SUBMISSION TO PRODUCTIVITY COMMISSION INQUIRY:

ABORIGINAL AND TORRES STRAIT ISLANDER VISUAL ARTS AND CRAFTS

December 2021

Foreword

The Australia Council for the Arts welcomes the Productivity Commission inquiry into Aboriginal and Torres Strait Islander Visual Arts and Crafts and is pleased to provide this submission to assist the inquiry and its examination of the value, nature and structure of markets for Aboriginal and Torres Strait Islander arts and crafts.

As the Australian Government's arts investment, development and advisory body, the Australia Council has a statutory role to support Aboriginal and Torres Strait Islander arts practice.[1] Under our strategy *Creativity Connects Us*,[2] the Australia Council is prioritising investment in First Nations arts and culture. In 2020–21, the Council invested $23.3 million in First Nations artists and communities across art forms.

Our submission includes:

- **the evidence base** for the value, nature and structure of markets for First Nations arts and crafts; the need for fostering First Nations decision-making and creative control; pathways to legislation to protect First Nations' traditional cultural expression; the importance of strategic government investment in First Nations visual arts; the critical role of culture as the foundation of First Nations wellbeing and the vital role art centres play within the Indigenous arts economy and community life
- **case studies** exemplifying the strength of funding models that enable First Nations decision-making and control
- **recommendations** to address deficiencies in the market.

We have a long-term commitment to working in partnership with Aboriginal and Torres Strait Islander peoples to strengthen Australia's First Nations arts and cultural ecosystem. This is a strategic priority that delivers strong social, cultural and economic returns for all Australians.

In 2020–21 we continued to implement our Reconciliation Action Plan, aspiring to cultural excellence in how we employ, engage and collaborate with First Nations peoples, and an organisational culture that includes, involves, considers and respects First Nations knowledge and perspectives, and embeds principles of self-determination.

[1] It is a function of the Australia Council to support Aboriginal and Torres Strait Islander arts practice under Section 9 of the *Australia Council Act 2013* (Cth).
[2] Australia Council 2020, *Creativity Connects Us: Corporate Plan 2020–24.*

Acknowledgement

The Australia Council for the Arts proudly acknowledges all First Nations peoples and their rich culture of the country we now call Australia. We pay respect to Elders past and present. We acknowledge First Nations peoples as Australia's First Peoples and as the Traditional Owners and custodians of the lands and waters on which we live.

We recognise and value the ongoing contribution of First Nations peoples and communities to Australian life, and how this continuation of 75,000 years of unbroken storytelling enriches us. We embrace the spirit of reconciliation, working towards ensuring an equal voice and the equality of outcomes in all aspects of our society.

Language

Throughout this submission, the terms 'Indigenous', 'Aboriginal and Torres Strait Islander' and 'First Nations' are used interchangeably to reference the First Nations people and communities of Australia. Within the Australia Council for the Arts, we use the term 'First Nations'.

Aboriginal and Torres Strait Islander readers are advised that this document may contain names of deceased persons.

CONTENTS

EXECUTIVE SUMMARY

- **The First Nations visual arts and craft industry is not a cottage industry** – it is a high value, complex industry with diverse products, participants and interests; sizeable activity; and significant domestic and international traction and reach. The industry expands beyond the sale or resale of a product and includes the growing demand for First Nations designs in textiles, fashions, and design. The industry has been embracing digital innovation and growing audiences by pivoting to ecommerce and maximising online activity.
- **There is limited knowledge of the total economic value of the First Nations visual arts market**. Particular challenges to filling these data gaps include obtaining commercial data from private dealers/private art businesses; the export value of First Nations visual arts; quantifying increasing activity around textiles, fashion and homewares; quantifying the First Nations souvenir market and the value of lost income through the fake souvenir and art markets, or unlicensed products; how much inauthentic product is domestically manufactured versus imported.
- **The Australia Council's investment in First Nations arts and culture complements, leverages and distinguishes from local, state and territory government investment**. The Council provides a range of critical First Nations-led support to Indigenous visual artists. We do this through our project grants and multi-year organisational investment; targeted investment through strategic programs; capacity building and strategic development nationally and internationally; the National First Nations Arts Awards; and research that investigates the First Nations arts ecology and its audiences and markets.
- **The Visual Arts and Crafts Strategy, delivered by the Australia Council, provides professional support for Aboriginal and Torres Strait Islander artists, Indigenous visual arts industry service organisations and other visual arts organisations**. As part of its investment cycle, the Council is reviewing its multi-year investments for 2025-28 including Four Year Funding and recurrent investments through the Visual Arts and Craft Strategy.
- **As a priority, all Council-directed First Nations investments recognise and advance First Nations arts and culture and foster First Nations decision-making and control**. These investments adhere to principles that empower communities to utilise their cultural knowledge and build on their unique strengths. They encourage First Nations communities to take control and plan how they will nurture their younger people through arts and cultural practice. It is critical to increase opportunities for First Nations-led decision-making and control throughout the visual arts supply chain to ensure ethical dealings between artists and markets.
- **Protecting traditional cultural expressions contributes to economic development, encourages cultural diversity and helps preserve cultural heritage**. It enables artists to control their work and receive payment from its sale and use. Indigenous artists and their communities face particular challenges with the recognition and enforcement of intellectual property rights. While there is increasing awareness of the need to prevent misuse of Indigenous cultural and intellectual property, **Australia's current legal framework provides limited recognition and protection for traditional cultural expressions**.

- **The Australia Council recommends stronger protection of Indigenous cultural and intellectual property, including amendments to Australia's intellectual property and consumer protection regimes to enable recognition and protection of First Nations rights**. The Council's *Protocols for using First Nations Cultural and Intellectual Property in the Arts* serve as good guidelines for engaging with Indigenous cultural and intellectual property in the arts, however, as the protocols are not legally binding, further protection needs to be considered. The creation of Indigenous cultural and intellectual property rights would enable First Nations communities to negotiate access and benefit sharing agreements. Stronger protection for First Nations intellectual property from misrepresentation would promote the commercial sale of authentic Indigenous peoples' arts and crafts. This would strengthen the ability of Aboriginal and Torres Strait Islander artists and communities to benefit from the commercial exploitation of their traditional arts and culture.

- **Internationally, progress has been made to develop legal frameworks to protect Indigenous cultural rights**. Developments such as Canada's *United Nations Declaration on the Rights of Indigenous Peoples Act 2021*, the United States' *Indian Arts and Crafts Act 1990* and Panama's *Special System for Collective Intellectual Property Rights of Indigenous Peoples* serve as good examples to consider implementing in Australia.

- **First Nations artist income is significantly less than that of non-First Nations Australian artists, underscoring the importance of working ethically and respectfully with First Nations artists and visual arts organisations**. Frameworks such as the Indigenous Art Code and the Resale Royalty Right for Visual Artists are critical to ensuring First Nations artists receive equitable returns for the sale of their work. However, the voluntary nature of the code means not all artists and galleries are signatories of the code.

- **Although recent progress has been made to determine and understand supply chains in the First Nations visual arts market, significant knowledge gaps remain** including the degree to which particular parts of the chain are First Nations-led.

- **There is a growing body of evidence for the critical role of culture as the foundation of First Nations wellbeing**, and of the benefits of First Nations arts and cultural engagement for First Nations people and communities. First Nations arts engagement supports empowerment, community connectedness and wellbeing among First Nations Australians and supports outcomes across the Closing the Gap framework.

- **Indigenous-owned and governed art centres play a vital role in the functioning of the Indigenous arts economy and community life**. They perform many functions to support artists, including providing a place to work, supplying materials, providing services such as mentorship and advice, and providing a marketing channel for the sale of work.

RECOMMENDATIONS

- **Address significant knowledge gaps regarding the scale and scope, both domestically and internationally, of markets for First Nations visual arts and crafts**. This includes quantifying the total economic and export value of First Nations visual arts, the scale of the souvenir market and the impact of inauthentic activity, and markets related to design, textiles and fashion.
- **Address skills gaps and funding deficiencies with strategic whole-of-sector response to building skills, careers and pathways to employment for First Nations people**. Recommendations include improving access to technology and internet to artists and communities in regional and remote Australia and building professional skills in digital literacy, ecommerce, marketing and fundraising. It is recommended the Productivity Commission address gaps in the fashion industry for career pathways for Indigenous photographers, stylists, models and artistic directors, as well as career pathways for First Nations art centre managers.
- **Increase investment through the Visual Arts and Crafts Strategy** to generate greater pathways for First Nations visual arts and crafts. Greater public investment will improve outcomes for First Nations artists and the broader industry by deepening audience engagement; expanding markets and enhancing international connections; ensuring opportunities for First Nations artists through funding of new diverse works; providing professional support for First Nations artists; and building stronger, more resilient visual arts and crafts organisations.
- **Identify pathways to legislation to protect First Nations' traditional cultural expression and continue to build awareness of protocols for using First Nations intellectual property in the arts**. Introducing specific legislation that recognises the cultural and intellectual property rights of Indigenous communities and enforces strict penalties for the misappropriation of Aboriginal and Torres Strait Islander arts and culture will protect the traditional cultural expressions of First Nations peoples.
- **Make the Indigenous Art Code mandatory for all dealers, galleries and other sellers of Aboriginal and Torres Strait Islander arts and crafts**. Alternatively, the Council recommends an **increase in resourcing for, and the marketing of, the Indigenous Art Code to artists and consumers** to increase its utilisation.
- **Increase number of international reciprocal arrangements under the Resale Royalty Right for Visual Artists.** Key to supporting a sustainable First Nations visual arts and crafts industry is reciprocal international agreements that entitle First Nations artists to a share of the ongoing value of their works, wherever they are sold – whether that is within Australia or abroad.
- **Address knowledge gaps regarding the current First Nations visual arts supply chain**. The Council recommends the Productivity Commission consider an updated mapping of the supply chain of the sale and resale of artworks from First Nations artists. It is recommended the scope should include the sale and resale of artworks from First Nations artists affiliated with art centres compared to the sale of artworks from independent First Nations artists. It is also recommended that the mapping

examine the degree to which intermediaries and other parts of the supply chain are First Nations-led. This will enable the sector to better understand new markets; the First Nations-led, and non-First Nations-led, management of money made by the sale of First Nations artworks and provide the basis to quantify returns to First Nations artists.

- **Increase opportunities for First Nations decision-making throughout the supply chain of First Nations visual arts**. This includes increasing First Nations-led intermediary agents to support, control and lead the sale of First Nations artworks to domestic and international markets and increasing representation of First Nations management of art centres.
- **Develop a ten-year plan for First Nations art centres to rebuild following the devasting effects of COVID-19**. The sector is still recovering from the global financial crisis and longer-term planning that is co-designed with the sector is needed. This will enable the sector to develop succession plans for future generations of leaders.
- **Focus on tangible outcomes for the First Nations visual arts market.** After a decade of consultations, action plans and inquiries, our First Nations artists and organisations are keen for tangible outcomes that address well-known problems. Our submission endeavours to assist the Productivity Commission to deliver recommendations that will address these issues and contribute to a strong and thriving First Nations visual arts and craft industry.

MARKETS

Australia's First Nations visual arts and craft industry is large and dynamic. It is a high value sector that includes diverse products, participants and interests; sizeable activity; and significant domestic and international traction and reach.

Activity spans primary and secondary markets and extends beyond supply and demand into new markets such as textiles, fashions, and homewares. Our First Nations arts is also one of the world's largest and fastest-growing cultural tourism markets.

The industry is a growth sector and Indigenous cultural capital an unrealised resource, with significant numbers of artists willing to work on cultural production who are not currently able to do so.

Prior to COVID-19, attendance and interest in First Nations arts were strong and growing. Almost all Australians agreed that Indigenous arts form an important part of Australia's culture.[3]

Since COVID-19, the industry has been embracing digital innovation and growing audiences by pivoting to ecommerce and maximising online activity.

Art centres and art fairs

Art centres are integral to the First Nations visual arts and crafts industry. Between 2000/01 and 2012/13 it is estimated that art centre sales totalled $155m,[4] and between 2011-12 and 2018-19, the average sales of Indigenous art centres grew by 53.4%.[5]

Right before the pandemic, average art centre sales were at their highest level since the global financial crisis.[6] Art centres had seen eight years of stability and growth after four years of falling sales after 2007–08. In 2019–20, average art centres sales were $532,648. This is 13% higher than in 2018–19; 68% higher than at their low point in 2011–12; and the highest level since the sales peak prior to the global financial crisis.[7]

However, there has been a decline in the percentage of new artists affiliated with art centres. New artists typically make up around 9% of all art centre artists, but the percentage of new artists in 2019–20 fell to its lowest level on record, at 5.2%.[8] The future health of First Nations arts depends on supporting both existing artists and attracting new artists.

COVID-19 has drastically affected the sector, with substantial drops in production, sales and number of active artists over March–June 2020. However, the sector saw significant improvement over July–December 2020, which included the peak sales period for art centres relating to most of the art fairs.[9]

The sector is taking advantage of the digital disruptions from COVID-19 and innovating, while many businesses and art centres have been forced to adapt to survive in a changing

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[3] Australia Council for the Arts 2015, *Arts Nation: An overview of Australian arts,* available at http://www.australiacouncil.gov.au/research/arts-nation-an-overview-of-australian-arts/
[4] Acker T 2015, *The Art Economy of Remote Australia*. Paper presented at the *CAEPR Seminar Series*, Australian National University, Canberra. 4 March 2015, Ninti One Limited, Alice Springs. (presentation)
[5] Desart 2020, *Financial Snapshot of Aboriginal and Torres Strait Islander Centres, Financial years 2004/05 > 2018/19, Data analysed – March 2020.*
[6] Desart 2021, *A Financial Snapshot of Aboriginal and Torres Strait Islander Art Centres FYE 2020,* available at https://desart.com.au/publication/a-financial-snapshot-of-aboriginal-and-torres-strait-islander-art-centres-fye-2020/
[7] Desart 2021, *A Financial Snapshot of Aboriginal and Torres Strait Islander Art Centres FYE 2020*
[8] Desart 2021, *A Financial Snapshot of Aboriginal and Torres Strait Islander Art Centres FYE 2020*
[9] Desart, (March-June 2020 and July-December 2020)

environment. Anecdotal information suggests that art centres who maximised their online presence and pivoted to an ecommerce model saw improved sales, including during the traditionally quieter summer months.[10] There are however challenges, including low-quality internet connections in many remote locations, as well as concerns about the potential for online platforms to provide new opportunities for exploitation and unethical practices (discussed further on page 32).

In 2020, Cairns Indigenous Art Fair was forced online due to COVID-19. The fair generated $330k in overall art purchases.[11] Likewise in 2020 the Darwin Aboriginal Art Fair (DAAF) delivered an online fair. The fair generated over $2.6m in sales, which went directly to art centres and communities.[12] In 2021, DAAF was once again a completely digital fair and sales totalled $3.12m.[13]

See page (31) for more detail on art centres.

Cultural tourism

Cultural tourism is one of the world's largest and fastest-growing tourism markets. It is directly connected to the growing demand for First Nations 'style' arts and crafts, which are often consumed alongside experiential aspects of tourism.

Australia's unique position as home to the world's oldest living culture is part of what makes Australia such a special place to visit. First Nations arts engage international tourists, especially those who travel outside capital cities.

Australia's First Nations tourism has an estimated value of $5.8 billion annually, catering to 910,000 international visitors and 688,000 overnight domestic trips in 2016.[14]

International tourists are more likely to engage with First Nations arts than attend sporting events. In 2017, over 660,000 international visitors attended a First Nations art, craft or cultural display an increase of 39% from 2013.[15]

First Nations arts and craft are also a strong and growing area of domestic arts tourism. Prior to the pandemic, First Nations arts tourism was increasing, reflecting Australians' emerging interest in engaging with First Nations arts for their beauty, strength and power, and to understand who we are as a nation. The regions where tourists were most likely to engage with First Nations arts and craft are in regional Australia, and particularly regional areas of the Northern Territory where First Nations arts and craft were driving arts engagement by tourists.[16]

Our First Nations arts and culture are an incredible asset to our tourism industry. Arts tourists are high value tourists and arts tourism tends to align with travelling further, staying longer and spending more.

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[10] Desart, (March-June 2020 and July-December 2020).
[11] Cairns Indigenous Art Fair 2020, *2020 Report* available at https://ciaf.com.au/publications.
[12] Darwin Aboriginal Art Fair 2021, *Digital DAAF a Roaring Success!* Accessed on 7 December 2021 https://daaf.com.au/digital-daaf-a-roaring-success/
[13] As above.
[14] Tourism Research Australia, International Visitor Survey 2016 and National Visitor Survey 2016.
[15] Australia Council 2018, *International Arts Tourism: Connecting cultures*, available at https://www.australiacouncil.gov.au/research/international-arts-tourism-connecting-cultures/
[16] Australia Council 2020, *Domestic Arts Tourism: Connecting the country*, available at https://www.australiacouncil.gov.au/research/domestic-arts-tourism-connecting-the-country/

Fashion, textiles and homewares

In recent years, there has been an increased presence of First Nations visual arts, design, and fashion in Australian fashion magazines. For example, Vogue Australia's front cover feature of Anangu/Aboriginal Pitjantjatjara artist Betty Muffler's artwork *Ngangkari Ngura* (Healing Country), (2020) in September 2020.

Anecdotally, there is a groundswell of activity in licensing First Nations designs for textiles, fashions, homewares and packaging. For example:

- The ground-breaking fashion collaboration between Gorman and Mangkaja Art Centre (WA)[17] a commercial-in-confidence agreement negotiated by Copyright Agency.[18]
- The first all-First Nations show at Australian Fashion Week in 2021.[19] This historic show was presented by Indigenous Fashion Projects, a Darwin Aboriginal Art Fair Foundation program in partnership with IMG Fashion and David Jones.[20] Featured designers included Ngali, a high-end Indigenous clothing brand working with First Nations artists such as Lindsay Malay.
- Formation of the first Indigenous modelling agency in Australia: Jira Models; and Australia's first Indigenous fashion council:[21] new national industry body First Nations Fashion and Design. The Australia Council has supported First Nations Fashion and Design to deliver four unique cultural fashion performances across the nation in 2021 that are 100% First Nations owned, operated and managed, and which provide professional and economic development opportunities for Indigenous designers and models.
- The collaboration between Bunnings and Warlukurlangu artists (central desert, NT) on a range of plant pots and cushions, which are proving enormously popular.[22]
- The collaboration between Adairs and First Nations artists on a homewares range including quilted bedlinen, cushions, table lights and home fragrances.
- The 2021 collaboration between Southern Kaantju/Umpila artist Naomi Hobson, MECCA Brands and the National Gallery of Victoria, resulting in Naomi's designs decorating MECCA stores and adorning packaging.

This activity represents growing First Nations art economies not currently quantified or tracked. It is also activity with important intellectual property implications and different implications for artists working outside art centres.

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[17] See ABC 2019, *Gorman Mangkaja collection breaks new ground for Indigenous fashion design collaboration*, 21 July 2019.
[18] See Copyright Agency 2019, *Mangkaja and Gorman create an Indigenous collection setting a benchmark in collaboration*, viewed 1 September 2021.
[19] See Willis C 2021, 'First Nations fashion designers make history at Australian fashion week,' *ABC News* 5 June 2021. Birrell A 2021, 'The milestone presence of Indigenous design at Australian Fashion Week is a reminder of fashion's power,' *Vogue* 4 June 2021. Sams L 2021, 'Historic fashion week show draws year's first standing ovation,' *Financial Review* 2 June 2021. Note, other Australian major fashion shows have included First Nations designers, models and artists, such as Melbourne Fashion Festival's Global Indigenous Runway show in 2013 and the 2014 Indigenous Fashion Runway as part of Melbourne Spring Fashion Week.
[20] See Thompson C 2021, 'The Indigenous Fashion Projects Show confirmed the immense talent of First Nations Designers,' *Marie Claire*, 3 June 2021.
[21] See Couros F 2020, 'You may have missed it, but Australia's first First Nations Fashion Council launched last month,' *Fashion Journal*, 5 April 2020.
[22] See Daily Mail Australia 2021, *Shoppers are going wild for these stunning Indigenous art pots from Bunnings – and they're only $17*. News.com.au 2021, *Bunnings $17 Indigenous art pots go viral on Facebook*.

The last systematic tracking of types and values of art products was for the Art Economies project report *Artists and Art Centre Production*. This research found that between 2003 and 2012, textiles and fabrics comprised just 0.6% of total products produced by art centres. Between 2008 and 2012, this accounted for 493 products with a mean value of $270.[23] The other product categories looked at in this research were paintings, works on paper and sculptures.

Knowledge gaps

Over the previous decade, there has been a substantial amount of research and improved data tracking, particularly for art centres.[24] Reports of inauthentic activity, including illegal trading of First Nations visual arts, is also now tracked in a more concise way through the Indigenous Art Code. However, significant knowledge gaps remain, including knowledge of the total economic value of First Nations visual arts.

There is a need to fill gaps, however, long-standing challenges exist in accessing the commercial data needed to show the total economic contribution of the industry. While there have been attempts to fill these data gaps and better understand the total economic value of First Nations visual arts, there are challenges to collecting and quantifying this data.[25]

Particular challenges include obtaining commercial data from private dealers/private art businesses; quantifying the export value of First Nations visual arts; quantifying increasing activity around textiles, fashion and homewares; quantifying the First Nations souvenir market and the value of lost income through the fake souvenir and art markets, or unlicensed products; calculating how much inauthentic product is domestically manufactured versus imported.

There is a need to address these significant knowledge gaps regarding the scale and scope – including total economic and export value – for First Nations visual arts and crafts markets, both domestically and internationally; the souvenir market and the impact of inauthentic activity and the value of markets related to design, textiles and fashion.

See appendix A, B and C for more detail on existing research, knowledge gaps and attempts to fill them to date.

Recommendation: **Address significant knowledge gaps regarding the scale and scope, both domestically and internationally, of markets for First Nations visual arts and crafts**. This includes quantifying the total economic and export value of First Nations visual arts, the scale of the souvenir market and the impact of inauthentic activity, and markets related to design, textiles and fashion.

THE ROLE OF GOVERNMENTS

Australia Council investments

Australia Council investment strengthens the global profile of Australian arts, culture and creativity, and builds the capability of Australia's creatives to engage internationally. It

[23] Woodhead A and Acker T 2014, *Art Economies Value Chain Report: Artists and art centre production*, CRC-REP, Ninti-One Alice Springs.
24 See appendix A for more detail.
[25] See Appendix C for more detail.

complements, leverages and distinguishes from local, state and territory government, the private and community sector and international partner initiatives.

As the Australian Government's arts investment, development and advisory body, the Australia Council has a statutory role to support Aboriginal and Torres Strait Islander arts practice.[26] Since the creation of the Australia Council in 1968, the Council has fostered First Nations arts and culture both within Australia and internationally. The Council continues to foster First Nations decision-making and control to advance and promote First Nations arts and culture. This has underpinned our investment since the founding of the Aboriginal and Torres Strait Islander Arts Board in 1973 through to the critical role of the current First Nations Arts Strategy Panel.

The Council provides a range of critical First Nations-led support to Indigenous visual artists. We do this through our project grants and multi-year organisational investment; targeted investment through strategic programs; capacity building and strategic development nationally and internationally; the National First Nations Arts Awards; and research that investigates the First Nations arts ecology and its audiences and markets.

In particular, we invest in independent First Nations artists; the exhibition of work in Australia and overseas; First Nations-led organisations and art fairs; innovative projects to expand national and international markets; global First Nations networks; and professional and digital capacity building. Through our advocacy and protocols, we encourage an ethical marketplace.

In 2020-21, the Council invested a total of $193.9m in arts and cultural activities with a primary focus on First Nations arts and culture. Across art forms, the Council invested $23.3m in First Nations artists and communities in 2020–21.

For more information on the Australia Council's investment in First Nations arts and culture see Appendix D.

Multi-year investment

The Council invests in a range of First Nations-led organisations through our multi-year investment programs. These include service organisations to build capacity for First Nations artists, and organisations that present compelling contemporary First Nations works across theatre, visual arts, community arts and music.

In 2020-21, 8 new First Nations organisations were supported by the Council's Four Year Funding program.

From a study of the Council's multi-year funded organisations – and those that have sought funding from the Council that we have not been able to provide – we know that there are numerous immediate unmet opportunities to invest in cultural, artistic and social outcomes.

Visual Arts and Crafts Strategy

The Council delivers, in partnership with state and territory governments, the Visual Arts and Crafts Strategy (VACS). The strategy provides direct funding to the Australian contemporary

[26] It is a function of the Australia Council to support Aboriginal and Torres Strait Islander arts practice under Section 9 of the *Australia Council Act 2013* (Cth).

visual arts and craft sector, promoting creative work by living visual artists and craft practitioners, and the organisations that support their practice.

A key objective of the strategy is to provide professional support for Aboriginal and Torres Strait Islander artists, Indigenous visual arts industry service organisations and other visual arts organisations as needed.

In 2020–21 the Council provided $6.8 million in VACS investment through multi-year investment organisations and contemporary touring initiative projects. Currently, VACS invests in two First Nations-led organisations: UMI Arts, the peak Aboriginal and Torres Strait Islander Cultural organisation for Cairns and Far North Queensland, which is managed by an all-Indigenous Board of Directors, and the Darwin Aboriginal Art Fair, a First Nations-led art fair. Visual arts organisations, such as Queensland Art Gallery and Gallery of Modern Art (QAGOMA) and the Art Gallery of South Australia (AGSA), also receive VACS investment for specific events which feature First Nations art centres and/or the works of First Nations artists.

As part of its investment cycle, the Council is reviewing its multi-year investments for 2025-28 including Four Year Funding and recurrent investments through the Visual Arts and Craft Strategy. In doing so, the Council is actively responding to the National Indigenous Visual Arts Action Plan including the identified need for further investment in Aboriginal and Torres Strait Islander artists and Indigenous-led and orientated visual arts events and organisations.

For detail on how the Visual Arts and Crafts Strategy interacts with other government funding, see 'Relationships between government investment strategies' on page 18.

Fostering First Nations decision-making and control

First Nations-led solutions that empower communities to utilise their cultural knowledge and build on their unique strengths are the most likely to succeed.

There is a need to build opportunities for First Nations decision-making and creative control to ensure appropriate presentation of First Nations arts in Australia.[27] This includes the need to listen to and work with First Nations leaders, and for prioritised funding for First Nations-led organisations that is sufficient to enable long-term planning for sustainability.

As part of the Council's commitment to First Nations self-determination, our investment is underpinned by First Nations decision-making. Our dedicated funding to First Nations people, groups and organisations through our grants program is assessed wholly by Aboriginal and Torres Strait Islander peer assessors.

The Council's First Nations Arts Strategy Panel provides expert strategic advice to ensure the effective delivery of our programs and strategic activities. The panel comprises senior arts leaders who provide expert advice supporting the development and promotion of traditional and contemporary arts practices. The panel encourages new forms of cultural expression by Aboriginal and Torres Strait Islander people who practise any art form and live in urban, regional and remote areas.

Outcomes from the *Kulata Tjuta* (many spears) project – a recipient of the Chosen program between 2016-19 – illustrate the importance and strength in funding models that enable First Nations-led and community-led collaborative arts and cultural programs to deliver social, cultural and economic development outcomes for First Nations people. The impacts of this

[27] Australia Council 2020, *Creating Art Part 1: The Makers' View of Pathways for First Nations theatre and dance*.

project have been significant and long lasting – both socially and economically – with *Kulata Tjuta* inspiring many spin-off projects and impacting every area of community and art centre business.

Case study: Kulata Tjuta

A powerful cultural renewal project taking the visual arts industry by storm, strengthening community, and creating artists and cultural leaders of the future

Kulata Tjuta (many spears) is a cultural renewal project sharing skills across generations. It has grown from a small project – teaching younger men the skills of carving and punu kulata (wooden spear) making in the Amata community – to become a powerful force with exponential outcomes across communities spanning the APY Lands and beyond. It has revived dying cultural practices while building employment opportunities, community wellbeing and the capacity of the younger Anangu community to become professional artists and cultural leaders of the future. Led by Elders and senior people, multiple remote communities across the APY Lands have worked together to deliver large scale artistic outcomes that have received national and international interest and acclaim.

The multiplier effect of the project over the previous decade, and with the support of the Council's Chosen program from 2016 to 2019, exemplifies the effectiveness of community-led projects and Chosen's co-design model.

'The Chosen funds have been invaluable, it has allowed a project that was in its infancy filled with potential to grow and become what is regarded as the most powerful art project seen in the history of the APY Art Centre Movement.'[28]

The Chosen program supported *Kulata Tjuta* with $45,000 per year for 3 years from June 2016, $145,000 in total. The growing confidence of the participants at every stage led to stronger outcomes in the next stage. Projects were iterative and adopted greater complexity and collaboration, resulting in larger scale works with increasingly impactful artistic outcomes.

In 2015, senior APY artists and men from the Lands developed a large-scale art exhibition for the Tarnanthi Art Fair 2015 (Art Gallery of South Australia) incorporating film, sound and live performance. Following the success of Kulata Tjuta at Tarnanthi, APY art centres were presented with several large-scale commissions and exhibition opportunities providing exciting employment. In 2018, APY Arts Collective opened a permanent Sydney-based commercial gallery, the first of its kind – fully Aboriginal-artist owned and led. In its first weekend, the gallery sold over 50 works from young and emerging artists.[29] In October 2020, the 2017 *Kulata Tjuta* installation and work by APY artists were presented as part of a touring exhibition in France which opened at the Museum of Fine Arts in Rennes.

First Nations entrepreneurship, including the APY Collective's commercial galleries in Sydney and Adelaide, highlight the value of cultural maintenance and renewal to First Nations economic development.

'When we started this project, we didn't know that the Kulata Tjuta project would open a whole world of opportunities for our young people.

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[28] Chosen progress report 2018.
[29] Blanco C 2018, 'Opening of Aboriginal artist-owned APY gallery in Sydney a whopping success', NITV News, 27 March 2018.

We are extremely grateful to Australia Council for the Arts for the support through Chosen. Your support really gave us a chance to make the Kulata Tjuta project work. Your confidence in us supported our confidence to grow.

The Kulata Tjuta Project is now part of the fabric of each of our art centres and the fabric of our community. The Elders and I have so much pride in our young people and we know the Ancestors do too.'

– Frank Young[30]

Other Federal Government investments

Through the Office for the Arts, the Australian Government administers several investments supporting First Nations arts and culture. In particular, the Indigenous Visual Arts Industry Support (IVAIS) program provides about $21m per year to around 80 Indigenous-owned art centres, as well as a number of art fairs, regional hubs and industry service organisations. This provides opportunities for 8,000 Aboriginal and Torres Strait Islander artists and more than 500 Aboriginal and Torres Strait Islander arts workers.[31]

In 2018–19, organisations supported by IVAIS participated in over 900 exhibitions and events, achieving $26.5m in primary art sales. In addition, in 2018–19, the four Indigenous art fairs supported through the IVAIS program hosted more than 96,400 visitors, achieved more than $4.3m in art sales, and featured work by more than 2,700 artists.[32] It is estimated that each year activities supported by IVAIS contribute about $70m to the Australian economy.[33]

The Australian Government also administers the Indigenous Languages and Arts (ILA) program. The ILA program supports activities that revive, maintain, celebrate and promote Indigenous cultures through languages and arts.

Critical funding for art centres

Coordinated government funding is critical to enabling Indigenous-owned and governed art centres to continue to play a vital role in the functioning of the Indigenous arts economy and community life. Art centres represent a rare, long-term success in remote Aboriginal and Torres Strait Islander Australia. They have been a feature of remote communities since the 1970s and have made a major contribution to Australia's cultural and creative landscape.[34]

Cultural producers from these remote locations contribute significantly to their local economies. Many collaborate, travel or send their work Australia-wide and internationally. For example, almost two-thirds of artists in the Central Desert/APY Lands region have had their work shown or presented in capital cities, and nearly one in three have been shown overseas.[35]

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[30] Frank Young, APY Art Centre Collective 2019 Chosen report.
[31] Office for the Arts 2020, *Consultation Paper on Growing the Indigenous Visual Arts Industry*, September 2020, Department of Infrastructure, Transport, Regional Development and Communications.
[32] Data provided by the Office for the Arts, 8 April 2020.
[33] Office for the Arts 2020, *Consultation Paper on Growing the Indigenous Visual Arts Industry*, September 2020, Department of Infrastructure, Transport, Regional Development and Communications.
[34] Acker T 2015. Aboriginal and Torres Strait Islander Art Economies Project. CRC-REP Policy briefing PB009. pdf.
[35] Throsby D and Petetskaya K 2019, *Submission to the Committee on Indigenous Affairs: Inquiry into the pathways and participation opportunities for Indigenous Australians in employment and business*. (Sub.5).

Financial analysis by Desart found that in 2018–19, nearly 74,300 artworks were produced through 83 art centres, an average of 895 works for each of the art centres included in the data.[36] Desart also compared art centre activity between 2019 and 2020. In 2019, 38,544 artworks were produced, an average of 494 per art centre. In 2020, total artworks produced fell 27.2% to 28,047, an average of 360 per art centre.[37]

Art centres perform many functions to support artists. For visual artists, an art centre typically provides a place to work, a supply of materials such as canvas and paint, services such as mentorship and advice, and a marketing channel for the sale of work. For the majority of visual artists in the Central Desert/APY Lands region, the availability of access to an art centre is critical – for 84% this is their most important work location.[38] Many art centres also provide account management for their artists and negotiate with government services on behalf of the artists.[39]

Art centres form partnerships and make connections with agents, galleries and art institutions in the capital cities in Australia and overseas. They link artists to the wider art market through their participation in art fairs, their relationships with dealers, galleries and museums in Australia and abroad, and their marketing presence on the internet. They also create employment opportunities, both in creative art production and for art workers engaged in packaging, archiving, art restoration, cataloguing, office work, cleaning, working with visitors and so on.[40]

Art centres, along with fairs such as the Cairns Indigenous Art Fair (CIAF) and Darwin Aboriginal Art Fair (DAAF), also increase access for domestic and international visitors to experience First Nations arts. Prior to the travel restrictions, First Nations arts were increasingly part of the itinerary for both international and domestic tourists in Australia and were driving tourism in regional and remote areas.[41]

A significant majority of First Nations artists living in remote areas agree that art and cultural production has the potential to promote long-term sustainability of remote communities in their region. It is clear that in these settings, arts and cultural activities perform better than non-cultural activities in providing regional artists with relevant employment opportunities and associated incomes.[42]

For detail on art centres see 'Importance of art centres to communities' and 'The art centre model' on page 31.

Relationships between government investment strategies

Australian Government investment in First Nations arts and culture, including through the Council, complements, leverages and distinguishes from local, state and territory government, the private and community sector and international partner initiatives. Coordinated government investment, from all levels, provides critical support to the sector. Investments work in harmony to ensure organisations are adequately funded.

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[36] Desart Inc 2020, *Financial Snapshot of Aboriginal and Torres Strait Islander Art Centres, 2004/05 > 2018/19*.
[37] Desart Inc 2021, *Art Centres and COVID-19: An update on the pandemic's ongoing impact, July to December 2020*.
[38] Throsby D and Petetskaya K, *Integrating Art Production and Economic Development in the Central Desert (NT) and the APY Lands (SA)*, April 2019.
[39] Throsby D and Petetskaya K 2019, *Submission to the Committee on Indigenous Affairs: Inquiry into the pathways and participation opportunities for Indigenous Australians in employment and business*. (Sub.5), p.6.
[40] As above, p.9.
[41] Australia Council 2018, *International Arts Tourism: Connecting cultures*. Australia Council 2020, *Domestic Arts Tourism: Connecting the Country*.
[42] Throsby D and Petetskaya K, Integrating Art Production and Economic Development in the Central Desert (NT) and the APY Lands (SA), April 2019; Integrating Art Production and Economic Development in North West NT and Tiwi Islands, May 2019; Integrating Art Production and Economic Development in Arnhem Land Northern Territory, July 2019.

For example, funding delivered through IVAIS and VACS provides operational support for First Nations visual arts organisations. In addition, the Council's grants programs enable First Nations artists and visual arts organisations to create and deliver specific projects such as artworks, exhibitions, workshops and events.

Support from state, territory and local governments complement Commonwealth investments and provide localised project and operational funding for First Nations visual arts organisations and artists.

First Nations visual arts organisations across Australia rely on multilateral government investment, in addition to philanthropic and corporate support, to remain operational. Such organisations include Cairns Indigenous Art Fair (CIAF), Darwin Aboriginal Art Fair (DAAF) and Arnhem, Northern and Kimberley Artists (ANKA) Aboriginal Corporation.

Case study: Coordinated funding fostering sustainable organisations

The Darwin Aboriginal Art Fair (DAAF) is an annual event that showcases the contemporary fine art of more than 70 Aboriginal and Torres Strait Islander Art Centres, providing opportunities to purchase art directly from Indigenous owned and incorporated Art Centres. DAAF is a recipient of multilateral government support and exemplifies how strategic government investment helps build strong, impactful and sustainable organisations.

DAAF receives support through IVAIS, VACS and multi-year organisational funding. The fair also receives support from the Northern Territory State Government and from City of Darwin, Darwin's local government. DAAF has also been successful in securing funding for special projects via the Council's grant programs.

This investment has enabled stability and security and allowed the organisation to think strategically and plan for its future. This strategic work has seen DAAF expand their operations and deliver further opportunities for art centres and affiliated artists. In particular, DAAF recently secured philanthropic investment from the Ian Potter Foundation. The Foundation invested $950,000 over 3 years to support DAAF's digital pivot initiative.

About the digital pivot

In 2020 DAAF was forced online due to concerns about visitors to remote art centres and vulnerable communities during the pandemic. The online event far exceeded expectations and generated over $2.6m in sales, which went directly to art centres and communities.

By moving online, the fair was able to reach a far bigger audience – 'the website had almost 45,000 unique visitors (compared to over 17,000 in-person attendees in 2019) and almost three-quarters were first-time visitors'.[43] It also enabled people from all around the world to gain a 'rare and intimate glimpse' into artists' lives and work. The implementation of the digital platform has opened up major business opportunities for the future, and enabled the fair's organisers to engage more fully in export markets to promote First Nations art around the world.

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[43] Loewenthal C 2020, 'Innovation takes Indigenous art to the world', Dynamic Business, 14 Dec, viewed 17 May 2021, https://dynamicbusiness.com.au/topics/news/innovationtakes-indigenous-art-to-the-world.html.

Funding gaps

As discussed above, co-ordinated investment provides crucial support to the sector. However critical gaps remain, and new opportunities have emerged for additional funding to support the development of a First Nations visual arts and crafts market that is sustainable. Key to this is a strategic whole-of-sector response to building skills, careers and pathways to employment for First Nations people.

In particular, there is a need to address the digital environment and build digital literacy skills for First Nations artists and their stakeholders. This includes improved access to technology and internet to artists and communities in regional and remote Australia; building professional skills in digital literacy to develop robust ebusiness platforms, including improving capacity for website design, ecommerce and other digital skills; building professional skills in marketing and fundraising to support sustainable business models. This could be achieved through First Nations-specific training or a national mentoring program.

In addition, while there have been ad hoc opportunities provided by Vogue, Marie Claire and Country Road, there needs to be a more strategic approach to provide professional development opportunities and technical roles for First Nations people in the fashion industry.

Recommendation: Address skills gaps and funding deficiencies with strategic whole-of-sector response to building skills, careers and pathways to employment for First Nations people. Recommendations include improving access to technology and internet to artists and communities in regional and remote Australia and building professional skills in digital literacy, ecommerce, marketing and fundraising. It is recommended the Productivity Commission address gaps in the fashion industry for career pathways for Indigenous photographers, stylists, models and artistic directors, as well as career pathways for First Nations art centre managers.

Recommendation: Increase investment through the Visual Arts and Crafts Strategy to generate greater pathways for First Nations visual arts and crafts. Greater public investment will improve outcomes for First Nations artists and the broader industry by deepening audience engagement; expanding markets and enhancing international connections; ensuring opportunities for First Nations artists through funding of new diverse works; providing professional support for First Nations artists; and building stronger, more resilient visual arts and crafts organisations.

INAUTHENTICITY

Importance and limitations of intellectual property

Traditional cultural expressions are integral to the economic, cultural and social life of Indigenous communities, embodying knowledge and skills, transmitting core values and beliefs and manifesting identity.

For many remote communities, arts and cultural production has the potential to be one of the most important ways for community members to earn a viable and culturally relevant livelihood.[44]

Creative artistic activities and other cultural activities are the main income sources for around a third of artists working in North West NT and the Tiwi Islands (29%), the Central Desert (NT) and the APY Lands (SA) (35%), Arnhem Land (NT) (33%) and the Kimberley (31%).[45] Within creative practices, the most prominent art form in these four remote regions is visual arts, with over nine in ten visual artists who practised their art in the last 12 months receiving some financial return from it.[46]

Protecting traditional cultural expressions contributes to economic development, encourages cultural diversity and helps preserve cultural heritage. It enables artists to control their work and receive payment from its sale and use.

However, Australia's current legal framework provides limited recognition and protection for traditional cultural expressions. Australia does not yet have a law that prevents alteration, distortion or misuse of traditional symbols, songs, dances, performances or rituals that may be part of the heritage of particular Indigenous language groups.

The Council advocates for the full legal protection of Indigenous and cultural and intellectual property and supports amendments to Australia's intellectual property and consumer protection regimes to enable recognition and protection of First Nations rights.

The Council's *Protocols for using First Nations Cultural and Intellectual Property in the Arts* serve as good guidelines for engaging with Indigenous cultural and intellectual property in the arts, however, as the protocols are not legally binding, further protection needs to be implemented through a sui generis law. The creation of Indigenous cultural and intellectual property rights would enable First Nations communities to negotiate access and benefit sharing agreements. The introduction of laws to protect First Nations intellectual property from misrepresentation would promote the commercial sale of authentic Indigenous peoples' arts and crafts. This would strengthen the ability of Aboriginal and Torres Strait Islander artists and communities to benefit from the commercial exploitation of their traditional arts and culture.

[44] National survey of remote Aboriginal and Torres Strait Islander artists (Macquarie University, ongoing).
[45] As above.
[46] As above.

Australian laws and protocols

Consumer protection

Section 18 of the Australian Consumer Law prohibits conduct that may be misleading or deceptive, or making false or misleading representations in trade or commerce, which includes the sale of artworks[47] and other art and craft products such as souvenirs.

In circumstances of misleading and deceptive conduct the Australian Consumer and Competition Commission (ACCC) – or any person or business that has suffered a loss as a result of the conduct – can take action against corporations and related individuals involved, and may apply to the court for an injunction or other orders.

For example, in *ACCC v Australian Icon Products Pty Ltd (AIP) and others*, in 2003, the sellers of souvenirs were prevented from making statements claiming that the souvenirs were made or painted by Aboriginal artists or were "Aboriginal art" when, in fact, they were not. Similarly, in 2019, the Federal Court ordered Birubi Art Pty Ltd to pay $2.3m for making false or misleading representations about products it sold in breach of the Australian Consumer Law.[48]

While the ACCC has in the past used its powers to prevent misleading or deceptive conduct by prosecuting those who falsely market products as 'Aboriginal-made' or 'authentic Aboriginal merchandise',[49] the Australian Consumer Law as currently drafted does not provide adequate protection against the misappropriation of traditional cultural expressions.

The scope of conduct prohibited under section 18 is narrow, capturing only representations which are false or misleading. This means that inauthentic products which misappropriate traditional cultural expressions are permissible as long as no assertion of authenticity is made. For instance, in *ACCC v Farzad Nooravi and Homa Nooravi (trading as Doongal Aboriginal Art and Artefacts)*[50] the finding of misleading and deceptive conduct turned on the defendants' actions in advertising artworks as 'authentic' when the artworks were created by three non-Indigenous white artists without consent of traditional owners.

Intellectual property law

Aboriginal and Torres Strait Islander artists may also protect their original art works and designs under intellectual property law. The *Designs Act 2003* allows individuals to register a design to obtain protection from obvious or fraudulent imitations, while the *Copyright Act 1968* protects against unlawful copying of original works and enables artists to secure a benefit from licensing their works.[51]

However, the Council notes that Indigenous artists and their communities face particular challenges in respect of the recognition and enforcement of intellectual property rights. While there is increasing awareness among both the community and the courts of the need to prevent misuse of Indigenous cultural and intellectual property – including successive decisions which have extended *Copyright Act 1968* protections to better accommodate

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[47] *Blackman & Ors v Gant & Anor* [2010] VSC 109.
[48] ACCC, $2.3M penalty for fake Indigenous Australian art, 26 June 2019.
[49] *ACCC v Australian Icon Products Pty Ltd* (Federal Court Proceedings Q33 of 2003); *ACCC v Australian Aboriginal Art Pty Ltd, Henry Peter De Jonge, Bruce Leslie Read* (Federal Court Proceedings Q131 of 2003).
[50] *ACCC v Farzad Nooravi and Homa Nooravi* 920080 FCA 2021.
[51] Many Aboriginal and Torres Strait Islander art centres are members of Viscopy, the Australian copyright collecting society for visual artists which allows users to license images of the works by arts centre artists for a negotiated fee.

Indigenous property rights – significant barriers still exist for First Nations artists and communities who seek to assert their property rights.

To further protect Indigenous knowledge and culture, the Council is currently in discussions with IP Australia to suggest revisions to Australian intellectual property laws. The Council is proposing the formation of an Indigenous advisory committee to advise the Director General on applying the proposed revisions. The Indigenous advisory committee would provide advice on how best to prepare for trademark and design applications which contain Indigenous art, culture or knowledge, such as Indigenous design, symbols or language.

Protocols for using First Nations Cultural and Intellectual Property in the Arts

The Australia Council has published a protocol guide – *Protocols for using First Nations Cultural and Intellectual Property in the Arts* – which endorses the rights of Indigenous people to their cultural heritage and supports Indigenous creative practice.[52] The protocol guide encourages self-determination and helps build a strong and diverse Indigenous arts sector.

These protocols are another option to restrict the proliferation of inauthentic products. They spell out clearly the legal, ethical and moral considerations for the use of Indigenous cultural material. They promote interaction based on good faith and mutual respect.

For applicants to the Council's grants program who are working with Indigenous Australian artists, adherence to these protocols is a condition of funding. All applicants must confirm they comply with the protocols by accepting the Council's terms and conditions. Applicants must also provide evidence they adhere to the protocols through support material such as letters of support from Elders and budget lines illustrating consultation fees for Elders and cultural advisors.

The Council released updated *Protocols for using First Nations Cultural and Intellectual Property in the Arts* in September 2020. This is the third edition of the protocols following editions in 2002 and 2007.

The protocols serve as good guidelines for the general public to respect and consult with First Nations communities about selling and distributing First Nations arts.

Internationally, the protocols are also gaining traction.[53] Canada Council for the Arts, Canada's national arts investment body, are considering the Council's protocols in order to develop their own protocols for using First Nations cultural and intellectual property in the arts. Canadian Artists Representation le Front des Artistes Canadiens (CARFAC) have also licensed the Council's protocols to develop a new Indigenous Intellectual and Cultural Property toolkit for the visual arts sector in Canada. To be presented in a new workshop series next year, the toolkit will offer guidelines on the use and protection of First Nations, Inuit and Métis traditional and contemporary visual art and cultural material.

However, as the protocols are not legally binding unless placed in a contract, further protection for First Nations cultural and intellectual property needs to be implemented through a sui generis law.

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[52] *Protocols for using First Nations Cultural and Intellectual Property in the Arts*, (2020) developed by Terri Janke and Company for the Australia Council.

[53] In December 2020, WIPO Magazine published an article highlighting the launch of the new edition of Australia Council's *Protocols for using First Nations Cultural and Intellectual Property in the Arts.*

International laws and protocols

Internationally, progress has been made to develop legal frameworks to protect Indigenous cultural expression. These developments provide a number of possibilities for the Australian Government to implement and protect Indigenous intellectual property, and reduce the prevalence of inauthentic Aboriginal and Torres Strait islander art and craft products.

Canada's United Nations Declaration on the Rights of Indigenous Peoples Act, 2021

In December 2020, the Government of Canada introduced legislation to implement the *United Nations Declaration on the Rights of Indigenous Peoples* (the Declaration), which provides a road map to advance lasting reconciliation with Indigenous peoples. On June 21, 2021, Bill C-15, the *United Nations Declaration on the Rights of Indigenous Peoples Act* received Royal Assent.[54]

This bill provides a key building block to fully recognising, respecting, protecting and fulfilling the rights of Indigenous peoples.

Article 31 of the Bill specifically acknowledges that: 'Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.'

The Bill directs that States, in conjunction with Indigenous peoples, 'shall take effective measures to recognise and protect the exercise of these rights.'

As the Act is in its infancy, implementation plans for the Act as it specifically relates to Indigenous cultural and intellectual property are currently in development.

The Australian Government has not implemented this particular Article into any national domestic law.

The United States' Indian Arts and Crafts Act, 1990

The *Indian Arts and Crafts Act* in the United States prohibits the misrepresentation in marketing of Indian arts and crafts products within the United States. It mandates it is illegal to offer or display for sale, or sell, any art of craft product in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian tribe.

There are substantial penalties for violating *Indian Arts and Crafts Act*. If found guilty, an individual who violates the IACA may face up to a $250,000 fine or imprisonment for no more than five years. If found guilty of more than one charge, that person may be fined up to $1,000,000 and imprisoned for up to 15 years.

To promote the economic development of American Indians and Alaskan Natives through the expansion of the Indian arts and craft market, the Indian Arts and Crafts Board is an agency within the United States Department of the Interior. While the Indian Arts and Crafts Board (IACB) has the power to refer complaints, recommend charges to be filed and create and register trademarks that are authentically Native American or Alaskan, criticisms have been raised regarding limited resourcing and low numbers of prosecutions.

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[54] See Government of Canada 2021, Implementing the United Nations Declaration on the Rights of Indigenous Peoples Act.

Panama's traditional knowledge laws

Panama was one of the first countries to establish a comprehensive sui generis intellectual property regime.[55] The *Special System for Collective Intellectual Property Rights of Indigenous Peoples* was established in 2000 to protect the arts and crafts of the Indigenous peoples of Panama.

This law is set about to protect the collective rights of the Indigenous communities to their intellectual property and to promote the commercialisation of these rights in order to emphasise their value and apply social justice. The law promotes the commercial sale of authentic Indigenous peoples' arts and crafts to ensure economic returns to Indigenous peoples. The Kuna People of Panama fiercely protect their art, culture and knowledge and advocate for better resourcing to regulate and enforce this law in Panama.

Opportunities to identify legislative pathways to protect Indigenous cultural and intellectual property

(a) Recognition of Aboriginal and Torres Strait Islander intellectual property rights

In line with our legislative function to support and promote the development of markets and audiences for the arts,[56] the Council considers that incentives for the creation and production of artistic works and protection of creators' rights are fundamental to maintaining a diverse and sustainable Australian arts and culture sector.

Introduction of specific legislation to protect the cultural and intellectual property rights of Indigenous communities would address gaps in the current framework.

Legislation to recognise Aboriginal and Torres Strait Islander intellectual property rights should:

- allow for the nature of Indigenous intellectual property rights to be defined according to customary law
- recognise the perpetual nature of indigenous folklore and knowledge
- exempt traditional cultural expressions from requirements of originality and material form
- enable moral rights of attribution to the indigenous communities rather than just individual artists
- provide a right of civil action against infringers
- establish collecting agencies for the charging of fees for the use of heritage.[57]

Effective intellectual property laws play a critical role in the realisation of diversity in the arts. They function to incentivise and protect the creation, publication and dissemination of diverse cultural expressions, enhance respect and support for cultural diversity.

Legal frameworks which protect, promote and enable a diversity of cultural expressions enrich Australia by making our communities more vibrant and creative and ensuring that Australians from all backgrounds are given the opportunity to participate in and contribute to Australia and its social, economic and cultural life.

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[55] Figueroa P 2021, *When Imitation Is Not Flattery: Addressing Cultural Exploitation in Guatemala Through a Sui Generis Model*, 46 BYU L. Rev. p. 982.
[56] *Australia Council Act 2013* section 9(1)(e)
[57] Janke T., *Our Culture, Our Future: Proposals for the Recognition and Protection of Indigenous Cultural and Intellectual Property* (Australian Institute of Aboriginal and Torres Strait Islander Studies, 1997).

The creation of Indigenous intellectual property rights would enable First Nations communities to negotiate access and benefit sharing agreements, which would strengthen the ability of Indigenous and Torres Strait Islander artists and communities to benefit from the commercial exploitation of their traditional arts and culture.

Any legislative reform in this regard would need to consider the implications for creators' income from their creative work overtime and should be developed in consultation with Aboriginal and Torres Strait Islander people and their communities.

(b) Amendment of the Australian Consumer Law to penalise sellers of inauthentic Aboriginal and Torres Strait Islander arts and crafts products

To more effectively prevent the selling and distribution of inauthentic art and craft products, the Council supports the recommendation to amend Australian Consumer Law.

Introducing stricter penalties for inauthentic art into Australia's consumer protection laws similar to the United States' *Indian Arts and Crafts Act* may assist with raising awareness of Indigenous cultural and intellectual property. The implementation of such measures would send an important signal about Australia's commitment to reducing the misappropriation of Aboriginal and Torres Strait Islander arts and culture.

Any legislative reform in this regard should be developed in consultation with Aboriginal and Torres Strait Islander artists and their communities.

(c) Continue to build global awareness of First Nations protocols

To encourage ethical conduct and promote interaction based on good faith and mutual respect, it is imperative that the Australian Government promote awareness of First Nations protocols both here in Australia and internationally.

Building awareness through educational campaigns of the impacts of inauthentic art could increase community understanding of the costs of inauthentic art and craft products. Awareness could also be built through the promotion of using and understanding authenticity certificates, as well as other resources to enable regional Indigenous arts peak bodies to provide education to consumers about buying ethically sourced and authentic art.

Responsible use of Indigenous cultural knowledge and expression will ensure that Indigenous cultures are maintained and protected so they can be passed on to future generations. More work can be done to educate consumers and the industry about provenance practices and help increase consumer confidence in Aboriginal and Torres Strait Islander arts, contributing to First Nations artists receiving equitable returns on their cultural expression. However, while these measures make an important contribution to the protection of authentic Aboriginal and Torres Strait Islander traditional cultural expressions, their capacity to restrict the proliferation of inauthentic products is limited by their voluntary nature.

Recommendation: Identify pathways to legislation to protect First Nations' traditional cultural expression and continue to build awareness of protocols for using First Nations intellectual property in the arts. Introducing specific legislation that recognises the cultural and intellectual property rights of Indigenous communities and enforces strict penalties for the misappropriation of Aboriginal and Torres Strait Islander arts and culture will protect the traditional cultural expressions of First Nations peoples.

DEALINGS BETWEEN ARTISTS AND MARKETS

Importance of ethical dealings between artists and markets

For many remote communities, arts and cultural production is 'likely to be one of the most important means for providing a viable and culturally-relevant livelihood for members of the community'.[58] However, First Nations artist income is significantly less than non-First Nations Australian artists. For example, in the financial year 2014-15, median income for First Nations artists in the Kimberley was $25,000 – higher than the median for all First Nations people in the region ($15,700)[59]. However, this was significantly less than the median income of all Australian artists in the same period ($42,200), which was already substantially below the Australian workforce median of $50,100.[60] This highlights the importance of working ethically and respectfully with First Nations artists and visual arts stakeholders, and ensuring artists see equitable returns for the sale of their work.

First Nations artists operate their businesses in a variety of ways, including independently or through affiliations with art centres or galleries. The supply chain can be populated with other intermediaries – such as auction houses, consultants and art dealers – who assist in the brokerage and promotion of works to greater audiences. All these commercial operators play a key role in ensuring that Indigenous art and culture is respected, and that artists are remunerated for their work and earn income from copyright and royalties.

In remote regions, art centres play a vital role in the functioning of the Indigenous arts economy and are integral to the promotion of authentic Aboriginal and Torres Strait Islander arts and crafts. Aboriginal art centres are governed by Aboriginal people and help support Aboriginal artist careers. They promote and produce authentic Aboriginal and Torres Strait Islander arts and craft products and enhance the wellbeing of communities. The artist receives a share of the income from works sold and a portion of sales is also reinvested in the art centre.

The majority of First Nations artists living in remote areas agree that having an art centre creates (or could create) jobs and incomes in North West NT and the Tiwi Islands (97%), the Central Desert (NT) and the APY Lands (SA) (86%), Arnhem Land (NT) (98%) and the Kimberley (97%).[61]

However not all First Nations artists are affiliated with an art centre. It is critical that the rights of these artists are not overlooked.

For more information on the art centres, see page 31.

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[58] Throsby, D & Petetskaya, E 2016, *Macquarie Economics Research Papers: Integrating Art Production and Economic Development in the Kimberley. Research Paper 2/2016*. Macquarie University, Sydney. https://www.mq.edu.au/about/about-the-university/faculties-and-departments/faculty-of-business-and-economics/departments-and-centres/department-of-economics/research/research-networks/reach-network

[59] Throsby, D & Petetskaya, E 2016, *Macquarie Economics Research Papers: Integrating Art Production and Economic Development in the Kimberley. Research Paper 2/2016.* Macquarie University, Sydney. https://www.mq.edu.au/about/about-the-university/faculties-and-departments/faculty-of-business-and-economics/departments-and-centres/department-of-economics/research/research-networks/reach-network

[60] Throsby, D & Petetskaya, K 2017, *Making Art Work: An Economic Study of Professional Artists in Australia*.

[61] Throsby C and Petetskaya K 2019, *Integrating Art Production and Economic Development in North West NT and the Tiwi Islands; Integrating Art Production and Economic Development in the Central Desert (NT) and the APY Lands (SA)*; *Integrating Art Production and Economic Development in the in Arnhem Land, Northern Territory; Integrating Art Production and Economic Development in the Kimberley* (2016), National Survey of Remote Aboriginal and Torres Strait Islander Artists, Macquarie University.

Indigenous Art Code

The Indigenous Art Code has been established to ensure fair trade with First Nations artists. The code establishes a set of standards for commercial dealing with Aboriginal and Torres Strait Islander visual artists, provides a benchmark for ethical behaviour and builds greater certainty for consumers that the artworks they buy are purchased through ethical processes.

For artists, the code provides a standard code of conduct for agreements, and for record keeping and reporting. Under the code, dealers must not misrepresent the authenticity or provenance of a work and not misrepresent whether the artwork has been created by an Indigenous artist.

The voluntary nature of the code means that not all artists and galleries are signatories and has significantly limited its effectiveness as a mechanism to reduce the proliferation of inauthentic artworks. As it is voluntary, artists, dealers, and consumers need to be aware of the code for it to be effective.

Recommendation: Make the Indigenous Art Code mandatory for all art dealers, galleries and other sellers of Aboriginal and Torres Strait Islander arts and crafts. Alternatively, the Council recommends an increase in resourcing for, and the marketing of, the Indigenous Art Code to artists and consumers to increase its utilisation.

Resale Royalty Right for Visual Artists

Under the *Resale Royalty Right for Visual Artists Act* 2009, artists benefit from the secondary sales market. The resale royalty right plays an important role in ensuring artists earn income from their work.[62]

Since the introduction of the scheme in 2009, First Nations artists have benefited from the resale of their work. Over 65% of the more than 2,193 artists who have received resale royalty payments between 2010 and 2021 are Aboriginal or Torres Strait Islander. The royalties generated by these Indigenous artists is around $3.7m, which is 38% of the total royalties generated since 2010 ($9.8m).[63]

Over 46% of royalties have been paid directly to living artists with some paid to artists' estates and beneficiaries. Of the 50 artists who have received most money under the scheme, 17 are Aboriginal or Torres Strait Islander. Most artists have received one or two royalty payments, but some have received multiple payments.[64]

Resale payments are particularly important for First Nations artists and their beneficiaries in small and remote communities. In addition to safeguarding income, the royalty scheme has contributed to improved professionalism and capacity building for First Nations artists.[65]

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[62] The *Resale Royalty Right for Visual Artists Act* requires the seller, or the seller's agent, to report all commercial resales for $1,000 or more, whether or not a royalty is payable. Under the scheme, visual artists and other right-holders are entitled to 5% of the sale price of eligible artworks resold commercially for $1,000 or more.
[63] Between June 2010 and 31 May 2021. Copyright Agency 2014, Resale Royalty, www.resaleroyalty.org.au accessed 26 August 2021.
[64] Between June 2010 and 31 May 2021. Copyright Agency 2014, Resale Royalty, www.resaleroyalty.org.au accessed 26 August 2021.
[65] Australian Government, *Post-Implementation Review — Resale Royalty Right for Visual Artists Act 2009 and the Resale Royalty Scheme*, p. 31.

Although the scheme has benefited many artists, the scheme has been criticised for its limitations regarding distribution of funds, particularly in relation to deceased estates and unknown artists.[66]

While the Resale Royalty Right for Visual Artists has seen First Nations artists benefit from the resale of their work here in Australia, internationally there is still a way to go. Discussions for reciprocal arrangements have begun, though, between the UK and Australia. In June 2021, the Australia – UK Free Trade Agreement (FTA) stated the new FTA would begin a process to allow Australian artists to receive royalties when their original works of art are resold in the UK and vice versa.[67]

Recommendation: Increase international reciprocal arrangements under the Resale Royalty Right for Visual Artists. Key to supporting a sustainable First Nations visual arts and crafts industry is reciprocal international agreements that entitle First Nations artists to a share of the ongoing value of their works, wherever they are sold – whether that is within Australia or abroad.

Lack of supply chain transparency

Although the supply chain of First Nations visual arts and crafts has previously been examined in-depth, significant knowledge gaps remain.

Led by Dr Alice Woodhead, the *Art Economies Value Chain* looked at the scope and scale of the sector; key points in the value chain that link artists, agents and audiences; 'mapping' the financial and commercial forces at work and the various stakeholders and markets.[68]

The analysis of the First Nations visual art supply chain was divided into numerous reports and an overarching synthesis and focuses on economic, social and trade issues within the art value chain. The *Synthesis* report presents an overview of the value chain studies and highlighted challenges around the purpose of art centres; polarised industry views about regulation, funding and trading practices; the remoteness of art production from art markets; the variable quality of art products undermining the 'brand'.[69] *Methodology and Art Regions* presents some key results around the number of artists and the characteristics of each of 12 remote area art regions.[70] *Art Centre Finances* and *Update on Art Centre Finances 2013/14–2014/15* examine funding for art centres and their financial circumstances.[71] *Artists and Art Centre Production* takes a detailed look at how many artists were producing and selling how many works of art, and what types of works.[72] *Art business trading practices and policy views* presents the findings of a comprehensive survey of private and public art businesses, including breakdowns of products, challenges to product development, and feedback on policy settings.[73]

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[66] Woodhead A and Acker T 2014, *The Art Economies Value Chain reports: Synthesis*.
[67] DFAT 2021, Your Australia-UK FTA: Artist Resale Royalties accessed 7 December 2021.
[68] Woodhead A and Acker T 2014, *The Art Economies Value Chain reports: Synthesis*, p.2.
[69] Woodhead A and Acker T 2014, *The Art Economies Value Chain reports: Synthesis*.
[70] Woodhead A and Acker T 2014, *Methodology and Art Regions.*
[71] Woodhead A and Acker T 2014, *Art Centre Finances*, Woodhead A and Acker T 2014, *Update on Art Centre Finances 2013/14–2014/15.*
[72] Woodhead A and Acker T 2014, *Artists and Art Centre Production.*
[73] Woodhead A and Acker T 2014, *Art business trading practices and policy views.*

This research was critical in demonstrating the importance of understanding markets and supply chains of First Nations visual arts and crafts. However, since this study, new players have entered the market. There has also been an increase in digital activity, particularly since the beginning of the pandemic, resulting in new digital models. Anecdotal evidence shows there may be more non-First Nations intermediary agents involved in the management or sale of First Nations art, and First Nations artists may not be receiving equitable returns.

Limited data is available that demonstrates the current supply chain of the sale and resale of a First Nations artwork – and to what degree intermediaries involved in the sale and resale of First Nations artworks are First Nations-led. This highlights the need to map out these new markets; better understand the First Nation-led management of money made by the sale of First Nations artworks and quantify the returns to First Nations artists.

However, there is also limited data available to understand supply chains of the sale of artworks from First Nations artists affiliated with art centres compared to the sale of artworks from independent First Nations artists. While the broader Aboriginal and Torres Strait Islander Art Economies[74] project also included studies on artists outside art centres – focusing on the relationships and transactions between remote area freelance Aboriginal artists and private art businesses[75] – further research can be undertaken to better understand these supply chains and gauge financial returns to all First Nations artists. This research will be critical to understanding the needs of artists working outside the art centre structure.

Recommendation: Address significant knowledge gaps regarding the current First Nations visual arts supply chain. The Council recommends the Productivity Commission consider mapping out the supply chain of the sale and resale of artworks from First Nations artists. It is recommended the scope should include the sale and resale of artworks from First Nations artists affiliated with art centres compared to the sale of artworks from independent First Nations artists. It is also recommended that the research include an objective to collect data on what degree intermediaries involved in the sale and resale of First Nations artworks are First Nations-led. This will enable the sector to better understand new markets; the First Nations-led, and non-First Nations-led, management of money made by the sale of First Nations artworks and quantify the returns to First Nations artists.

Recommendation: Increase opportunities for First Nations decision-making throughout the supply chain of First Nations visual arts to ensure ethical dealings with markets. This includes increasing First Nations-led intermediary agents to support, control and lead the sale of First Nations artworks to domestic and international markets and increasing representation of First Nations management of art centres.

See more about First Nations decision-making on page 14.

[74] Aboriginal and Torres Strait Islander Art Economies, Ninti-One and CRC for Remote Economic Participation, 2011–2016.
[75] Aboriginal and Torres Strait Islander Art Economies, Ninti-One and CRC for Remote Economic Participation, 2011–2016, *Artists Outside Art Centres.*

ART IN COMMUNITIES

Art and culture are critical to wellbeing

For decades, First Nations peoples have advocated for the critical role of culture – as a necessary part of the solution to Indigenous disadvantage, and for the healing and strengthening of individuals and communities.

To support this, there is a growing body of evidence on the critical role of culture as the foundation of First Nations wellbeing, and of the benefits of First Nations arts and cultural engagement for First Nations people and communities. Research shows First Nations arts engagement supports empowerment, community connectedness and wellbeing among First Nations Australians. First Nations arts and cultural participation can support the development of strong and resilient First Nations children; improved school attendance and engagement; higher levels of educational attainment; improved physical and mental health and wellbeing; greater social inclusion and cohesion; more employment, economic opportunities and meaningful work; safer communities with reductions in crime and improved rehabilitation; as well as the prevention of suicide – fostering a secure sense of cultural identity is a powerful protective factor against self-harm for young First Nations people and helps First Nations children and young people to navigate racism and being a minority group in their own country.[76]

Through arts, First Nations people can connect to their culture, identity and community via a sensory, participatory experience. Opportunities to connect with First Nations arts and culture in contemporary ways engage First Nations youth and help to build a bridge between cultures.

In addition, First Nations participation in arts and culture supports outcomes across the Closing the Gap framework. Research to support this argument include The Elders' report into preventing Indigenous self-harm and youth suicide (2014), *Living Culture: First Nations arts participation and wellbeing* (2017); The Interplay Project (2011–2017); and more.[77]

First Nations artists and cultural practitioners have a deep understanding of the intimate relationship between cultural practice and both individual and community wellbeing. First Nations people are the knowledge leaders when it comes to the social and cultural determinants of health.

Importance of art centres to communities

In addition to the vital role that they play in the functioning of the Indigenous arts economy (see page 15), art centres are also highly valued by community members, are usually at the heart of community life, and are central to the cohesiveness and social and economic wellbeing of remote communities. Most art centres and artists subsidise other services for their communities such as food and nutrition programs, numeracy and literacy programs, training and employment support, leadership and youth services, after school and holiday programs, as well as facilitating access to government services.[78]

Many provide welfare services – which are usually not part of their core arts-related operations and for which they rarely receive specialised funding – including: home and community care to the aged and people with disability; child protection and family support services; community-based youth justice supervision; providing training and education to

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[76] See the Australia Council's Submission to the Closing the Gap Refresh.
[77] See the Australia Council's Submission to the Closing the Gap Refresh.
[78] Office for the Arts 2019, *Submission to the Committee on Indigenous Affairs: Inquiry into the pathways and participation opportunities for Indigenous Australians in employment and business*. (Submission 1), p.3.

community members; and documenting and archiving of material of cultural and social significance to the community.[79]

At times, an arts and cultural organisation might be the only organisation in a community that has functional equipment and facilities such as an internet or phone connection. Located remotely, these organisations often facilitate government and other organisations' staff to make contacts and carry out discussions and negotiations with Indigenous clients. At the same time, most art and cultural organisations located remotely receive only small amounts of operational funding when compared to many other community-based health and welfare organisations funded by Closing the Gap programs. Far more than retail or financial centres, art centres are centres of community activity. As it has been described to the Australia Council, 'you lose the art centres, you lose of a lot of community function.'[80]

The art centre model

Art centres have been relatively stable enterprises, particularly when considering the challenges facing small businesses in remote communities. Of the 90 organisations funded through the IVAIS program in 2008–09, 67 (or 75%) were still funded in 2018–19. This means that, for a decade, these organisations consistently delivered against program outcomes across arts development, engagement with the art market, Indigenous employment and participation, and managing financial, administrative and governance requirements.[81]

Following the devastating impact of the global financial crisis on Australia's First Nations art market, art centre sales saw eight years of growth. From 2011–12 to 2018–19, average sales grew by 43% (still, however, 12% lower than at their peak in 2007–08). Art centres have also become more financially independent. Over the last ten years, grant funding has averaged 44.3% of total income for art centres.[82]

COVID-19 has drastically affected the sector, which relies heavily on tourism, art fairs and events for sales of work. Many art centres had to close their doors, effectively shutting off key revenue streams as well as vital health and community infrastructure. Likely caused by the disruption of COVID-19, in 2019/20 reliance on grant income increased for the third consecutive year.[83]

First Nations art centres have adapted by attempting to move their business online. Desart worked with their art centre members to assist in setting up strong online sales functions on their websites and social media. However these are unlikely to replicate market or gallery sales, and concern remains across the First Nations arts sector about business sustainability and solvency.[84] There are additional financial challenges for art centres that do not receive support through IVAIS.

Many remote centres also have poor access to web-capable devices and have low-quality internet connections.[85] A 2015 study of ebusiness in arts centres identified challenges of

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[79] Throsby D and Petetskaya K 2019, *Submission to the Committee on Indigenous Affairs: Inquiry into the pathways and participation opportunities for Indigenous Australians in employment and business*. (Sub.5), p.6.
[80] Consultee to the Australia Council's 2020 report: *Impacts of COVID-19 on First Nations arts and culture*.
[81] Office for the Arts 2019, *Submission to the Committee on Indigenous Affairs: Inquiry into the pathways and participation opportunities for Indigenous Australians in employment and business*. (Submission 1), p.3.
[82] Desart Inc, Financial Snapshot of Art Centres Financial years – 2004/05 > 2019/20, April/May 2021.
[83] Desart Inc, Financial Snapshot of Art Centres Financial years – 2004/05 > 2019/20, April/May 2021.
[84] Two peak organisations (ANKA and Desart) have run workshops on measuring solvency.
[85] Holcombe-James I 2020, 'Coronavirus: As culture moves online, regional organisations need help bridging the digital divide,' The Conversation, April 7 2020.

slow internet, lack of technical support, website design and a maximum of 10% of overall sales generated by (direct or indirect) online sales.[86]

In addition, First Nations stakeholders have highlighted concerns with the rapid development of shared online platforms, specifically the ways in which these can provide new opportunities for exploitation and unethical practices, and the need for protection of Indigenous sovereignty.[87]

At the same time, the digital environment has been critical for providing safe access to arts and culture during the lockdown. This need further highlights the importance of ensuring access to technology and internet to artists and communities in regional and remote Australia.

Art centre managers leaving communities due to COVID-19 presents an additional challenge. The majority of art centres are reliant on the attraction, retention and quality of management staff recruited into the community. As it is, an average tenure of two-to-three years and limitations to the number and quality of applicants is already often disruptive.[88]

Opportunities to support art in communities

Prior to COVID-19, sector advocates were feeling positive that, after many years at the periphery, culture was at the centre of government policy frameworks in Indigenous affairs, included in development of the next ten-year Indigenous health plan and in work relating to Closing the Gap. However, culture was not mentioned in the Australian Government's April 2020 announcement of $123m over two financial years for targeted measures to support Indigenous businesses and communities to increase their responses to COVID-19.[89] It is vital that the cross-portfolio importance of support for culture remains central at this time when First Nations culture is facing such dire risk.

The First Nations visual arts sector is still recovering from the global financial crisis, and it is clear that the impacts of COVID-19 will continue to be felt for a long time to come. To support the sector long term planning is needed.

The Council recommends the development of a ten-year plan for the art centre sector. This plan will enable the rebuilding of the arts ecology, including the reviving art centre relationships with private galleries. Succession plans for future generations of leaders and online delivery for artists who do not have a gallery affiliation need to be reconsidered.

Recommendation: Develop a ten-year plan for First Nations art centres to rebuild following the devasting effects of COVID-19. The sector is still recovering from the global financial crisis and longer term planning that is co-designed with the sector is needed in order for the sector to develop succession plans for future generations of leaders.

[86] Bendor I and Acker T. 2015. Summary - The use and benefits of ebusiness for Aboriginal and Torres Strait Islander art centres. Ninti One Limited. Alice Springs. pdf 0.7MB.
[87] Australia Council, 2020, *Impacts of COVID-19 on First Nations arts and culture*.
[88] Acker T 2015. Aboriginal and Torres Strait Islander Art Economies Project. CRC-REP Policy briefing PB009. pdf.
[89] The Hon Ken Wyatt AM MP, '$123 million boost to Indigenous response to COVID-19,' media release 2 April 2020.

- **<u>Recommendation:</u> Focus on tangible outcomes for the First Nations visual arts market.** After a decade of consultations, action plans and inquiries, our First Nations artists and organisations are keen for tangible outcomes that address well-known problems. Our submission endeavours to assist the Productivity Commission to deliver recommendations that will address these issues and contribute to a strong and thriving First Nations visual arts and craft industry.

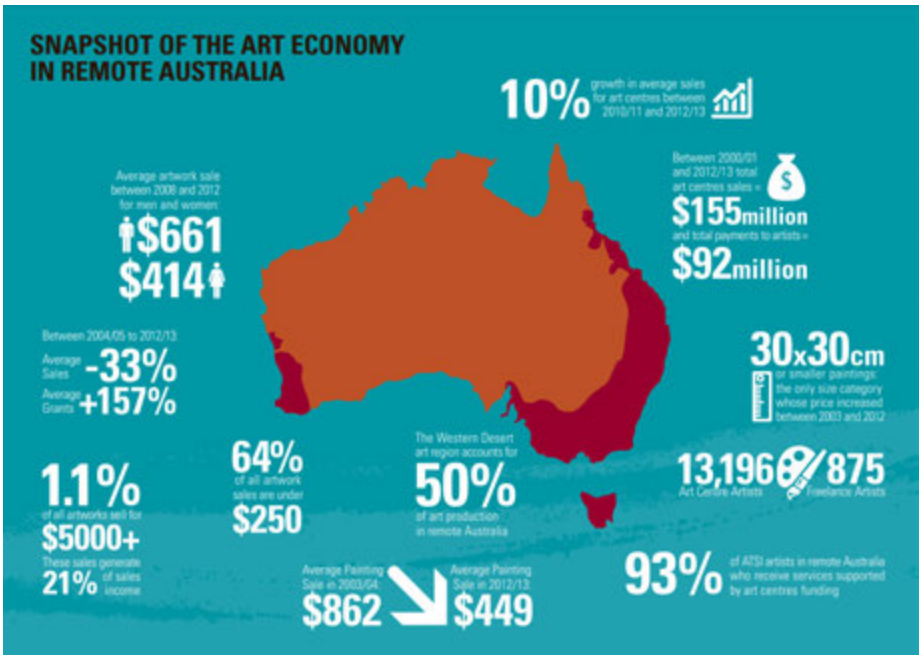
APPENDICES

Appendix A: Summary of First Nations visual arts research

Key research projects and economic data tracking

Aboriginal and Torres Strait Islander Art Economies **(Ninti-One and CRC for Remote Economic Participation, 2011–2016)**

- Led by Tim Acker, this multi-year, multi-faceted project produced a substantial body of research outputs on First Nations visual arts funding, production and markets.
- The research reported art centre sales of around $30 million per annum and that select art centres make most of the sales.[90] Issues it highlighted included the increase in smaller, lower priced works; increased funding contributing to a growth in art centre production not matched by sales; and challenges around attracting and retaining art centre managers.
- For a snapshot of some key findings, issues and policy implications see:
    - Acker T 2015, *Aboriginal and Torres Strait Islander Art Economies Project*, CRC-REP Policy briefing.



Infographic: Snapshot of the Art Economy in Remote Australia and Art Centres and Funding in Remote Australia.

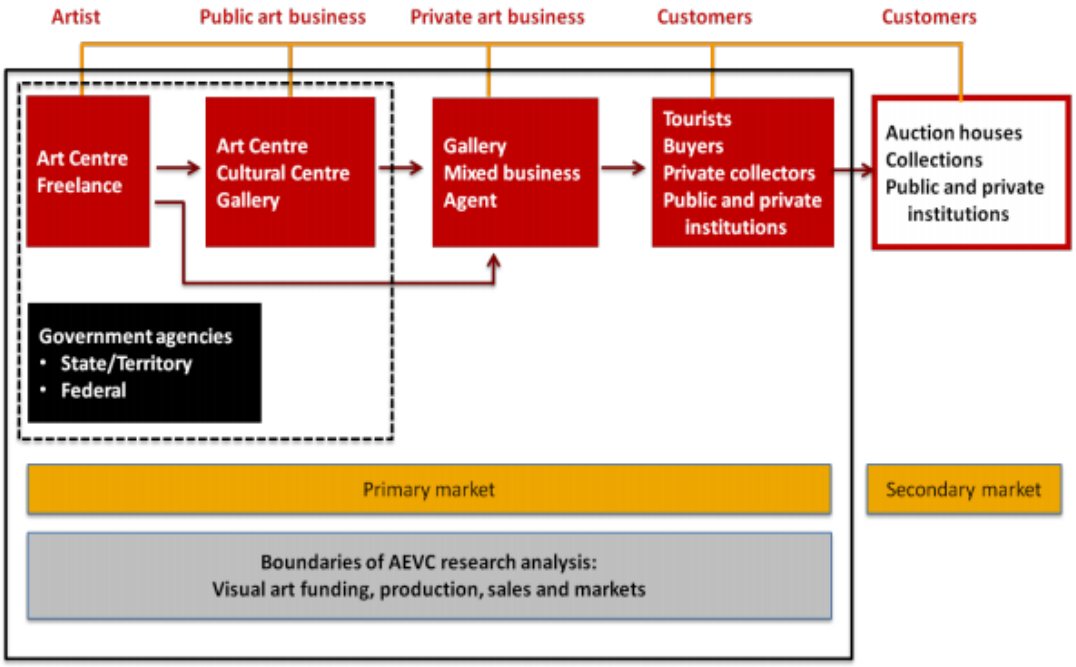
Art Economies Value Chain

- Led by Dr Alice Woodhead, the *Art Economies Value Chain* part of the study looked at:
    - the scope and scale of the sector
    - key points in the value chain that link artists, agents and audiences

[90] Acker T 2015, *The Art Economy of Remote Australia*. Paper presented at the *CAEPR Seminar Series*, Australian National University, Canberra. 4 March 2015, Ninti One Limited, Alice Springs. (presentation)

- ‘mapping’ the financial and commercial forces at work
- the stakeholders and markets bounded by the black lines in the figure below.

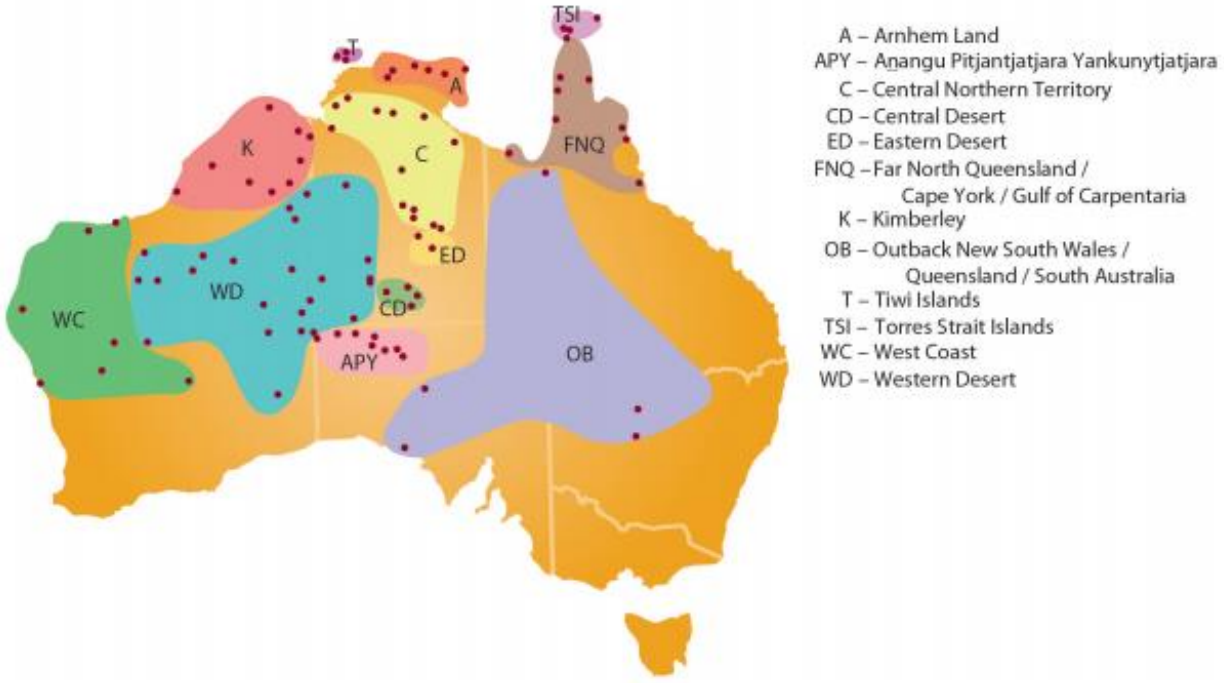
Figure 1: Value chain stakeholders and markets[91]



- The research discussed 12 art regions, based on known areas of art production, grouped by cultural and aesthetic characteristics. The highest producing region by number of products and value was the Western Desert.

[91] Woodhead A and Acker T 2014, *The Art Economies Value Chain reports: Synthesis*, p.2.

Figure 2: Art regions map[92]



- Published in 2014, the *Synthesis* report presents an overview of the value chain studies and highlights challenges around:
    - the purpose of art centres (e.g. art versus social services/employment)
    - polarised industry views about regulation, funding and trading practices
    - the remoteness of art production from art markets
    - the variable quality of art products undermining the 'brand'.
- *Methodology and Art Regions* presents some key results around the number of artists and the characteristics of each of 12 remote area art regions.
- *Art Centre Finances* and *Update on Art Centre Finances 2013/14–2014/15* examine funding for art centres and their financial circumstances.
- *Artists and Art Centre Production* takes a detailed look at how many artists were producing and selling how many works of art, and what types of works.
- *Art business trading practices and policy views* presents the findings of a comprehensive survey of private and public art businesses, including breakdowns of products, challenges to product development, and feedback on policy settings, i.e.:
    - Self-managed Super Funds
    - Resale Royalty Right for Visual Artists scheme
    - Indigenous Art Code
    - *Protection of Movable Cultural Heritage Act 1986*

[92] Woodhead A and Acker T 2014, *The Art Economies Value Chain reports: Synthesis*, p.2.

The broader ***Aboriginal and Torres Strait Islander Art Economies*** *project also included studies on:*

- buyer behaviour in the lower and middle price tiers of the primary market
    - based on surveys of art fair visitors and interviews with buyers and sellers in 2013, this highlights that audiences at art fairs are predominantly female, Australian, and small spenders; and are interested in aesthetics, ethics and provenance
- buyer perceptions of artwork provenance, available consumer information and industry regulation such as the Indigenous Art Code
    - based on surveys of art fair visitors
- artists outside art centres – interview research focusing on the relationships and transactions between remote area freelance Aboriginal artists and private art businesses
- sustainability factors for art centres – summarising PhD case study research
- the enabling environment for art centres – summarising PhD case study research
- use and benefits of ebusiness in art centres – summarising Honours case study research.

A Financial Snapshot of Aboriginal and Torres Strait Islander Art Centres FYE 2020 **(Desart, 2021)**

- Continuing from the Art Economies work, this industry update gives a snapshot of the long-term financial and production trends within First Nations art centres from 2004–05 to 2019–20. It presents 'average annual art centre sales' rather than a total for all art centres.
- Before the pandemic, art centres had seen eight years of stability and growth after four years of falling sales after 2007–08. Sales and grant dependency are uneven across states and territories.
- In 2019–20, average art centres sales were $532,648. This is 13% higher than in 2018–19; 68% higher than at their low point in 2011–12; and the highest level since the sales peak prior to the global financial crisis.
- Production data shows that female artists produce three quarters of all artworks; female artists aged over 50 years produce more than one third of all artworks; and artists aged 60 or more produce one quarter of all artworks.
- The future health of art centres depends on supporting both existing artists and attracting new artists. The percentage of new artists in 2019–20 fell to its lowest level on record, at 5.2%.
- While 63% of all artworks sell for less than $250, this has fallen for the third consecutive year. Only 1.1% of artworks sell for more than $5,000.
- As well as audits, this report draws on the **Stories Art and Money Database (SAM)** which is used by many art centres, managed by Desart. The SAM database was an outcome of Tim Acker's Art Economies project. The aim was to improve art centre

reporting including development of a consistent financial data set for art centres that could be aggregated more easily.

Indigenous Visual Arts Industry Support (IVAIS) program data (Office for the Arts) [93]

- The IVAIS program provides approximately $21 million per annum to around 80 Indigenous-owned art centres, as well as a number of art fairs, regional hubs and industry service organisations.
- This provides opportunities for approximately 8,000 Aboriginal and Torres Strait Islander artists and more than 500 Aboriginal and Torres Strait Islander arts workers.
- In 2018–19, organisations supported by IVAIS participated in over 900 exhibitions and events, achieving $26.5 million in primary art sales. It is estimated that each year these activities contribute approximately $70 million to the Australian economy.
- In addition in 2018–19, the four Indigenous art fairs supported through the IVAIS program hosted 96,402 visitors, achieved $4.3 million in art sales, and featured work by 2715 artists.[94]

COVID-19 impacts

Desart has tracked the impact of the pandemic through information provided by a statistically significant sample of art centres.

Data focused on two periods (March-June 2020 and July-December 2020) showed:

- Substantial drops in production, sales and number of active artists over March–June.
- Significant improvement over July–December, which included the peak sales period for art centres relating to most of the art fairs.
- However, the drop in production and participation are pronounced. This has seen more artworks sold than produced over the six months to 31 December.
- Anecdotal information suggests that art centres who maximised their online presence and pivoted to an ecommerce model saw improved sales, including during the traditionally quieter summer months.

The 2020 digital DAAF generated $2.6 million in sales with more than 44,000 unique visitors.

- First Nations art centres are adapting through the COVID-19 pandemic by moving their business online. Desart are working with their art centre members to assist in setting up strong online sales functions on their websites and social media.

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[93] Office for the Arts 2020, *Consultation Paper on Growing the Indigenous Visual Arts Industry*, September 2020, Department of Infrastructure, Transport, Regional Development and Communications.
[94] Office for the Arts 2020, *Consultation Paper on Growing the Indigenous Visual Arts Industry*, September 2020, Department of Infrastructure, Transport, Regional Development and Communications, p.4.

- But many remote centres have poor access to web-capable devices and have low-quality internet connections.[95] Australians are more likely to be digitally excluded when Indigenous, living in remote areas, or being over the age of 65.[96]
- In addition, both Desart and participants in the Australia Council's First Nations' Roundtables to discuss the impacts of COVID-19 have highlighted concerns with the rapid development of shared online platforms, specifically the ways in which these can provide new opportunities for exploitation and unethical practices, and the need for protection of Indigenous sovereignty.[97]

In April 2020, the Australia Council published a briefing paper on *The Impacts of COVID-19 on First Nations arts and culture*.

- This paper outlined the immediate and longer term needs, concerns and potentially catastrophic impacts for First Nations arts and culture in light of COVID-19; and the need for a long term plan for the art centre sector (in addition to welcomed targeted support for art centres provided through the IVAIS program in response to the pandemic).

Tracking the secondary visual art market (reselling)

Australian and New Zealand Art Sales Digest: Australian art auction sales by artist nationality (ongoing, Furphy)

- This website, compiled by John Furphy, brings together auction sales from around 50 Australian and New Zealand auction houses (predominantly Australian).
- It shows that after steadily climbing to the record total of $26 million set in 2007, auction sales of visual artworks by First Nations artists have fluctuated between around $5–$13 million following the global financial crisis.
- Sales reached around $12.5 million in 2020, which was more than double 2019 but less than half of 2007.[98]

Resale royalties (ongoing, Copyright Agency)

- Over 65% of the more than 2,193 artists who have received resale royalty payments between 2010 and 2021 are Aboriginal or Torres Strait Islander.
- The royalties generated by these Indigenous artists is around $3.7 million, which is 38% of the total royalties generated since 2010 ($9.8 million).
- Over 46% of royalties have been paid directly to living artists with some paid to artists' estates and beneficiaries.

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[95] Holcombe-James I 2020, 'Coronavirus: As culture moves online, regional organisations need help bridging the digital divide,' *The Conversation*, April 7 2020. See also: Bendor I and Acker T 2015, Summary - *The use and benefits of ebusiness for Aboriginal and Torres Strait Islander art centres*. Ninti One Limited, Alice Springs.
[96] Thomas J, Barraket J, Wilson CK, Rennie E, Ewing S, MacDonald T 2019, *Measuring Australia's Digital Divide: The Australian Digital Inclusion Index 2019*, RMIT University and Swinburne University of Technology, Melbourne, for Telstra
[97] See Australia Council 2020, *Impacts of COVID-19 on First Nations arts and culture.*
[98] Furphy J 2021, *Australian Art Sales Digest: Australian art auction sales by artist nationality*, accessed 26 August 2021.

- Of the 50 artists who have received most money under the scheme, 17 are Aboriginal or Torres Strait Islander.
- Most artists have received one or two royalty payments, but some have received multiple payments.99

Key research projects on First Nations cultural and economic participation
National survey of remote Aboriginal and Torres Strait Islander artists (Macquarie University, ongoing):

- The Australia Council is one of the financial contributors to this Macquarie University survey, which is being rolled out progressively across six regions. The survey collects data and artists' views on income levels and sources, as well as skills, training, and other aspects of professional practice.
- Findings from published reports so far highlight the significance and interconnectedness of cultural, social and economic development:
    - For many remote communities, arts and cultural production has the potential to be one of the most important ways for community members to earn **a viable and culturally relevant livelihood**.
    - Indigenous cultural capital is an unrealised resource, with significant numbers of artists willing to work on cultural production who are not currently able to do so. There are also opportunities for **small-business development**.
    - Creative artistic activities and other cultural activities are the **main income sources** for around a third of artists working in North West NT and the Tiwi Islands (29%), the Central Desert (NT) and the APY Lands (SA) (35%), Arnhem Land (NT) (33%) and the Kimberley (31%).
    - Within creative practices, the most prominent art form in these four remote regions is **visual arts**, with over nine in ten visual artists who practised their art in the last 12 months receiving some financial return from it.
    - **Art centres** play a vital role in the functioning of the Indigenous arts economy in remote regions. The majority of respondents agreed that having an art centre creates (or could create) jobs and incomes in North West NT and the Tiwi Islands (97%), the Central Desert (NT) and the APY Lands (SA) (86%), Arnhem Land (NT) (98%) and the Kimberley (97%).[100]
- The two remaining surveys, which were delayed with the closure of communities during the height of the pandemic, are scheduled for completion late 2021/early 2022.
- On completion, the Council is partnering with Macquarie University to draw together results across all surveyed regions. This will provide comprehensive information on

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[99] Between June 2010 and 31 May 2021. Copyright Agency 2014, Resale Royalty, www.resaleroyalty.org.au accessed 26 August 2021.
[100] Throsby C and Petetskaya K 2019, *Integrating Art Production and Economic Development in North West NT and the Tiwi Islands; Integrating Art Production and Economic Development in the Central Desert (NT) and the APY Lands (SA)*; *Integrating Art Production and Economic Development in the in Arnhem Land, Northern Territory; Integrating Art Production and Economic Development in the Kimberley* (2016), National Survey of Remote Aboriginal and Torres Strait Islander Artists, Macquarie University.

how individual First Nations artists in remote Australia establish, maintain and develop professional arts practice, and benchmark First Nations economic and cultural development within and between regions in remote Australia.

Living Culture: First Nations arts participation and wellbeing **(Australia Council, 2017)**

- *Living Culture* published data tables the Australia Council commissioned from the ABS based on the latest National Aboriginal and Torres Strait Islander Social Survey (NATSISS) (2014–15).
- The tables include representative data about First Nations people's participation in First Nations arts with breakdowns by a range of characteristics including state/territory, gender and remoteness areas.
- The research found that in 2014–15:
    - 17% of First Nations people participated in creating First Nations arts or craft (on par with 2008)
    - 2.5% of First Nations people earned income from selling paintings or artworks
    - 0.9% of First Nations people earned income from selling weaving, dyed cloth, sculptures, pottery, or wooden art and craft
    - at an age when many Australians are retiring, First Nations artists are contributing to the arts economy, with those aged 65 plus the most likely to be earning income from First Nations arts.
- The research highlights the importance of:
    - First Nations arts participation to wellbeing
    - First Nations languages to arts engagement
    - supporting intergenerational cultural transmission
    - investment to engage young First Nations people in the arts – one of the fastest growing and at-risk segments of our population.

Australia Council research on audiences and markets

The Australia Council has a First Nations research program that investigates the First Nations arts ecology and promotes greater access and participation in First Nations arts experiences by all Australians.

Some key research on audiences and markets for First Nations arts:

Creating Our Future: Results of the National Arts Participation Survey **(2020)**

The Australia Council's latest National Arts Participation Survey found:

- More Australians now agree that First Nations arts are an important part of Australia's culture (75% up from 70% in 2016).
- However, only half of Australians believe First Nations arts are well represented, showing there is still work to be done to increase the representation and visibility of First Nations arts in Australia.

- Prior to COVID-19, attendance and interest in First Nations arts were strong and growing. Attendance was increasing across art forms.
- One in six Australians attended First Nations visual arts and craft in 2019 (17%, up from 13% in 2016) and 8% attended a First Nations visual arts and craft festival.

Building Audiences: Aboriginal and Torres Strait Islander arts **(2015)**

- *Building Audiences* examined barriers to audience attendance at First Nations arts (across art forms, including visual arts) and strategies for increasing audiences.
- It found six key motivators for audiences to engage with First Nations art experiences: an attraction to stories, contemporary experiences, unique experiences, personal connections, and a desire for cultural insight and deeper understanding.
- Perceived barriers for audiences were uncertainty about how to engage, a lack of awareness or visibility of First Nations programming, and a 'serious' image.

Domestic Arts Tourism: Connecting the country **(2020)**

The Australia Council's domestic tourism research shows:

- **First Nations arts and craft are a strong and growing area of domestic arts tourism:** First Nations arts tourism is increasing, reflecting Australians' strong and growing interest in engaging with First Nations arts for their beauty, strength and power, and to understand who we are as a nation. The regions where tourists are most likely to engage with First Nations arts and craft are in regional Australia, and particularly regional areas of the Northern Territory where First Nations arts and craft are driving arts engagement by tourists.
- **Arts tourism tends to align with travelling further, staying longer and spending more:** Arts tourists are high value tourists – they are more likely to stay longer and spend more when travelling than domestic tourists overall. Australians are more likely to engage with the arts when they travel further afield – those who take overnight trips rather than daytrips, and those who travel outside their home state. The areas where tourists are most likely to engage with the arts are often outside the large east coast capital cities.

International Arts Tourism: Connecting cultures **(2018)**

Australia's unique position as home to the world's oldest living culture is part of what makes Australia such a special place to visit. Australia Council tourism research (conducted prior to COVID-19) shows:

- First Nations arts engage international tourists, especially those who travel outside capital cities.
- International tourists are more likely to engage with First Nations arts than attend sporting events.
- Over 660,000 international visitors attended a First Nations art, craft or cultural display in 2017, an increase of 39% from 2013.

Other key resources

The Indigenous Art Code (since 2009, industry led)

- A system to preserve and promote ethical trading in Indigenous art.
- In 2009, the Australia Council held meetings with the industry and the ACCC regarding the establishment of the Indigenous Art Code. The code was publicly launched in 2010.
- The code promotes ethical dealings between First Nations artists and their galleries and dealers.
- The code is voluntary and members who sign up to the code follow agreed templated agreements which enable clear and ethical dealings with First Nations artists.
- Members can display the Indigenous Art Code logo on their websites and shop windows to encourage consumers to buy First Nations works both ethically and authentically.
- Over the years since its launch, the Indigenous Art Code has gathered confidential information regarding inauthentic activity, including the illegal trading of First Nations visual arts.

***Protocols for using First Nations Cultural and Intellectual Property in the Arts*, (2020) developed by Terri Janke and Company for the Australia Council**

- This is the third edition of the protocols following editions in 2002 and 2007. The protocols guide includes case study examples across art forms to demonstrate how the principles are applied in practice. It also provides resources for ongoing use in projects.
- These protocols are another option to restrict the proliferation of inauthentic products. They spell out clearly the legal, ethical and moral considerations for the use of Indigenous cultural material. They promote interaction based on good faith and mutual respect.
- Adherence to these protocols is a condition of funding for applicants to our grants program who are working with Indigenous Australian artists and also serve as good guidelines for the general public to respect and consult with First Nations communities about selling and distributing First Nations arts.

Appendix B: Key knowledge/information gaps

- **The total economic value** of First Nations visual arts is a long-standing data gap. Within this, particular challenges include:
    - obtaining **commercial data** from private dealers/private art businesses
    - the **export value** of First Nations visual arts
    - quantifying increasing activity around **textiles, fashion and homewares**
    - quantifying the **First Nations souvenir market** and the value of **lost income** through the fake souvenir and art markets, or unlicensed products
    - **how much inauthentic product** is domestically manufactured versus imported.

- There is also a need to identify and address current and existing deficiencies in, not only the market, but in the visual arts and fashion industries.
    - This includes the suite of **professional skills** including technical and digital literacy required in the recovery phase from the COVID-19 pandemic.
    - It also includes **gaps in the fashion industry for career pathways** for Indigenous photographers, stylists, models and artistic directors. While there have been ad hoc opportunities provided by Vogue, Marie Claire and Country Road, there needs to be a more strategic approach to provide professional development opportunities and technical roles for First Nations people.

Appendix C: Attempts to fill knowledge gaps

Previous attempts to fill these gaps include the following:

Commercial data

- In 2016, the Australia Council partnered on a project with Deloitte Access Economics. The aim was to build the economic picture by filling the data gap from the commercial sector using a survey of commercial art businesses and modelling. Deloitte's participation was pro-bono under their Reconciliation Action Plan.
- Deloitte's survey of commercial art businesses took around 60 minutes to complete. Despite making individual calls to businesses, Deloitte received inadequate responses to the survey for the project to go ahead.[101]
- Pages 20–21 of the report on the inquiry about inauthentic First Nations art (Dec 2018) discuss how 'valuing different parts of the art market is complicated by the number of players in this sector and the fact that attempts to get any information on commercial sales have proved problematic', including Deloitte's attempt and Tim Acker's attempts through the Art Economies project:

    > 'We probably spent two years of our six-year project trying to pull data together, and that was from a very contained pool—art centres, working with a certain database—and so it was manageable. As soon as you relied on retailers providing sales data or stock data, people weren't interested. It's really difficult to quantify.'[102]

Export value

- The Council has discussed the long-standing gap around the export value of First Nations arts with the ABS in the past. We understand that the nature of Customs data is a barrier to getting breakdowns of Indigenous versus non-Indigenous art exports.

Quantifying increasing activity around textiles, fashion and homewares

- Anecdotally, there is a groundswell of activity in licensing First Nations designs for textiles, fashions and homewares. For example:

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[101] See Eccles J 2016, 'Vital statistics' in *Aboriginal Art Directory*, 3 July 2016 for commentary and background.
[102] House of Representatives Standing Committee on Indigenous Affairs 2018, *Report on the Impact of Inauthentic Art and Craft in the Style of First Nations Peoples*, p.21.

- The ground-breaking fashion collaboration between Gorman and Mangkaja Art Centre (WA)[103] a commercial-in-confidence agreement negotiated by Copyright Agency.[104]
- The first all-First Nations show at Australian Fashion Week in 2021.[105] This historic show was presented by Indigenous Fashion Projects, a Darwin Aboriginal Art Fair Foundation program in partnership with IMG Fashion and David Jones.[106] Featured designers included Ngali, a high-end Indigenous clothing brand working with First Nations artists such as Lindsay Malay.
- Formation of the first Indigenous modelling agency in Australia: Jira Models; and Australia's first Indigenous fashion council:[107] new national industry body First Nations Fashion and Design. The Australia Council has supported First Nations Fashion and Design to deliver four unique cultural fashion performances across the nation in 2021 that are 100% First Nations owned, operated and managed, and which provide professional and economic development opportunities for Indigenous designers and models.
- The collaboration between Bunnings and Warlukurlangu artists (central desert, NT) on a range of plant pots and cushions, which are proving enormously popular.[108]
- The collaboration between Adairs and First Nations artists on a homewares range including quilted bedlinen, cushions, table lights and home fragrances.

- This activity represents growing First Nations art economies not currently quantified or tracked. It is also activity with important IP implications and different implications for artists working outside art centres.
- The last systematic tracking of types and values of art products was for the Art Economies project report *Artists and Art Centre Production*. This research found that between 2003 and 2012, textiles and fabrics comprised just 0.6% of total products produced by art centres. Between 2008 and 2012, this accounted for 493 products with a mean value of $270.[109] The other product categories looked at in this research were paintings, works on paper and sculptures.
- Desart's SAM database may track some product types and mediums.

Quantifying the souvenir market and lost income through inauthentic products

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[103] See ABC 2019, *Gorman Mangkaja collection breaks new ground for Indigenous fashion design collaboration*, 21 July 2019.
[104] See Copyright Agency 2019, *Mangkaja and Gorman create an Indigenous collection setting a benchmark in collaboration*, viewed 1 September 2021.
[105] See Willis C 2021, 'First Nations fashion designers make history at Australian fashion week,' *ABC News* 5 June 2021. Birrell A 2021, 'The milestone presence of Indigenous design at Australian Fashion Week is a reminder of fashion's power,' *Vogue* 4 June 2021. Sams L 2021, 'Historic fashion week show draws year's first standing ovation,' *Financial Review* 2 June 2021.
[106] See Thompson C 2021, 'The Indigenous Fashion Projects Show confirmed the immense talent of First Nations Designers,' *Marie Claire*, 3 June 2021.
[107] See Couros F 2020, 'You may have missed it, but Australia's first First Nations Fashion Council launched last month,' *Fashion Journal*, 5 April 2020.
[108] See Daily Mail Australia 2021, *Shoppers are going wild for these stunning Indigenous art pots from Bunnings – and they're only $17*. News.com.au 2021, *Bunnings $17 Indigenous art pots go viral on Facebook*.
[109] Woodhead A and Acker T 2014, *Art Economies Value Chain Report: Artists and art centre production*, CRC-REP, Ninti-One Alice Springs.

- On inauthentic products, it was suggested during the fake art inquiry that 80% or more of the First Nations souvenir products on sale in gift shops are inauthentic, including artefacts such as boomerangs and didjeridus displaying First Nations imagery and art. The committee's own private investigations and observations concurred with this view.[110]
- To date, there has been no systematic tracking of the size and value of the First Nations souvenir market or lost income through inauthentic products.

Needs in the industry

- On deficiencies and needs in the industry, the Office for the Arts' *Consultation paper on Growing the Indigenous Visual Art Industry* asked questions that included 'What skills do you think are important in the industry? What ways do you build those skills? What would help you to build those skills?'[111]
- We understand that fashion industry discussions on the need for a strategic approach to professional development and career pathways have been raised by fashion council First Nations Fashion and Design, and are being led by First Nations model Samantha Harris, and creative director and casting agent Rhys Ripper.
- Australia Council research, *Creating Art Part 1: The makers' view of pathways for First Nations performing arts* (2020) found similar needs for a strategic whole-of-sector approach to professional development in technical roles in the performing arts industry, as is now being raised in the fashion industry.

Appendix D: Australia Council investment in First Nations arts

In 2020-21, the Council invested $23.3 million and supported 317 applications from First Nations artists, groups and organisations; or for projects with First Nations artistic control; or that are targeted to First Nations audiences or participants; or supported applications that have been assessed by the Aboriginal and Torres Strait Islander Arts peer assessment panel. Collation of these categories represents a strengthened methodology to calculate the Council's support of First Nations artists, group and organisations.[112] The categories used to complete our analysis are not mutually exclusive, with some applicants featuring in two or more of these categories. A breakdown of investment within these categories is provided below:

- $12.7 million was invested in 165 projects by First Nations artists and organisations.
- $3.9 million was invested in 39 projects assessed by the Aboriginal and Torres Strait Islander Arts peer assessment panel.
- $6.7 million was invested in 88 projects that were intended for First Nations peoples.
- $19.8 million was invested in 305 projects where a First Nations person had creative control over the project.

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[110] House of Representatives Standing Committee on Indigenous Affairs 2018, *Report on the Impact of Inauthentic Art and Craft in the Style of First Nations Peoples*, p.5.
[111] Office for the Arts 2020, *Consultation Paper on Growing the Indigenous Visual Arts Industry*, September 2020, Department of Infrastructure, Transport, Regional Development and Communications, p.9.
[112] From 2020–21, the Council has included supported applications that have been assessed by the First Nations Arts and Culture peer assessment panel in this performance measure calculation.

This supported a range of activity such as the creation, presentation and touring of work (where possible without COVID-19 restrictions); recordings and publications; masterclasses/workshops and other learning and community engagement activities; as well as operational funding for multi-year investment organisations.

The Council invested $9.3 million in 232 projects by First Nations artists and organisations through our grants and initiatives. This accounts for 40% of the total First Nations investment in 2020–21. This includes a significant proportion of investment through the Sector Recovery Initiatives offered in 2020–21 supporting First Nations applications, totalling $1.2 million investment.[113]

Government Initiatives invested $4.8 million in 54 projects by First Nations artists and organisations (21% of the total investment in First Nations), an increase on $2.4 million in 2019–20 due to investment through Playing Australia and the Visual Arts and Craft Strategy.

$5.7 million was invested in Four Year Funded organisations, an increase of $1.9 million compared to the prior period. The increase is largely due to 8 new First Nations organisations supported by the Four Year Funding program.

$3.5 million has been invested through National Performing Arts Partnership Framework, an increase of $883k from 2019–20. This represents two new entrants to the Partnership Framework: First Nations theatre organisation ILBIJERRI Theatre Company and intercultural Indigenous dance company Marrugeku.

[113] The Sector Recovery Initiatives were offered in 2020–21 only as a direct response to COVID-19.