

chapter 5 Conclusion

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The research reported here has examined competition and consumer issues for Indigenous Australians in three ways:

- by a survey of the literature, both in Australia and overseas
- by examining TPA compliance and consumer protection issues in remote Indigenous communities
- by looking at a specific Indigenous industry, the visual arts industry, as a case study of industry-related competition and consumer issues.

This research has not been undertaken in complete isolation. The ACCC has sponsored this work at CAEPR and the Australian Securities and Investments Commission (ASIC) had commissioned Gordon Renouf to undertake a project on 'book-up' (or informal credit arrangements) with a final report published in March 2002 (see ASIC 2002); as well as to conduct some work on consumer education.

The research in this volume was undertaken by a number of researchers, from various disciplines, on an agreed set of TPA-related issues as they impact on Indigenous Australians. In this brief conclusion, an attempt is made to draw together some common threads across that body of research. This conclusion supplements more specific observations and recommendations made at the end of chapters 2–4.

We begin with two important caveats. First, while the literature search was unlimited in its scope, seeking to canvass competition and consumer issues both in Australia and in other fourth-world contexts, within time and resource constraints, most research (in Australia and in North America) appears to be geographically biased to remote and rural regions. This bias probably reflects the reality that the socioeconomic status of Indigenous peoples are lower in such jurisdictions, but it is certainly not intended to imply that the majority of Indigenous Australians residing in urban and metropolitan situations are immune from competition and consumer problems.

Second, the limitations of this report must be recognised—it is the outcome of a 12-month project and it has not sought to canvass all issues. Rather it has interrogated the literature, and then undertaken two specific projects focused primarily on community stores at remote Indigenous communities and the

Indigenous visual arts industry. Paradoxically, this focus may have continued to reinforce the geographic bias of the existing literature towards remote communities.

The literature review assisted us to frame our overarching conceptual framework of the ‘frontier economy’. This concept tacitly informs much of this report with the conflict between the various cultural domains being a recurring and dominant theme. Some key findings were as follows:

First, the relative poverty and isolation of Indigenous people in remote regions combines to exacerbate their economic marginality—there may be structural and locational reasons why people are poorer and why goods and services might be more expensive. However, these people are twice as vulnerable because they are often not aware of their rights, especially as consumers.

Second, geographic remoteness also exacerbates a lack of access to existing statutory mechanisms and regulatory agencies, like the ACCC and state and territory fair trading agencies, that are available to more urbanised populations. As with so many other services, access, equity, and enforcement remain a problem for people who reside outside the immediate umbrella of mainstream institutions.

Third, there is a range of broader policy tensions. Some again relating to remoteness, some to other structural factors, like the small size of the nearly 1200 discrete Indigenous communities (almost all with a population of less than 1000), and some to the particularities of the business access arrangements on Aboriginal-owned land. For example, while the broad policy emphasis on enhancing competition for greater consumer benefit is largely uncontested in Australian public policy today, there is a distinct lack of ‘competition’ in many remote Indigenous communities, largely owing to commercial realities. In situations of market failure, community-based economic enterprises may partially be supported by government subsidy, but these institutions often have a not-for-profit corporate structure. Alternatively, such community-based organisations may evolve into complex multi-functional institutions that mix commercial and social objectives with an attenuated cost to efficiency and consumer benefit. Such organisations are also likely to have governance structures that often reflect community power relationships based on customary law rather than commercial exigencies. The external articulations of such community-based institutions with government and regulatory agencies are often extremely complex.

While the literature review was somewhat dated, this is in part a reflection of the rapid change in the public policy environment, especially that pertaining to the evolving regulatory framework embodied in the TPA. This issue was anticipated, to some extent, by the innovation inherent in this project’s focus. The main contribution of the literature search was its identification that the existing literature fails to pay sufficient attention to the distinct cultural practices that inform choices made by Indigenous people as consumers.

The literature's relative neglect of Indigenous cultural practice greatly influenced the use of the conceptual framework of the 'frontier economy' that was initially developed to analyse the relationship between community stores and Indigenous consumers. This framework, outlined in some detail in chapter 3, seeks to focus on the intercultural intersection between Indigenous and non-Indigenous domains, the conceptual zone where the market articulates with extant Indigenous economic values and practices (in all their diversity). A benefit of such a framework is that it is flexible, especially in its recognition that this articulation varies enormously in different community or regional circumstances and contexts. In this project, this framework, which would benefit from further academic development, has been instrumental in facilitating insights into institutions, industries and actions that are in this intersectional (or intercultural) zone:

- institutions like community stores or art centres, that are simultaneously Indigenous-owned, and which may face problems in creating a governance structure that meets the sometimes competing Indigenous and non-Indigenous conceptions of how businesses should operate
- institutions like community stores and art centres, that are located in this zone because they simultaneously pursue objectives, in varying degrees, in the commercial and social and cultural domains
- industries like Indigenous visual arts that require intercultural mediation at the intersection between the Indigenous domain, where art is produced, and the (largely non-Indigenous) market where it is sold.

Understandings of Indigenous agency must inform any action taken by the ACCC for breaches of the TPA by businesses operating in the intercultural domain. Key to an understanding of Indigenous agency is the notion that it is not necessarily through any lack of education that Indigenous consumers are participating in what are perceived by others to be exploitative transactions.

With this framework in mind, the community stores case study includes the following observations:

- many Indigenous consumers, governing bodies and businesses lack an awareness of TPA issues, although experience has been extremely diverse
- the concentration of economic power in a few key institutions in remote Indigenous communities, like community stores, results in these institutions undertaking a multiplicity of functions, some social and some economic;
- governance of these key institutions can be problematic—there is a tension between a range of customary rights in the Indigenous domain and statutory and regulatory frameworks that exist in the non-Indigenous domain
- it is likely that in remote situations, small community populations and diseconomies of small scale make competition policy intrinsically difficult

- market-sharing arrangements may be taking place among community stores in remote Indigenous communities.

A brief summary of the Indigenous visual arts industry case reported in chapter 4 includes the following observations:

- This industry is diverse and complex: the nature of products is highly variable, consumers are located in both fine art and tourist art markets and there are culturally-based concerns about ownership of intellectual property, and potential copyright and moral rights infringements.
- The complexity of the industry and an element of market failure has resulted in a high degree of government involvement in the industry, mainly via ATSIC's support of a network of community-controlled art centres that facilitate the sale of art produced by Indigenous artists to mainly non-Indigenous consumers.
- The range of government support of the industry has historically extended to support for several prominent 'test case' legal actions that prosecuted copyright infringements.
- There is some concern that false and misleading information that can emanate from a number of industry players—artists, art centres, retail outlets, commercial dealers—could have negative impacts on this important Indigenous industry.
- The issues of authorship and authenticity are the main sources of such concern. It is important that information about authorship or co-authorship is accurate so that buyers can be confident about this, especially when purchasing expensive Indigenous fine art. It is also important that authenticity of art is assured and that collaborations between Indigenous and non-Indigenous producers, regional styles, licensed and unlicensed manufactured items and imported fakes or licensed product are all clearly distinguished.
- Unconscionable conduct is evident in situations where dealers have a stronger bargaining position than producers and such practice is most evident when formal collecting institutions, like community-controlled art centres, are absent.
- Indigenous agency is again evident in choices that some artists make to use private dealers over established (and government-sponsored) channels. In some situations, even if they are active rather than passive parties in the transaction, Indigenous artists may face special disabilities and be especially vulnerable. In other situations such choice may be fully informed and based on established social relations, even if the financial return is lower than via established channels.

Therefore, in spite of the differing circumstances facing community stores and the Indigenous arts industry, the analysis of the respective case studies come to similar

conclusions. Some apparent instances of unconscionable conduct can be reduced to unrecognised cultural difference. Similarly, the issue of false or misleading representations is particularly complex when dealing with categories that do not conform with established precedents. One possible tension between the case studies in this report is that the community stores chapter emphasises the need to direct education strategies towards Indigenous organisations, whereas the arts industry chapter is not as focused in its prescription. The more relaxed position of the latter is a recognition that Indigenous artists are, in some sense, engaging in the non-Indigenous market by producing art works for it. However, this in no way denies that education strategies for artists may have to be mediated through an organisation that is in a position to move between the respective cultural domains.

We end this report by making some practical suggestions for the ACCC to consider in seeking to provide equitable, but appropriate, access to its regulatory and educative services and strategies. In making these suggestions, we are acutely conscious that some of the issues that have been highlighted in this report are systemic and beyond the immediate functional responsibilities of the ACCC. Our recommendations include the following:

1. There is evidence that Indigenous consumers and producers have a limited understanding of the workings of the TPA and of their rights. Clearly there is a need for education strategies that are targeted effectively at some of the specific issues that have been raised in this report.
2. Because so many of the TPA issues that we identify appear most prevalent in remote communities, it is important that the ACCC forge strategic links with existing Indigenous organisations that have an administrative presence in these communities. Such organisations will range from those with regional jurisdictions like land councils and ATSIC, to industry associations like ANKAAA and Desart, to community-based institutions like stores, community councils and art centres. It is recommended that consumer and producer education strategies are targeted at these institutions, rather than at individuals, in the first instance.
3. The MoU between the ACCC and ATSIC signed in April 2002 obviously provides an important framework for building strategic alliances. As alluded to in the foreword, such alliances should be viewed as providing a conduit for two-way exchange of ideas and information about their respective domains and areas of expertise.
4. A similar proactive effort could be considered with state and territory fair trading agencies, although it is likely that the range of issues that need to be addressed will vary between States and by section-of-state.
5. There is clearly a need to develop effective and creative modes for the delivery of consumer education and producer information. Options available might include using established Indigenous media outlets, electronic communications,

or the engagement of Indigenous liaison officers. Such strategies are currently being investigated by ASIC and it may be that the ACCC could also benefit from participating in this work.

6. Governance is clearly an issue. For example, TPA compliance education and information for Indigenous artists and Indigenous consumers could be targeted at boards and managers of community stores or art centres. Such a strategy could mesh well with strategies being developed by ATSIIC under the broad umbrella of governance
7. *Storecharter—a service charter serving remote and Indigenous communities* provides one model for the development of a code of conduct that was developed by the ACCC during the time that this research project was under way. There are possibilities for developing similar codes of conducts in other areas.
8. Another related option is the development of an 'Arts charter—a service charter for the Indigenous arts industry' to provide a code of conduct for all participants in this important and growing Indigenous industry. Such a code could be developed by the ACCC in collaboration with Indigenous arts advocacy organisations.

While this research was specifically commissioned by the ACCC, we hope that our findings can also be widely disseminated to other consumer agencies to increase awareness of competition and consumer issues for Indigenous Australians and to assist in the development of targeted strategies. It is only when Indigenous consumers and producers are empowered with information about TPA issues that they will be in positions to make choices about using existing statutory provisions to enhance their economic wellbeing. While this research has focused specifically on the role of stores in remote Indigenous communities and on issues facing the relatively new Indigenous visual arts industry, we believe that many of the issues raised will have wider applicability to other economic institutions and to other cultural industries.