues faced by Indigenous people in remote communities. In particular, it attempted to take account of specific economic practices of Indigenous consumers and businesses which may be quite different from those of non-Indigenous people. Analysis of prospective breaches of the TPA requires a culturally-informed understanding of why Indigenous people may continue to participate in relationships that have the potential to be exploitative.

The third component of the project sought to examine how competition and consumer protection issues might be applicable, and of relevance, to an Indigenous-specific industry. The steering committee selected the Indigenous visual arts industry as the most suitable industry case study. The research found that the structure of this industry is extremely complex, particularly because it encompasses ‘fine’ and ‘tourist’ art markets and because its many producers reside in very remote communities. Competition within the industry is robust, though there is some concern about imported ‘fakes’ sold in the tourist market. Authorship and issues of authenticity emerged as key considerations that might affect future industry growth. The research highlighted three trade practices issues that may be of significance: unconscionable conduct, false and misleading representations, and possibly harassment or coercion in informal settings.

Research methods

The project was based on three broad approaches: literature search and analysis, interviews, and field-based data collection and analysis. The first component (presented here as chapter 2 and appendix 1) was based primarily on desk-based research complemented by the knowledge of CAEPR staff and colleagues. Items for the annotated bibliography were selected by searching various libraries' databases and the Internet and by email and telephone inquiries as well as liaising with researchers and Indigenous organisations. The literature search focused on relevant publications from Australia, New Zealand, Canada and the USA, though the international realm yielded little research of either stand-alone or comparative value.

The methodology adopted in the second component combined interrogation of the literature base relating to Indigenous businesses and consumers with primary data collected via fieldwork. The fieldwork component included brief pilot visits by David Martin to Aurukun community, western Cape York in August 2001 and by Jon Altman to Maningrida in central Arnhem Land in July 2001, and a more extensive visit to a number of localities in central Australia by David Martin and Siobhan McDonnell in August–September 2001.

A hybrid approach was taken in the third component, drawing on the diverse skills of a small team. Both Jon Altman and Felicity Wright drew on their long-standing involvement in the industry as researchers and arts advisers. Boyd Hunter focused on economic aspects of the industry and Sally Ward focused on an additional literature search. Sallie Anderson was also briefly commissioned to assist with some analysis from her recently completed PhD thesis *The Aboriginal Art Industry in Cairns, Queensland: An Ethnographic Study*. While no fieldwork was conducted specifically for this component of the project, Jon Altman discussed aspects of the project with Susan Congreve, the executive officer of the Association of Northern, Kimberley and Arnhem Aboriginal Artists (when in Darwin in February 2002) and with staff of Maningrida Arts and Culture and the Bawinanga Aboriginal Corporation (when in Maningrida in February 2002). Felicity Wright conducted a number of telephone interviews to a set of TPA-related questions identified by CAEPR as part of her research in April 2002.

Project outputs

In undertaking this project as independent university-based research, the ACCC and the ANU negotiated joint ownership of intellectual property in research outputs. A time constraint of six months was placed on this joint ownership, with the written permission of the ACCC being required for early publication of any parts of the final report. To date, this permission has been provided for the early publication of three elements of this final report, chapters 2, 3 and 4.

Consequently, the outputs from this project take two distinct forms. First, are the three components that are being disseminated by CAEPR. These are:

- 'Indigenous Australian competition and consumer issues: A review of the literature and an annotated bibliography', by Jon Altman, Siobhan McDonnell and Sally Ward, published electronically as *CAEPR Working Paper 12* in April 2002 (available from <http://www.anu.edu.au/caepr/>)
- 'Indigenous community stores and the 'frontier economy': Some competition and consumer issues', by Siobhan McDonnell and David Martin, published as *CAEPR Discussion Paper 234* in July 2002
- 'The Indigenous visual arts industry: Some trade practices issues', by Jon Altman, Boyd Hunter, Sally Ward and Felicity Wright, to be published as *CAEPR Discussion Paper 235* in September 2002.

Second, is this final report provided to the ACCC in a slightly different composite format that includes the three project components as well as this introduction and a conclusion (Ch. 5). It is the hope of the CAEPR project team that this report will assist the ACCC in understanding the complexity and heterogeneity of Indigenous Australia and particularly the nuances that need to be considered when looking at potential competition, fair trading and consumer issues for Indigenous Australians. We also hope that this final report will be circulated as widely as possible by the ACCC and ATSIC. The collaboration between all stakeholders in this project has been extremely positive and productive. CAEPR hopes that this final report, when disseminated will prove of relevance both to policy makers and to Indigenous interests.