

# *Gallery Directors' Perceptions About Art Fraud and the Justice System*

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## **Introduction**

Art crime has been with us at least since the days when sculptors in ancient Rome would 'sorrow' their work to give it the appearance of the older, and far more valuable Greek antiquities (Watson 1992). It is now estimated to cost around A\$12 billion annually worldwide, making it the third biggest illegal trade after weapons and drugs. According to one estimate, between 10 and 40 per cent of the \$520 million worth of art sold in Australia each year could be fraudulent in some way (Baker 1999; AusStats 1998). In recent years there has been increasing criminological interest in these kinds of offences, as more victims of fraud come forward; such as the Melbourne dealer who startled the art world in 1999 by revealing in the press that she had unwittingly sold fake pictures.<sup>1</sup>

Although there is much media attention and some anecdotal evidence, there has been very little research into this largely hidden crime problem (Aarons 2001). Due to the absence of statistical data, a recent exploratory study sought to gather some perceptions of art fraud by sending a mailed survey to 159 art gallery directors around Queensland. The sample was collected by merging published lists of commercial, regional, state and territory galleries. A combination of fixed-choice and open-ended questions were used to seek opinions about aspects of art fraud such as likely targets, police and justice system responses, and effects on the art market. Groups of fixed choice questions were followed by an open-ended question designed to capture qualitative comments. The responses were coded into sets of broad thematic categories. Fifty-seven directors gave usable responses to the survey, while another thirty returned the questionnaire with comments to the effect that either they knew very little about fraud or it did not affect their operation.

## **Police Responses to Art Fraud**

Of particular interest were perceptions about the adequacy of police and judicial responses when art fraud engages with the criminal justice system. A majority of respondents felt that current police responses to art fraud are not adequate, and there was strong agreement about the need for specialised art fraud squads in Australian police forces (see Table 1).

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1 In February 1999, Lauraine Diggins Fine Art issued a release advising that she had sold four fakes at one of her 1998 shows. She announced she had refunded the purchasers about \$200,000 and sent the problematic pictures to the Ian Potter Art Conservation Centre for scientific analysis. The difficulty she faced when making the refund was that the dealer who had sold her the works had left the country and she stood to take a considerable loss (Makin 1999).

**Table 1: Perceptions About Police Responses to Art Fraud**

	Agree	Disagree	No opinion
	%	%	%
Police responses adequate	23	53	24
Need for specialised squads	65	23	12

Comments suggesting improvements for police responses to art fraud fell into several broad categories (see Table 2). About five percent suggested that current responses were adequate or that no change was needed. The most frequent suggestion was that police should have specialised training, or make use of qualified art experts. For example, it was suggested that 'what is needed is education for police. It is not enough to have some bozo with an overnight diploma — you have to have seriously trained professionals'.

**Table 2: Suggested Improvements for Policing Art Fraud in Australia**

	%
Employ extra specialists or extra police training	18
Databases or better record keeping (register new artworks, DNA)	16
Education for artists, galleries, need for buyers to seek specialist advice	12
Other measures (industry self regulation, supervision of artists, help line)	12
Tougher policing (targeted investigations, convictions, customs vigilance)	11
Other/Don't know	31

About one sixth of respondents suggested a valuable tool would be an art fraud database or other record keeping measure, such as a register of new artworks. Others suggested forensic methods, for example 'testing the DNA in a hair in the painting', or 'a DNA solution made available to all artists which they could mix with their mediums'.

About ten percent made comments to the effect that the policing of art fraud would be enhanced if artists, galleries and art buyers could be educated about plagiarism and fraudulent practice. For instance, the comment was made for instance that 'generally, Australian knowledge of art on a local and international level is, at best, grass roots basic'. Several comments emphasised the importance of artists keeping good records of works produced and sold. Others suggested tougher policing measures such as closer investigation of auction houses or prosecutions against people known to commit fraud.

Some specific remedies were offered among the other suggested measures that fell outside the main categories. These included: closer monitoring of artists; a special art fraud hotline to enhance public access to police services; and a fund designed to remove fraudulent artworks from circulation by compensating fraud victims.

Several other themes emerged about policing art fraud. One was that police must treat art fraud as seriously as any other fraud ('a specialist squad would be less likely to dismiss it as the rich defrauding the rich'). There were diverse opinions about how art fraud should be treated in the media. Some felt there was a need to 'publicise cases as they occur', but others were firmly opposed to giving 'publicity to known forgers'. It was pointed out that a

key reason for reluctance to involve police in art fraud matters is that ‘there is no easy way of contacting the justice system about fraud’. An interesting comment was a suggestion that the number of fraudulent works entering Australia might be reduced by Customs giving closer scrutiny to ‘artworks carried by individual travellers as personal baggage’.

### Art Fraud and the Justice System

While the majority of gallery directors felt that art fraud is not a victimless crime, opinions about whether the courts take art fraud seriously were less clear (see Table 3).

**Table 3: Perceptions About Justice System Responses to Art Fraud**

	Agree	Disagree	No opinion
	%	%	%
Art fraud is a victimless crime	7	84	5
Courts take fraud seriously	39	40	21

Changes to the law or to court procedures were the most often suggested remedy (see Table 4). For example, ‘copyright infringement needs to be a criminal, not a civil offence, and should be encompassed by federal laws’; or ‘generally, the cultural significance of art works is relegated to secondary importance behind commercial values. This should be addressed in judicial considerations of art fraud’.

**Table 4: Suggested Improvements for Justice System Responses to Fraud**

	%
Legislative or procedural improvements	21
Educate the courts, need to exercise greater sensitivity	11
Harsher penalties for art fraud	7
Other/Don’t know	61

A smaller number suggested there is a need for the courts to treat art fraud with greater sensitivity, or spoke of the benefits of education for the courts about art fraud issues — ‘some individual judges take art fraud more seriously than others. Public education would be a good start before policing is necessary’. A few advocated responses such as ‘stiffer penalties and much louder exposure of convicted crimes for this precious industry’.

Some comments about justice system responses inferred that art fraud is difficult to convict — ‘art fraud is treated seriously: if the problem actually goes to court’, while others doubted whether the justice system responds to fraud at all — ‘to my knowledge in the past 14 years I’ve been in business no forger has been brought to account in court’. Directors with experience in the witness box suggested the process could be made less daunting — ‘a less adversarial treatment of expert witnesses would be a start’. One intractable problem identified was the high cost of obtaining expert advice — ‘there needs to be more knowledgeable people who don’t charge thousands of dollars’. Another observation was that the courts must recognise ‘that art fraud represents a part of a portfolio of criminal intents and as such is linked to other serious crime’.

## Comment

The range of responses seems to show that directors do not see art fraud as extensive, or perhaps are unwilling to admit its extent, but the fact that almost all agreed it produces victims shows the level of seriousness they attach to it. The impression gained was that many directors, particularly of smaller public galleries, and commercial operations selling recent works, see art fraud as a problem confined to auction houses and large commercial galleries dealing in 'investment art'. They seemed to be uniformly of the opinion that sales of work by emerging artists are unaffected by art fraud.

An interesting observation arising from the survey was that most directors used forms of the word 'copy' to describe both problematic works and also the action of producing them, with only a few using words such as 'fake', 'forge' or 'forgery'. By implication, it appears that the majority of gallery directors think of such works as 'copies'. It was not clear whether this reinforces the general principle that artworks are never fraudulent, only the actions surrounding them, such as trying to sell questionable works, or whether it points to reluctance by the art world to admit the existence of a seamy underside.

The suggested plan to remove fakes from circulation by compensating victims is an idea that regularly comes up. The chief objection has always been that a system that encourages people to submit fake art for cash rewards would almost certainly cause an escalation in the production of fake art, and would very likely create opportunities for corruption.

The general perception that art crimes are difficult and costly to prosecute, and of scant interest to police, means that those who commit art fraud can do so with little fear that their activities will be questioned, let alone reported.

It was notable that a large proportion of respondents skipped the questions relating to police and justice system responses, with many stating outright they did not know anything about this area. There were frequent comments about the importance of education for artists, police, the judiciary and the art buying public. The education of artists and the art buying public about art and art fraud must surely be primarily the responsibility of the galleries, both commercial and public. This shows up the need for better liaison between the art world and the various arms of the justice system to achieve better understanding of the problems faced by both sides when dealing with art fraud.

The need for police forces to undertake the formation of specialist art crime squads comprehensively trained in procedures against art crime was emphatically supported by directors. The appointment of police art fraud liaison officers could serve as the nucleus for the formation of such squads.

Many suggested police need access to accurate and timely intelligence in the form of an art fraud database. Until recently there were no specific police records kept in Australia about art crimes (McCartney 1999; Hanley 1999). The situation changed in 2000 with the deployment of the National Fraud Desk, an on-line resource operated by the Australian Bureau of Criminal Intelligence (ABCI), designed to function as an educational tool for law enforcement, with reference material such as articles, published papers and journals, and overviews on various types of crime including art fraud. Investigators also have access to a relational database of criteria such as offenders, addresses, offences, etc (McCartney 1999).

The art fraud hotline suggested by directors would only be feasible if a suitably trained group, empowered to act upon complaints of fraud, were in place to answer calls. If and when such a facility is developed, it must be linked effectively to the ABCI Fraud Desk.

For the courts, there are fewer clear options. Convictions must fit the degree of the crime. But convictions cannot be made without prosecutions. The best way to increase prosecutions is to give priority to providing the necessary resources for law enforcement agencies to effectively investigate art crimes. Above all, everyone, gallery directors, police, judges and barristers must not forget that art fraud is first and foremost fraud.

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